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Executive Orders

EXECUTIVE ORDER BJ 09-02

Louisiana Innovation Council

WHEREAS, amidst increasing economic competition from other states and countries, Louisiana must aggressively pursue and leverage innovation as a means to grow and diversify its economy;

WHEREAS, given the broad scope and interdependence of innovation-related activities such as targeted research investments, commercialization efforts, entrepreneurship services, risk capital development, and the development of new, high-growth industry segments, sustained and coordinated statewide leadership across various sectors is needed to strategically advance a Louisiana innovation agenda; and

WHEREAS, to address this challenge, the Louisiana Innovation Council is needed to shape the innovation agenda and coordinate related efforts as an important part of a broader, comprehensive economic development strategy;

NOW THEREFORE, I, BOBBY JINDAL, 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 Louisiana Innovation Council (hereafter Council) is hereby established. Its mission is to shape an innovation-based vision for Louisiana and coordinate activities in the statewide innovation agenda.

SECTION 2: The duties of the Council shall include, but are not limited to, the following:

A. Recognize and communicate economic diversification and innovation efforts as key state economic development priorities.

B. Shape the Louisiana innovation agenda, including strategic objectives, activities, and investment opportunities related to targeted research investments, commercialization efforts, entrepreneurship services, risk capital development, and the development of new, high growth industry segments.

C. Assist in the development of a workforce pipeline that supports innovation, including efforts to cultivate talent in Louisiana's prekindergarten-12th grade education systems, community and technical colleges, universities, and other relevant workforce development programs.

D. Assist in the coordination of related policies, programs, and investments, including those already in place (e.g., angel investor tax credits, state venture capital investments).

E. Develop prioritized recommendations on an annual basis to address part or all of the Louisiana innovation agenda.

SECTION 3: The Council shall be composed of twenty-two (22) members, as follows:

- A. The governor or the governor's designee;
- B. The secretary of Economic Development;
- C. The commissioner of Higher Education;
- D. The executive director of the Louisiana Workforce Commission;
- E. The president of the Louisiana Community and Technical College;
- F. The state superintendent of Education;
- G. One (1) state senator, appointed by the governor;
- H. One (1) state representative, appointed by the governor;
- I. One (1) entrepreneur from each economic region of the state (eight total), appointed by the governor;
- J. Four (4) statewide representatives, appointed by the governor;
- K. The CEO of the Council for A Better Louisiana, or designee; and
- L. The Chair of the Committee of 100, or designee.

SECTION 4: A. Council members shall not receive compensation or a per diem for serving on the Council.

B. Council members who are employees or elected public officials of the state of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses from their agency or department, in accordance with PPM 49.

SECTION 5: The governor shall appoint the chair and vice-chair of the Council from its membership. All other officers, if any, shall be elected by the Council from its membership.

SECTION 6: The Council shall meet at regularly scheduled quarterly meetings, and at the call of the chair.

SECTION 7: Support staff, facilities, and resources for the Council shall be provided by the participating agencies.

SECTION 8: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Council in implementing the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of March, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0904#102

EXECUTIVE ORDER BJ 09-03

DOTD Guidelines for Vehicles, Trucks and Loads
Which Haul Hay from Louisiana to Texas

WHEREAS, R.S. 32:387 sets forth the terms and conditions whereby vehicles hauling certain loads may be issued special permits by the Department of Transportation and Development if they are in excess of legal statutory size and weight limits;

WHEREAS, as a result of the effects of a severe and extended drought condition in areas of Texas, a dire necessity has arisen for oversize loads of hay to be expeditiously moved from Louisiana to Texas;

WHEREAS, the economic vitality of the farming industry is extremely dependent on the availability of hay for feed for the livestock; and

WHEREAS, in order to provide emergency assistance to Texas farmers, the State of Louisiana is willing to waive certain permits, fees, and other obligations normally incurred by transporters;

NOW THEREFORE, I, BOBBY JINDAL, 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 Department of Transportation and Development, the Department of Public Safety, and the Department of Revenue shall waive the following statutory requirements for the shipment of hay:

A. The following sizes and weights for vehicles transporting hay on highways maintained by the State of Louisiana shall comply with the following limitation:

1. All vehicles transporting round bales of hay shall be loaded and stacked side-by-side, across the trailer and shall not exceed twelve (12) feet in width and fourteen (14) feet in height without permits.

B. Permit fees are waived for all carriers while engaged in the transportation of hay to the victims of the drought in Texas.

C. The following requirements shall remain in effect:

1. All such vehicles must travel during daylight hours only, beginning at sunrise and ending at sunset.

2. All such vehicles must travel with the required signs and flags properly placed and indicating that they bear oversized loads.

3. Vehicles must be equipped with mirrors so that drivers are able to have a clear view of the highway at least 200 feet to the rear of the vehicle.

4. Loads must be securely bound to the transporting vehicles.

D. Carriers, owners and/or drivers of any vehicle being operated under this Order are responsible for verifying in advance that the actual dimensions and weights of the vehicles and loads are acceptable for all routes being traveled.

SECTION 2. Nothing in this Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and similar structures, or relieve any vehicle or carrier, owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order or other legal requirement not specifically waived herein.

SECTION 3. This Order is effective upon signature and shall terminate on October 31, 2009, unless 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 26th day of March, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0904#103

EXECUTIVE ORDER BJ 09-04

Governor's Military Advisory Board
Amends and Supercedes Executive Order No. BJ 08-26

WHEREAS, the State of Louisiana has a vital interest in the installations and/or units of the U.S. Coast Guard and/or the armed forces of the United States located within the State, in the Louisiana Military Department, and in the concerns of the Active, Guard, Reserve, and/or retired military personnel, and their families, who reside in Louisiana (hereafter "military");

WHEREAS, in the past, the State of Louisiana has successfully employed a coordinating body to provide a forum for these various military components and to serve as a liaison between the various military entities and representatives of civilian interests; and

WHEREAS, various situations will continue to arise which necessitate the continued use of such a coordinating body;

NOW THEREFORE, I, BOBBY JINDAL, 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 Governor's Military Advisory Board (hereafter "Board") is reestablished within the executive department, Office of the Governor.

SECTION 2: The duties and objectives of the members of the Board shall include, but are not limited to, the following:

A. Providing a public forum for issues concerning the installations and/or units of the U.S. Coast Guard and/or the armed forces of the United States located within the state, Active, Guard, Reserve, and/or retired military personnel and their families who reside in Louisiana (hereafter "the military");

B. Formulating goals and objectives to enhance cooperation, coordination, communication, and understanding between the military, the Louisiana Congressional Delegation, the communities in the state interfacing with the military, and/or state and local government agencies;

C. Studying and determining the means to increase and/or strengthen the presence of the U.S. Coast Guard and/or armed forces of the United States located within the state;

D. Reviewing and/or disseminating information about proposed legislation related to and/or directly impacting the U.S. Coast Guard and/or military communities within the state; and

E. Proposing and/or sponsoring activities, legislation, initiatives, programs, or projects which increase, support, or enhance the U. S. Coast Guard and/or military's presence within the state or which enhance or improve the quality of life for the U.S. Coast Guard and/or military communities;

SECTION 3: Annually, on January 1, the Board shall submit a report to the governor regarding the status of and/or progress achieved on the issues addressed in Section 2 of this Order.

SECTION 4: The Board shall be composed of a maximum of twenty-five (25) members and military liaisons, the voting members of which shall be appointed by and serve at the pleasure of the governor and the non-voting military liaisons of which shall be invited to participate by the Office of the Governor.

A. The voting members of the Board shall be selected as follows:

1. The adjutant general of Louisiana, or the adjutant general's designee;
2. The president of the Louisiana State Senate, or the president's designee;
3. The speaker of the Louisiana House of Representatives, or the speaker's designee;
4. The secretary of the Department of Economic Development, or the secretary's designee;
5. The secretary of the Department of Veterans Affairs, or the Secretary's designee;
6. The chair of the Louisiana Employer Support of the Guard and Reserve, or the chair's designee;
7. One (1) representative each from the Greater New Orleans, Ft. Polk-Central Louisiana, Barksdale/Bossier/Shreveport, and the Lake Charles area that have established ongoing relationships with the military from their community;
8. One (1) representative for Louisiana businesses and industries from the areas described in subsection 4(A)(7); and
9. One (1) representative of local governments from the areas described in subsection 4(A)(7).

B. The non-voting military liaisons to the Board shall be selected as follows:

1. The commander, Joint Readiness Training Center (JRTC) and Ft. Polk, or the commander's designee;
2. The commander, Eighth Air Force, or the commander's designee;
3. The commanding officer, Naval Air Station Joint Reserve Base, New Orleans, or the commander's designee;
4. The commander, Marine Forces Reserve, or the commander's designee;

5. The commander, Eighth Coast Guard District, or the commander's designee;

6. The commander, 377th Theater Army Area Command, or the commander's designee; and

7. The commander, U.S. Army Corps of Engineers, Mississippi River Valley Division, or the commander's designee.

C. The Board may create subcommittees composed of Board members, military liaisons and non-Board members, which meet in accordance with the open meetings law, R.S. 42:4.1, et seq.

SECTION 5: The governor shall appoint the chair and vice-chair of the Board from its membership. All other officers, if any, shall be elected by the Board from its membership.

SECTION 6: The Board shall meet at regularly scheduled quarterly meetings, and at the call of the chair.

SECTION 7: Support staff, facilities, and resources for the Board shall be provided by the Louisiana Department of Economic Development.

SECTION 8:

A. Board members and military liaisons shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Board.

B. Board members who are employees or elected public officials of the state of Louisiana or a political subdivision of the state of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing department, agency and/or office or elected office.

C. Board members who are also a member of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance at Board meetings and/or services on the Board.

SECTION 9: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Board in implementing the provisions of this Order.

SECTION 10: This Order supercedes Executive Order No. BJ 2008-26, is effective upon signature, and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 26th day of March, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0904#104

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Board of Animal Health

Trichomoniasis (LAC 7:XXI.101, 121, and 339)

In accordance with the emergency provisions of the Administrative Procedure Act, specifically R.S. 49:953 (B), and under the authority of R.S. 3:2093, 3:2095, and 3:2097 the Louisiana Board of Animal Health declares an emergency to exist and adopts by emergency process the attached regulations for the reporting of trichomoniasis in cattle, restrictions on the entry of bulls into Louisiana, the testing of bulls for trichomoniasis and the movement of bulls testing positive for trichomoniasis. Trichomoniasis is a venereal disease of cattle caused by *Tritrichomonas foetus*, a protozoal parasite. Trichomoniasis causes early embryonic death of the fetus, usually in the first 30 to 90 days of pregnancy, but may cause late term abortion. The parasite is carried by bulls and is passed to cows during breeding. The parasite is almost impossible to detect in cows and is difficult to detect in bulls. The parasite may be transmitted from the cow to her calf during birthing.

Infected herds have had up to a 55 percent decrease in the number of calves being born. The financial losses caused by trichomoniasis are substantial. The Louisiana cattle industry has approximately 420,000 breeding age cows and 25,600 bulls. Based on this number of cows the calving rate is approximately 85 percent, for a total of 544,000 calves a year. A breeding cow will sell, on average, for approximately \$1,200 and a breeding bull will sell, on average for approximately \$2,000. A calf will sell, on average, for \$500. A cow or bull sold for slaughter will bring, on average, \$500. If Louisiana's cattle become infected statewide with trichomoniasis it is conservatively estimated that 50 percent of the cows and bulls will be infected and that the calving rate will decrease to a 50 percent birthing rate. Based on this estimate the Louisiana cattle industry would lose \$112 million from unborn calves, \$22.4 million from the sale of infected breeding cows for slaughter rather than as a breeder, and \$19.2 million from the sale of infected bulls for slaughter, rather than as a breeding bull. The cost for replacing the infected cows and bulls with cows and bulls capable of breeding immediately would be \$38.4 million for replacement cows and \$25.6 million for replacement bulls. The cost for testing bulls is a minimum of \$100. The vaccine for cows is approximately \$10 for the vaccination and \$5 for each yearly booster. Thus the cost of testing all bulls in the state would be \$2.56 million. The vaccination for cows would cost \$6.4 million initially and \$3.2 million yearly thereafter based on 640,000 breeding cows per year. As an example, the owners of a Louisiana herd of 3,000 cattle infected with trichomoniasis has suffered over \$1 million in one year in financial losses from the cost of testing, destruction of infected bulls and cows, replacement animals, and reductions in the calf crop.

The threat posed by trichomoniasis is real and immediate and creates an imminent peril to the public welfare of the citizens of this state, the viability of Louisiana's cattle industry and to the health and safety of the cattle in this state, thereby requiring the promulgation of these emergency regulations. This Emergency Rule becomes effective upon the signature, signed March 18, 2009, of the commissioner and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 1. General Provisions

§101. Definitions

APHIS—the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Bull—an uncastrated male of domestic cattle.

Breeding Bull—a bull less than 24 months of age in which there is no presence of both permanent central incisor teeth in wear if the bull has been commingled with breeding females; a bull less than 24 months of age in which there is the presence of both permanent central incisor teeth in wear; and a bull that is 24 months of age or older.

Virgin Bull—a bull less than 24 months of age in which both permanent central incisor teeth in wear are not present and that has never been commingled with breeding females.

Commissioner—the commissioner of agriculture and forestry.

Department—the department of agriculture and forestry

Slaughter Permit—an official document issued by an authorized agent of the department, a representative of APHIS veterinary services, or an accredited veterinarian that is required to accompany any animal that is a reactor, or suspect or exposed to a disease, and the animal is required to be taken to slaughter. The slaughter permit shall list the tag number of all reactors, the official ear tag number of all suspect or exposed animals, the owner's name and address, the origin and destination locations, number of animals covered, and the purpose of the movement. If a change in destination becomes necessary, a new permit shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

Trichomoniasis—a venereal disease of cattle caused by *Tritrichomonas foetus*, a protozoal parasite

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:230 (March 1985), amended LR 11:615 (June 1985), LR 12:289 (May 1986), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 12:498 (August 1986), LR 14:217 (April 1988), LR

15:811 (October 1989), LR 16:391 (May 1990), LR 17:29 (January 1991), LR 18:840 (August 1992), LR 23:949 (August 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1677 (September 1998), LR 28:1170 (June 2002), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 34:2336 (November 2008), LR 35:

§121. Requiring the Reporting of Contagious Diseases

A. All veterinarians practicing veterinary medicine in this state shall report any of the diseases listed in this Section to the state veterinarian within 24 hours after making a diagnosis or tentative diagnosis of any such disease. The report may be made by telephone, fax, or electronic mail. The reportable diseases are: classical swine fever (hog cholera), anthrax, vesicular conditions, all equine encephalomyelitis conditions, transmissible spongiform encephalopathies (including chronic wasting disease, scrapie, bovine spongiform encephalopathy), pseudorabies (Aujeszky's Disease), tuberculosis, Brucellosis, rabies, strangles (*Streptococcus equi equi*), equine herpes virus 1, equine viral arteritis, spring viremia of carp, viral hemorrhagic septicemia, Newcastle disease and other paramyxovirus infections, avian influenza (highly pathogenic), ornithosis (chlamydiosis, psittacosis), Salmonellas (pullorum disease or fowl typhoid), infectious laryngotracheitis (other than vaccine induced), trichomoniasis, any disease classified by USDA as a foreign animal disease, or any other disease condition which may seriously threaten the any animal population of this state.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2094 and R.S. 3:2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:234 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:813 (October 1989), LR 16:391 (May 1990), LR 23:197 (February 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 28:1170 (June 2002), LR 29:1460 (August 2003), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 34:2337 (November 2008), LR 35:

Chapter 3. Cattle

§339. Trichomoniasis Testing and Movement Requirements for Cattle

A. No bull that has tested positive for trichomoniasis shall be brought into this state for any purpose whatsoever.

B. No bull may be brought into this state without being accompanied by a negative test for trichomoniasis except for the following animals:

1. exhibition and rodeo bulls that are temporarily in the state only for the purpose of the event and will be leaving the state after the event;
2. bulls consigned to go directly to slaughter; and
3. virgin bulls.

C. A bull that is brought into this state without being accompanied by a negative test for trichomoniasis shall not be comingled with any cow unless the bull is tested and found to be negative for trichomoniasis prior to comingling.

D. All bulls, except exhibition and rodeo bulls, brought into this state shall be identified by one or more of the following means prior to importation:

1. Brucellosis ear tag;

2. official 840 radio frequency identification device (RFID);
3. official 840 flap or bangle tag;
4. official individual animal breed registry brand;
5. official individual animal breed registry tattoo; or
- an
6. official state of origin Trichomoniasis tag.

E. Virgin bulls, other than exhibition and rodeo bulls, brought into this state shall, in addition to any other required documentation, be accompanied by a certification of virgin status signed by the owner of the bull, or the owner's representative or a duly authorized veterinarian. The certification shall include the bull's individual identification. If the owner seeking to import the virgin bull into this state acquired the bull from a breeder or another owner then a certification of virgin status signed by the breeder and each prior owner of the bull, or their representative must also accompany the bull.

F. The requirements for testing bulls for trichomoniasis, whether in this state or to be imported into this state, are as follows.

1. All samples to be submitted for testing for Trichomoniasis shall be drawn by a certified accredited veterinarian.

2. The testing of samples shall be performed at an official laboratory or by a certified accredited veterinarian, qualified to test for Trichomoniasis.

3. Three separate official culture tests, each conducted not less than one week apart, or one Polymerase Chain Reaction test (PCR) shall be performed, no more than 30 days prior to entry of the bull into this state. Test samples shall not be pooled. A bull undergoing the three separate official culture tests must test negative on each such test to be considered free of trichomoniasis.

4. A positive result on any test shall immediately cause the bull to be classified as a trichomoniasis infected bull subject to the restrictions set out in these regulations.

5. A PCR test to confirm the presence of trichomoniasis may be requested in the event of a positive result on a test, but the request for the confirmatory test must be made within 5 days of notification of the positive test result.

a. If the confirming PCR test comes back negative then the bull is considered negative for trichomoniasis and may be moved as a negative bull.

b. If the confirming PCR test comes back positive then the bull shall be considered to be infected and subject to the restrictions set out in these regulations.

6. Bulls being tested for trichomoniasis shall be kept separate from female cattle at all times during the entire test period and from the completion of the test until importation into this state.

7. All test results for trichomoniasis, whether negative or positive, shall be reported to the state veterinarian within 24 hours after receipt of the results. When a positive test result is received the treating veterinarian shall consult with the state veterinarian on the first business day after receipt of the test results to determine a plan of action regarding the animal testing positive.

D. Bulls in Louisiana testing positive for trichomoniasis shall be subject to the following restrictions.

1. If a confirming PCR test is timely requested then the bull testing positive shall be segregated from all other cattle until the PCR test results are received.

2. A bull that has tested positive for trichomoniasis for which no confirming PCR test has been timely requested or which is confirmed by the PCR test to be infected with trichomoniasis shall be immediately isolated from and kept isolated from all other cattle, except for other known infected bulls and shall not be moved except as provided in these regulations.

3. An infected bull shall be moved directly to slaughter, or sold directly for slaughter through a livestock market, within 30 days from receipt of the positive results of the original test or the results of the confirming PCR test, whichever is later.

a. Movement of an infected bull shall be under a VS 1-27 permit issued by the testing veterinarian or the state veterinarian or his representative.

b. The VS 1-27 permit shall accompany the bull upon movement of the animal.

4. If an infected bull has been in a herd with other breeding bulls then the other breeding bulls shall automatically be under quarantine until they have tested negative for trichomoniasis.

a. All of the other breeding bulls shall be immediately separated from, and kept separate from, all female cattle and from all virgin bulls or other breeding bulls that have tested negative for trichomoniasis.

b. Each breeding bull that has been in a herd with an infected bull shall be tested for trichomoniasis.

c. Two PCR tests conducted at least seven days apart or three separate official culture tests, each conducted not less than one week apart, shall be performed on each bull. Test samples shall not be pooled. Each test conducted on a bull must show a negative result before the tested bull can be declared to be free of Trichomoniasis.

d. A bull that has tested negative shall be immediately removed from all of the other bulls that have not been tested, or for which the test results have not been received and shall be free of the hold or do not remove order.

e. A positive result on any test shall immediately cause the tested bull to be classified as a Trichomoniasis infected bull subject to the restrictions set out in these regulations.

f. A PCR test to confirm the presence of Trichomoniasis may be requested in the event of a positive result on a culture test, but the request for the confirmatory test must be made within 5 days of notification of the positive test result.

i. If the confirming PCR test comes back negative then the bull is considered negative for trichomoniasis and may be moved as a negative bull

ii. If the confirming PCR test comes back positive then the bull shall be considered to be infected and subject to the restrictions set out in these regulations.

E. A virgin bull or breeding bull that has tested negative for trichomoniasis but which has been comingled with cows that come from a known trichomoniasis infected herd shall not be moved to a herd not known to be infected or comingled with cows from such a herd unless the bull has been tested for trichomoniasis and has negative test results.

F. A violation of these regulations shall subject the violator to the following actions:

1. imposition by the board of a maximum \$1,000 civil penalty for each violation, with each day being a separate violation, as provided by R.S. 3:2093 if the violation does not involve the bringing of infected bulls into this state or the transportation of infected bulls through or within this state;

2. imposition by the board of a maximum \$5,000 civil penalty for each violation, with each day being a separate violation, as provide by R.S. 3:2097, if the violation involves the bringing of infected bulls into this state or the transportation of infected bulls through or within this state;

3. criminal prosecution under R.S. 3:2097 if the violation involves the bringing of infected bulls into this state or the transportation of infected bulls through this state, or within this state without a VS-127; conviction of which subjects the violator to a fine of not less that \$5,000 but not more that \$25,000, or imprisonment, with or without hard labor, for not less than 1 year but not more than 10 years, or both;

4. criminal prosecution under R.S. 14:133 if the violation involves the filing of a false public record; conviction of which subjects the violator to a fine of not more than \$5,000, or imprisonment for not more than 5 years with or without hard labor, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, 3:2095, and 3:2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Board of Animal Health, LR 35:

Mike Strain, DVM
Commissioner

0904#002

DECLARATION OF EMERGENCY

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

Use of Pesticide 2, 4-D (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) and R.S. 3:3203, the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in amending the following Rule for the implementation of regulations governing the use of the pesticide 2, 4-D and products containing 2, 4-D.

2, 4-D and products containing 2, 4-D are efficient and effective pesticides in the control of certain pests in agricultural crops. Restrictions on the application of 2, 4-D is necessary to prevent drift on to non-target areas and harm to other crops and vegetation. The current restrictions in the permanent rules and regulations do not allow for the use of 2, 4-D and products containing 2, 4-D on rice crops grown in certain areas of Allen and Evangeline Parishes. The current restriction subjects the rice crops in these areas to crop pests which can destroy the rice crops in those areas or severely limit the amount of rice harvested. Such destruction or reduction of the rice crops in those areas will imperil the

livelihood of the rice farmers producing those crops and adversely affect the agricultural economies of those parishes and the welfare of the citizens of those parishes.

The commissioner has therefore determined that this Emergency Rule implementing restrictions on the application of 2, 4-D, and products containing 2, 4-D is necessary to prevent an imminent peril to the public health, welfare, and safety of Louisiana citizens.

This Emergency Rule becomes effective on April 1, 2009 and will remain in effect 120 days.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - P.2. ...

3. 2, 4-D or products containing 2, 4-D; Application Restriction

a. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 1 and May 1 in the following parishes:

i. Allen (East of U.S. Highway 165 and North of U.S. Highway 190), Avoyelles (West of LA Highway 1), Evangeline, Pointe Coupee (West of LA Highway 1 and North of U.S. Highway 190), Rapides, and St. Landry (North of U.S. Highway 190).

ii. Applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 1, in the areas listed in LAC 7:XXIII.143.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between May 1 and August 1 in the area south of Deer Farm Road and Carrier Road, north of U.S. Highway 190 between U.S. Highway 165 and Castor Creek in Allen Parish and south of LA Highway 104, north of US Highway 190 and west of LA Highway 13 in Evangeline Parish, and except upon written application to and the specific written authorization by the assistant commissioner of the office of agricultural and environmental sciences, or in his absence the commissioner of agriculture and forestry.

4. - 5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), LR 35:

Mike Strain, DVM
Commissioner

0903#009

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 1303, and 1903)

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

This rulemaking will modify the definition of "qualified summer session" beginning with the 2010-2011 award year to allow students to use their TOPS award to attend a summer session if they have at least 60 hours of college credit and request payment for the summer session from their remaining TOPS eligibility. Students will lose one semester of TOPS eligibility for each summer session paid by TOPS. Summer hours may not be used to comply with the TOPS requirement to earn at least 24 hours each academic year. Grades earned during a summer session will be included in computing the student's cumulative grade point average.

This rulemaking changes the Leveraging Educational Assistance Partnership (LEAP) initial eligibility requirements to require a student pass the General Educational Development (GED) test with at least a minimum average score of 450. The GED is a nationwide test developed by the American Council on Education. The GED grading scale has been changed to 200 to 800 and the minimum average passing score has been raised from 45 to 450.

This declaration of emergency is effective April 7, 2009, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG09107E)

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.

* * *

Qualified Summer Session—those summer sessions (includes terms and semesters conducted during the summer) for which the student's institution certifies that:

a. - e. ...

f. beginning with the summer of 2010, prior to the beginning of the summer session, the student:

i. has at least 60 academic college credit hours;

- ii. has enrolled as a full time student for the summer session; and
- iii. has signed a form provided by LOSFA:
 - (a). requesting payment for the summer session from the student's remaining TOPS eligibility;
 - (b). stating the student understands that the use of the TOPS award for the summer session reduces the student's TOPS eligibility by one semester or term;
 - (c). stating the student understands that the hours earned cannot be used to meet the TOPS requirement to earn at least 24 hours each academic year; and
 - (d) stating the student understands that the grades earned during the summer session will be included in the student's cumulative grade point average.

* * *

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 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1303. Establishing Eligibility

A. - A.3. ...

4. have a high school diploma with at least a 2.00 cumulative grade point average, or a minimum average score of 450 on the General Educational Development (GED) test, or an ACT composite score of at least 20, or a post-secondary grade point average of at least 2.00 from the most recent term; and

A.5. - 12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1459 (August 1999), repromulgated LR 27:1861 (November 2001), amended LR 28:448 (March 2002), LR 35:

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A. - F. ...

G. Certification of Qualified Summer Session

1. Each student requesting payment must sign a form provided by LOSFA:

- a. requesting payment for the summer session from the student's remaining TOPS eligibility;

- b. stating the student understands that the use of the TOPS award for the summer session reduces the student's TOPS eligibility by one semester or term;
- c. stating the student understands that the hours earned cannot be used to meet the TOPS requirement to earn at least 24 hours each academic year; and
- d. stating the student understands that the grades earned during the summer session will be included in the student's cumulative grade point average.

2. The institution's submission of a payment request for tuition for a student's enrollment in a summer session will constitute certification of: the student's eligibility for tuition payment for the summer session; receipt from the student of a signed a written acknowledgment and consent that each payment will consume one semester of eligibility; and the student's enrollment in the summer session.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:

George Badge Eldredge
General Counsel

0904#078

DECLARATION OF EMERGENCY

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

General Subgrant Guidelines (LAC 22:III.4105)

The following amendments are published in accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 15:1204 and R.S. 15:1207, the Louisiana Commission on Law Enforcement, which allows the Commission on Law Enforcement to promulgate rules necessary to carry out its business or the provisions of the chapter. The commission hereby finds that an emergency exists whereby the commission may suffer an immediate, detrimental financial loss in federal grant grants estimated at over \$23 million over the next year if these amendments are not immediately implemented. The Emergency Rule provides a process to equitably award and distribute federal grant funds in the event of an emergency and/or natural disaster. In order to prevent any potential delay in the distribution of federal grant funds allocated to law enforcement and crime victims, the commission adopts this Emergency Rule effective April 23, 2009. It shall remain in effect for 120 days or until the final Rule takes place.

Title 22
CORRECTIONS, CRIMINAL JUSTICE, AND LAW
ENFORCEMENT

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

Subpart 3. General Subgrant Guidelines

Chapter 41. Procedures

§4105. General Provisions

A. - G. ...

H. Emergency Meetings

1. An emergency meeting of the priorities committee can be called when:

a. a disaster, crisis, or some other unforeseen event affecting all or part of the state of Louisiana, and the Louisiana commission on law enforcement is unable to meet at its regularly scheduled time; or

b. a regular commission meeting has been cancelled by order of the chairman; or

c. action is needed by the commission between regularly scheduled meetings to ensure that all federal and state funds are used within the proper timeframe and provide for necessary matters attendant to the proper administration of agency programs; or

d. for any other emergency so deemed by the chairman of the commission. When an emergency meeting is called, the priorities committee will have the power to act as (for) the commission.

2. These provisions are applicable to the award of state or federal grants, increases to state or federal grants, allocation of state or federal funds, approval of federal sole source contracts, federal grant adjustments or any other situation where the subgrantee and the state of Louisiana will lose all or part of available federal or state funds unless awarded or contracted by a specific date that falls prior to the next regularly scheduled commission meeting.

3. Process for Calling an Emergency Meeting

a. The executive director notifies the chairman of the Louisiana commission on law enforcement of the need for an emergency meeting.

b. The chairman of the Louisiana commission on law enforcement, or in his absence, the executive director, calls an emergency meeting of the priorities committee by notifying the membership of the committee no less than 24 hours in advance of the called meeting time and date

c. The executive director develops a list of grants, subgrants, allocations, increases and/or contracts requiring approval by the priorities committee at the emergency meeting. This list shall serve as the complete agenda for the emergency meeting.

d. All matters approved by the priorities committee at an emergency meeting will be reported to the commission at their next regularly scheduled meeting. Decisions of the priorities committee while in the emergency meeting shall have the same force and effect as a decision of the Louisiana commission on law enforcement.

e. Three of five priority committee members shall constitute a quorum for purposes of emergency meetings. The chairman of the commission shall be considered a committee member for purposes of establishing a quorum.

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 32:79 (January, 2006), amended LR 35:

Interested persons may submit written comments on this Emergency Rule no later than May 10, 2009 at 5 p.m. to Bob Wertz, Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Judy A. Dupuy
Executive Director

0904#047

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
Dental Program Reimbursement Rate Increase
(LAC 50:XV.6903 and 6905)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.6903 and 6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the rules governing the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, including those provisions governing coverage and reimbursement of dental services, in order to adopt these rules in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 29, Number 2)*. As a result of additional funds being allocated during the 2007 Regular Session of the Louisiana Legislature, the bureau increased the reimbursement fees for designated dental services (*Louisiana Register, Volume 34, Number 6*).

During the 2008 Regular Session of the Louisiana Legislature, additional funds were allocated for the EPSDT Dental Program. As a result of the allocation of these funds, the department amended the provisions governing the EPSDT Dental Program to include coverage of two additional dental procedures and increase the reimbursement fees for designated dental services. The bureau discontinued the lifetime service limits for certain endodontic procedures and provided clarification regarding covered services.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT dental services by encouraging the continued participation of dental providers in the Medicaid Program.

Effective April 24, 2008, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing covered services and the reimbursement methodology under the Early and Periodic Screening, Diagnosis and Treatment Dental Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening,

Diagnosis and Treatment

Chapter 69. Dental Services

§6903. Covered Services

A. The dental services covered under the EPSDT Dental Program are organized in accordance with the following 11 categories:

1. diagnostic services which include oral examinations, radiographs and oral/facial images, diagnostic casts and accession of tissue—gross and microscopic examinations;

2. preventive services which include prophylaxis, topical fluoride treatments, sealants, fixed space maintainers and re-cementation of space maintainers;

3. restorative services which include amalgam restorations, composite restorations, stainless steel and polycarbonate crowns, pins, core build-ups, pre-fabricated posts and cores and unspecified restorative procedures;

4. endodontic services which include pulp capping, pulpotomy, endodontic therapy on primary and permanent teeth (including treatment plan, clinical procedures and follow-up care), apexification/recalcification, apicoectomy/periradicular services and unspecified endodontic procedures;

5. periodontal services which include gingivectomy, periodontal scaling and root planning, full mouth debridement, and unspecified periodontal procedures;

6. removable prosthodontics services which include complete dentures, partial dentures, denture repairs, denture relines and unspecified prosthodontics procedures;

7. maxillofacial prosthetics service, which is a fluoride gel carrier;

8. fixed prosthodontics services which include fixed partial denture pontic, fixed partial denture retainer and other unspecified fixed partial denture services;

9. oral and maxillofacial surgery services which include non-surgical extractions, surgical extractions, other surgical procedures, alveoloplasty, surgical incision, temporomandibular joint (TMJ) procedure and other unspecified repair procedures;

10. orthodontic services which include interceptive and comprehensive orthodontic treatments, minor treatment to control harmful habits and other orthodontic services; and

11. adjunctive general services which include palliative (emergency) treatment, anesthesia, professional visits, miscellaneous services, and unspecified adjunctive procedures.

B. Effective November 1, 2006, the following dental procedures are included in the service package for coverage under the EPSDT Dental Program:

1. prefabricated stainless steel crown with resin window; and

2. appliance removal (not by the dentist who placed the appliance), including removal of archbar.

C. Effective December 24, 2008, the following dental procedures are included in the service package for coverage under the EPSDT Dental Program:

1. resin-based composite restorations (1-4 or more surfaces), posterior; and

2. extraction, coronal remnants—deciduous tooth.

D. Effective December 24, 2008, the service limit of six root canals per lifetime is discontinued.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:1138 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§6905. Reimbursement

A. - A.2. ...

B. Effective for dates of service on and after December 24, 2008, the reimbursement fees for EPSDT dental services are increased to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate, unless otherwise stated in this Chapter. The reimbursement fees are increased to:

1. 80 percent for all oral examinations;

2. 75 percent for the following services:

a. radiograph—periapical and panoramic film;

b. prophylaxis;

c. topical application of fluoride or fluoride varnish;

and

d. removal of impacted tooth;

3. 70 percent for the following services:

a. radiograph—complete series, occlusal film and bitewings;

b. sealant, per tooth;

c. space maintainer, fixed (unilateral or bilateral);

d. amalgam, primary or permanent;

e. resin-based composite and resin-based composite crown, anterior;

f. prefabricated stainless steel or resin crown;

g. core buildup, including pins;

h. pin retention;

i. prefabricated post and core, in addition to crown;

j. extraction or surgical removal of erupted tooth;

k. removal of impacted tooth (soft tissue or partially bony); and

l. palliative (emergency) treatment of dental pain;

and

m. surgical removal of residual tooth roots; and

4. 65 percent for the following dental services:

a. oral/facial images;

b. diagnostic casts;

c. re-cementation of space maintainer or crown;

d. removal of fixed space maintainer;

e. all endodontic procedures except:

i. unspecified endodontic procedure, by report;

f. all periodontic procedures except:

i. unspecified periodontal procedure, by report;

g. fluoride gel carrier;

h. all fixed prosthodontic procedures except:

i. unspecified fixed prosthodontic procedure, by report;

i. tooth re-implantation and/or stabilization of accidentally evulsed or displaced tooth;

j. surgical access of an unerupted tooth;

k. biopsy of oral tissue;

l. transseptal fiberotomy/supra crestal fiberotomy;

- m. alveoloplasty in conjunction with extractions;
- n. incision and drainage of abscess;
- o. occlusal orthotic device;
- p. suture of recent small wounds;
- q. frenulectomy;
- r. fixed appliance therapy; and
- s. all adjunctive general services except:
 - i. palliative (emergency) treatment of dental pain,

and

- ii. unspecified adjunctive procedure, by report.

C. The reimbursement fees for all other covered dental procedures shall remain at the rate on file as of December 23, 2008.

C.1. - NOTE Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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.

Alan Levine
Secretary

0904#083

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Facility Need Review—Home and Community-Based Service Providers (LAC 48:I.12501-12505 and 12523)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.12501-12505 and adopts §12523 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the inclusion of adult residential care providers in the Facility Need Review Program and reorganized Chapter 125 of Title 48 of the Louisiana Administrative Code (*Louisiana Register*, Volume 34, Number 12). The department now proposes to amend the December 20, 2008 Rule to adopt provisions governing the inclusion of licensed home and community-based service (HCBS) providers in the Facility Need Review Program.

This action is being taken to promote the health and welfare of recipients by assuring their access to home and community-based services rendered by appropriately regulated and licensed providers. It is estimated that

implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2008-2009.

Effective April 13, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the facility need review process to include licensed home and community-based service providers.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

* * *

Home and Community Based Service (HCBS) Providers—those agencies, institutions, societies, corporations, facilities, person or persons, or any other group intending to provide or providing respite care services, personal care attendant (PCA) services, or supervised independent living (SIL) services, or any combination of services thereof, including respite providers, SIL providers, and PCA providers.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§12503. General Information

A. The Department of Health and Hospitals will conduct a facility need review (FNR) to determine if there is a need for additional facilities, beds or units to enroll to participate in the Title XIX Program for the following facility types:

1. nursing facilities;
2. skilled nursing facilities;
3. intermediate care facilities for persons with developmental disabilities.

B. 42 CFR Part 442.12(d) allows the Medicaid agency to refuse to execute a provider agreement if adequate documentation showing good cause for such refusal has been compiled (i.e. when sufficient beds are available to serve the Title XIX population). The Facility Need Review Program will review applications for additional beds, units and/or facilities to determine whether good cause exists to deny participation in the Title XIX Program to prospective providers of those services subject to the FNR process.

C. The department will also conduct a FNR to determine if there is a need to license additional units, facilities or agencies so that they may enroll to participate in the Medicaid Program as one of the following provider types:

1. adult residential care units or facilities; or
2. home and community-based service providers, as defined under this Chapter.

D. The department shall be responsible for reviewing proposals for facilities, beds, units, and agencies submitted

by health care providers seeking to either be enrolled or licensed in order to participate in the Medicaid Program. The secretary or his designee shall issue a decision of approval or disapproval.

1. The duties of the department under this program include, but are not limited to:

a. determining the applicability of these provisions to all requests for approval to enroll facilities, beds, or units in the Medicaid Program or to license facilities, units or agencies so that these providers may enroll to participate in the Medicaid Program;

b - d. ...

E. No nursing facility, skilled nursing facility, or ICF-DD bed, nor provider units/beds shall be enrolled in the Title XIX Program unless the bed has been approved through the FNR Program. No adult residential care facility/unit or home and community-based services provider may be licensed by the department unless the facility, unit or agency has been approved through the FNR Program.

1. - 4. Repealed.

F. Grandfather Provision. An approval shall be deemed to have been granted under this program without review for NFs, ICF-DDs and/or beds that meet one of the following descriptions:

1. all valid §1122 approved health care facilities/beds;
2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program;
3. all valid approvals for health care facilities issued under the Facility Need Review Program; or
4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

G. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or
2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2612 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§12505. Application and Review Process

A. FNR applications shall be submitted to the Bureau of Health Services Financing, Health Standards Section, Facility Need Review Program. Application shall be submitted on the forms (on 8.5 inch by 11 inch paper) provided for that purpose, contain such information as the department may require, and be accompanied by a nonrefundable fee of \$10 per bed or unit. The nonrefundable application fee for an HCBS provider shall be a flat fee of \$150.00. An original and three copies of the application are required for submission.

1. - 3.e.i....

ii. acknowledgement that failure to meet the time-frames established in this Chapter will result in automatic expiration of the FNR approval for the ARCP units.

B. - B.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:812 (August 1995), amended LR 34:2612 (December 2008), LR 35:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12523. Home and Community-Based Service Providers

A. No HCBS provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of a HCBS provider license. This provision does not apply to any HCBS provider licensed by January 31, 2009, and grandfathered pursuant to Section 12503(B) of this Chapter. Once the FNR Program approval is granted, an HCBS provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. The service area for proposed or existing HCBS providers is the DHH region in which the provider is or will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional HCBS provider in the geographic location for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

- a. the number of other HCBS providers in the same geographic location and region servicing the same population; and
- b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferrable, and are limited to the location and the name of the original licensee.

1. The FNR approval shall not be transferred to another party or entity or be moved to another location without the submission of a new application to and approval by the department's FNR Program. Approval of licensed providers shall automatically expire if moved or transferred without application to and approval by the FNR Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

Interested persons may submit written comments to 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.

Alan Levine
Secretary

0904#082

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Program—Prescription Limit Reduction (LAC 50:XXIX.113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.113 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act, and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 32, Number 6)*. As a result of a budgetary shortfall, the bureau has determined that it is necessary to amend the provisions governing prescription limits to reduce the number of prescriptions covered by the Medicaid Program within a calendar month for certain recipients.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Pharmacy Benefits Management

Program by approximately \$610,644 for state fiscal year 2008-2009.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing prescription limits in the Pharmacy Benefits Management Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§113. Prescription Limit

A. Effective May 1, 2009, the Department of Health and Hospitals will pay for a maximum of five prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the five prescriptions per calendar month limitation:

1. persons under 21 years of age;
2. persons who are residents of long-term care institutions, such as nursing homes and ICF-DD facilities; and
3. pregnant women.

C. The five prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. "medically necessary override;" and
2. a valid ICD-9-CM Diagnosis Code that directly related to each drug prescribed that is over the five prescription limit (no ICD-9-CM literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than five prescriptions per calendar month is required by the recipient.

E. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

F. An acceptable statement and ICD-9-CM are required for each prescription in excess of five for that month.

G. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is 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.

Alan Levine
Secretary

0904#003

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pregnant Women Extended Services Dental Services Reimbursement Rate Increase (LAC 50:XV.16105 and 16107)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.16105 and 16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to expand coverage of certain designated dental services to include Medicaid eligible pregnant women ages 21 through 59 in order to address their periodontal needs that occur during pregnancy (*Louisiana Register*, Volume 30, Number 3). The bureau amended the March 20, 2004 Rule to clarify the provisions governing the prior authorization of these services (*Louisiana Register*, Volume 34, Number 3). The bureau amended the March 20, 2008 Rule to include an additional dental service that was already covered for Medicaid eligible pregnant women but was omitted from the list of covered services and to correct the spelling of a covered service in these provisions (*Louisiana Register*, Volume 34, Number 7).

Act 19 of the 2008 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program for payments to private and public providers of health care services. In compliance with the directives of Act 19, the department now amended the provisions governing the Pregnant Women Extended Services Dental Program to include coverage of two additional dental procedures and increase the reimbursement fees for designated dental services. In addition, the bureau clarified the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women. (*Louisiana Register*, Volume 35, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 6, 2009 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to medically necessary dental services for pregnant women by encouraging the continued participation of dental providers in the Medicaid Program.

Effective May 7, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for dental services provided to pregnant women.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 13. Pregnant Women Extended Services

Chapter 161. Dental Services

§16105. Covered Services

A. - B. ...

C. Effective January 6, 2009, the following dental procedures are included in the service package for dental services provided to Medicaid eligible pregnant women:

1. resin-based composite restorations (1-4 or more surfaces), posterior; and
2. extraction, coronal remnants—deciduous tooth.

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, amended LR 34:442 (March 2008), LR 34:1419 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 35:

§16107. Reimbursement

A. Dental services covered under Pregnant Women Extended Services shall be reimbursed at the lower of either:

1. the dentist's billed charges minus any third party coverage; or
2. 65 percent of the 2007 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate minus any third party coverage.

B. Effective for dates of service on and after January 6, 2009, the reimbursement fees for certain dental services are increased to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate, unless otherwise stated in this Chapter. These designated reimbursement fees are increased to:

1. 75 percent for the following services:
 - a. radiograph—periapical and panoramic film; and
 - b. prophylaxis;
2. 70 percent for the following services:
 - a. radiograph—occlusal film;
 - b. amalgam (1-4 or more surfaces), primary or permanent;
 - c. resin-based composite anterior and posterior;
 - d. resin-based composite crown, anterior;
 - e. prefabricated stainless steel or resin crown;
 - f. pin retention;
 - g. extraction of erupted tooth or exposed root;
 - h. surgical removal of erupted tooth and removal of bone and/or section of tooth; and
 - i. removal of impacted tooth (soft tissue or partially bony);
3. 65 percent for the following dental services:
 - a. periodontal scaling and root planing;
 - b. full mouth debridement; and
 - c. extraction, coronal remnants—deciduous tooth.

C. The reimbursement fees for all other covered dental procedures shall remain at the rate on file as of January 5, 2009.

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 30:434 (March 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 35:

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

Interested persons may submit written comments to 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.

Alan Levine
Secretary

0904#081

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF—SES Access and Visitation
(LAC 67:III.5567)

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 implement Section 5567 effective May 1, 2009. This declaration is necessary to extend the original Emergency Rule which was published January 1, 2009 and was effective January 1, 2009, 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 May 20, 2009.) This Emergency Rule will remain in effect for a period of 120 days.

The Office of Family Support will adopt the TANF Initiative, Legal Access and Visitation to further the goals and intentions of the Temporary Assistance for Needy Families (TANF) Block Grant to Louisiana by providing legal services to noncustodial parents to obtain regular visitation arrangements with their children and other related services.

The authorization for emergency action in this matter is contained in Act 19 of the 2008 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

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

Chapter 55. TANF Initiatives

§5567. Legal Access and Visitation

A. Effective January 1, 2009, the Office of Family Support will implement the TANF Initiative, Legal Access and Visitation.

B. Services provided include legal services that may include mediation, development of parenting plans, court ordered visitation, or other services to obtain regular visitation arrangements with the children. Referrals that assist non-custodial parents to overcome social, financial and emotional barriers that hinder access to their children will also be provided.

C. These services meet the TANF goal 4 to encourage the formation and maintenance of two-parent families by improving the parent's ability to act in the best interest of their children, providing the children continuous and quality access to both parents, improving the well-being of the children, and encouraging healthy relationships, youth development, and responsible parenting.

D. Eligibility for services is limited to non-custodial parents of minor children who have active child support cases under Title IV-D of the Social Security Act.

E. 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; Act 19 of the 2008 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 35:

Kristy Nichols
Secretary

0904#064

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial King Mackerel Season Closure

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by the commission in its resolution of January 8, 2009, to close the 2008-09 commercial king mackerel season in Louisiana state waters when he is informed that the designated portion of the commercial king mackerel quota for the Gulf of Mexico has been filled, or was projected to be filled, the secretary hereby declares:

Effective 12:00 noon, March 27, 2009, the commercial fishery for king mackerel in Louisiana waters will close and remain closed through June 30, 2009. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with closure, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in federal waters of the Gulf of Mexico will close at 12:00 noon, March 27, 2009. Closing the season in state waters is

necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Robert J. Barham
Secretary

0904#001

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Partial Reopening of Shrimp Season in State Outside Waters

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 have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and a resolution adopted by the Wildlife and Fisheries Commission on December 4,

2008 which authorizes the Secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the Secretary hereby declares:

That State Outside Waters from the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude, shall reopen to shrimping at Noon on April 13, 2009.

Recent biological samples taken by Department personnel indicate that small white shrimp which have over-wintered in these waters from December through the present time have reached marketable sizes and the closure is no longer necessary. Significant numbers of small white shrimp still remain in State Outside Waters west of the Atchafalaya River Ship Channel to the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude, and this area will remain closed to shrimping until further notice.

Robert J. Barham
Secretary

0904#044

Rules

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Pesticides—Examinations, Restriction,
Water and Fish Tissue Sampling
(LAC 7.XXIII.103, 121, 125, 129, 143, 173, 181, and 205)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statutes, R.S. 3:3203, 3:3271, and 3:3306, the Commissioner of Agriculture and Forestry, adopts regulations regarding pesticides to: add definitions and make other technical changes; provide for failure to pass an examination and cheating on examinations; changes the name of the right-of-way pest control category for commercial applicators; provide a numbering system for subcategories that agricultural consultants may become certified for; repeal a restriction on application of pesticides; repeal the requirement for publication in the *Louisiana Register* of an annual list of pesticides which, upon disposal, are declared by the EPA to be hazardous waste; and change the water monitoring frequency from monthly to quarterly and the fish tissue sampling from annually to on an as needed basis. These amendments have been made to improve the implementation of the provisions of the Louisiana Pesticide Law (R.S. 3:3201 et seq.).

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter A. Authority

§103. Definitions

Application—the activities directly related to the administering of a pesticide, including activities leading up to the actual administration of the pesticide (pre-application activities), the actual administering of the pesticide (application activities), and those occurring after the administering of the pesticide (post-application activities). Application activities include those such as the actual administering of the pesticide by any method, such as spraying or topical use.

1. Pre-application activities, include those such as: arranging for the application; mixing and loading the pesticide; and necessary preparations for the application of the pesticide, such as employee notification, workers and handlers training, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

2. Post-application activities include those such as: restricted-entry intervals, responsibilities related to worker training, notification, and decontamination, providing emergency assistance, transporting or storing the pesticides, and disposing of any excess pesticides, spray mix, equipment wash water, pesticide containers, and other materials containing the pesticide.

* * *

EPA—the United States Environmental Protection Agency

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3202 and 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:171 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 27:2085 (December 2001), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 35:626 (April 2009).

Subchapter E. Applicators, Salespersons and Agricultural Consultants

§121. Examinations of Applicators, Salespersons and Agricultural Consultants

A The minimum score necessary for successful completion of examinations for certifications under these rules and regulations shall be 70 percent.

B. - C. ...

D. Each applicant who fails to receive a passing score on any examination in any category or subcategory shall wait a minimum of 10 days before being eligible for re-examination.

E. ...

F. An applicant who took and did not pass an examination in this state under these standards shall not be permitted to receive certification in the occupation or category for which the examination was taken under a reciprocal agreement with another state.

G. ...

H. An applicant shall be disqualified from completing an examination or taking any other examination administered under these rules and regulations if the applicant is caught or found to be cheating on an examination or using any written materials, electronic devices, or other means during an examination, which have not been authorized or allowed by the director or person administering the examination.

1. Any such applicant shall not be allowed to finish the examination and shall receive a score of zero. If an applicant finished the examination prior to the discovery of the cheating or use of unauthorized written materials, electronic devices, or other means the applicant's examination shall be voided and the applicant shall receive a score of zero.

2. Any applicant who is not allowed under this subsection to finish an examination, or whose examination is voided, or who is disqualified from taking the examination or any other examination administered under these rules and regulations may appeal the action to the commission.

a. The appeal must be in writing, state the grounds for the appeal, and filed with the director within 30 days of the date of the action complained of.

b. The appeal will be placed on the agenda for the next meeting of the commission and the applicant will be notified of the date and place of the next meeting.

c. The appeal will be heard by the commission, which will make a recommendation to the commissioner. The decision of the commissioner shall be the final administrative decision in the matter.

d. An appeal from the decision of the commissioner shall be in accordance with the Administrative Procedure Act.

e. The action or administrative decision shall become final if no appeal is timely filed at any step in the proceedings or if the action is upheld on appeal.

3. During the pendency of any appeal or during the time limit for the filing of any appeal the applicant shall not be allowed to take any examination administered under these rules and regulations.

4. If the action or administrative decision is not appealed or is upheld on appeal then the applicant shall not be allowed to take or re-take the examination or any other examination administered under these rules and regulations for a period of three years from the examination date without the approval of the commission given at a meeting of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:178 (April 1983), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 15:76 (February 1989), amended LR 28:39 (January 2002), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 35:626 (April 2009).

Subchapter F. Certification

§125. Certification of Commercial Applicators

A. - B.2.e.ii. ...

f. Right-of-Way and Industrial Pest Control (Category 6). This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.

B.2.g. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and 3:3242.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002), LR 32:794 (May 2006), repromulgated LR 32:1011 (June 2006), amended LR 35:627 (April 2009).

§129. Certification of Agricultural Consultants

A. - C. ...

D. Certification of Agricultural Consultants

1. Certification in a category established under this subsection authorizes the agricultural consultant to make recommendations in the areas listed for each category. The categories in this subsection reflect national categories as established by the EPA.

2. Applicants for certification as agricultural consultants shall elect to be examined in one or more of the following categories.

a. Control of Insects, Mites, Nematodes or Other Invertebrates (Category 1)

i. Agricultural Entomology (Subcategory 1a). Making recommendations for the control of pests of agronomic crops, especially cotton, rice, soybeans, sugarcane, vegetables, pasture and forage, and grain crops.

ii. Forest Entomology (Subcategory 1b). Making recommendations for the control of forest pests.

iii. Household, Structural and Industrial Entomology (Subcategory 1c). Making recommendations for the control of household pests, structural pests and industrial pests (such as termites, in stores, warehouse and transportation facilities).

iv. Medical, Veterinary and Public Health Entomology (Subcategory 1d). Making recommendations for the control of arthropods affecting man and animals.

v. Orchard and Nut Tree Entomology (Subcategory 1e). Making recommendations for the control of orchard pests.

vi. Ornamental Entomology (Subcategory 1f). Making recommendations for the control of pests of ornamentals, lawns, turf and shade trees.

vii. Mosquito Control Entomology (Subcategory 1g). Making recommendations for the control of mosquito species.

b. Control of Plant Pathogens (Category 2)

i. Agricultural Plant Pathology (Subcategory 2a). Making recommendations for the control of diseases of agronomic crops, especially sugarcane, cotton, rice, soybeans and home garden plants.

ii. Turf, Ornamental, Shade-tree and Floral Plant Pathology. (Subcategory 2b). Making recommendations for the control of diseases of turf, ornamentals, shade-trees and floral plants. Also includes greenhouse and nursery plant disease control.

iii. Forest Pathology (Subcategory 2c). Making recommendations for the control of diseases of trees in plantations, nurseries and managed or unmanaged forests wherein the principal value lies in the production of wood fiber.

iv. Orchard Pathology (Subcategory 2d). Making recommendations for the control of diseases of wood vines and trees wherein the principal value lies in the production of fruits or nuts.

c. Control of Weeds (Category 3)

i. Agricultural Weed Control (Subcategory 3a). Making recommendations for the control of weeds and grasses in field crops, vegetable crops, pastures and rangeland.

ii. Turf, Ornamental and Shade-Tree Weed Control (Subcategory 3b). Making recommendations for the control of weeds and grasses in ornamentals, turf areas, cemeteries and other similar areas.

iii. Forest Weed Control (Subcategory 3c). Making recommendations for the control of weeds and grasses in forest lands.

iv. Right-of-Way and Industrial Weed Control. (Subcategory 3d). Making recommendations for the control of weeds and grasses in and around industrial and commercial sites.

v. Aquatic Weed Control: (Subcategory 3e). Making recommendations for the control of aquatic weeds and grasses in or on water in non-agricultural settings.

d. Soil Management (Category 4)

i. Agricultural Field Soil Management (Subcategory 4a). Knowledgeable in symptoms of soil and/or tissue nutrient problems; sampling techniques for soil and/or tissue analysis; interpretation of laboratory results; and recommendations for soil and/or tissue amendments.

ii. Agricultural Soil, Water and Tissue Laboratory Analysis (Subcategory 4b). Knowledge of all diagnostic procedures pertaining to the analysis of soil, water and/or tissue samples.

iii. Agricultural Soil Reclamation (Subcategory 4c). Knowledge of techniques, methods, etc., for restoring or attempting to restore soil productivity as a result of physical and/or chemical disturbance or natural causes such as severe erosion or contaminated soils.

iv. Agricultural Water Management. (Subcategory 4d). Knowledge of irrigation scheduling practices and techniques for various enterprises requiring water on a regular or intermittent basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and 3:3246.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:184 (April 1983), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:281 (February 1998), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides LR 28:39 (January 2002), LR 35:627 (April 2009).

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - G.2. ...

H. Repealed.

I. - P.5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 35:628 (April 2009).

Subchapter O. Penalties

§173. Penalties for Violation of Pesticide Statutes and These Regulations

A. - B. ...

C. No monetary penalty may be assessed by the commissioner prior to the holding of an adjudicatory hearing

before the Advisory Commission on Pesticides. Such adjudicatory hearing shall be conducted in accordance with the requirements of the Administrative Procedure Act; any person alleged to have violated any provision of the pesticide statutes or these regulations shall be accorded all of the rights and privileges guaranteed under said Act.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3252.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 35:628 (April 2009).

Subchapter S. Unused Portions of Pesticides and/or Rinsate of Pesticides Classified as Hazardous Wastes

§181. Constructive Recycling

A. Applicators of pesticides covered under this Section may recover and constructively reuse any unused portions of such pesticides and/or any rinsate of such pesticides by one of the following methods:

1. - 3. ...

B. All unused pesticides and/or rinsate from pesticides, classified as a hazardous waste upon disposal, must be removed from containment tanks in less than 90 days after deposit therein. Each containment tank must be cleaned by triple-rinsing or by procedures equivalent to triple-rinsing. The tank contents and rinsate shall be applied in accordance with the label and labeling requirements governing the initial application of the pesticide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:398 (May 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:282 (February 1998), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 35:628 (April 2009).

Subchapter X. Water Protection

§205. Procedures for the Determination of Threats

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

b. The water sampling frequency requirements shall be based upon criteria including, but not limited to:

i. the pesticide application season in the area of the water collection sample site;

ii. sampling shall be at least quarterly during any pesticide application season;

c. - e. ...

f. the department shall sample and test fish tissues when the commissioner determines that testing is needed.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3303 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, amended LR 18:248 (March 1992), amended, LR 35:628 (April 2009).

Mike Strain, DVM
Commissioner

0904#072

RULE

Department of Agriculture and Forestry Office of Agro-Consumer Services Agricultural Commodities Commission

Grain and Cotton Indemnity Fund
(LAC 7:XXVII.139 and 191-217)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3410.2, the Louisiana Agricultural Commodities Commission (commission), has amended regulations regarding the Grain and Cotton Indemnity Fund (Fund) and repeal regulations regarding the requirement of contracts to be in written form.

The legislature, in Acts 2008, No. 299 of the regular legislative session, enacted R.S. 3:3414(C), to provide for oral contracts or agreements as written evidence and to provide for confirmation notification of a sale and related matters.

The legislature, in Acts 2008, No. 920 of the regular legislative session, enacted R.S. 3:3410.2, authorizing the commission to establish the fund and to use the money in the fund to indemnify producers who are not fully compensated by a licensed grain dealer or cotton merchant who becomes insolvent. The legislature established the amount of the assessment that will go into the fund. These regulations implement the law by creating the fund, defining pertinent words and terms, establishing procedures for the collection and payment of assessments, establishing procedures for the making and paying of claims, providing for appeals of claims, providing for violations, adjudicatory proceedings, and civil penalties, and providing for related matters.

This Rule is enabled by R.S. 3:3410.2 and R.S. 3:3414(C).

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Louisiana Agricultural Commodities Commission

Subchapter I. Records and Reports

§139. Contracts Required to be in Written Form

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3414, R.S. 3:3405 and R.S. 3:3406.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), repealed LR 35:629 (April 2009).

Subchapter P. Grain and Cotton Indemnity Fund

§191. Creation

A. The Grain and Cotton Indemnity Fund is hereby created pursuant to R.S. 3:3410.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009).

§193. Definitions

A. The following words and terms are defined for purposes of this Subchapter and supplement the words and terms defined in §101 of this Chapter.

Claimant—a producer, as defined in §101 of this Chapter.

Fund—the Grain and Cotton Indemnity Fund.

Insolvency—the inability of a licensee to meet debts or discharge liabilities.

Licensee—for purposes of this Subchapter only, a *Licensee* is a cotton merchant as defined in R.S. 3:3402(6) or a grain dealer as defined in R.S. 3:3402(10).

Value of Commodity—the quoted price plus or minus premiums or discounts such as moisture and quality factors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009).

§195. Purpose

A. Upon the insolvency of a licensee, the fund shall be used to reimburse a producer who has not otherwise been fully compensated for grain or cotton sold to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009).

§197. Assessments

A. The commission shall charge an assessment at the rate of 1/25 of 1 percent on the value of all agricultural commodities regulated under this Chapter which are purchased by grain dealers and cotton merchants licensed in this state.

B. The assessments shall be levied only on commodities regulated by the commission which are grown in Louisiana.

C. The assessments shall be due and payable to the commission by the licensee at the first point of sale, except as otherwise provided for under §199.

D. The assessments shall be due to the commission on a monthly basis.

E. Each grain dealer and cotton merchant shall send a completed copy of the Louisiana Grain and Cotton Indemnity Fund Monthly Assessment Report (supplied by the commission) and assessment to the commission by the fifteenth of each month for the preceding month.

F. In the event no assessments are collected by the licensee, the licensee shall still submit a report each month to the commission on the approved form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009).

§199. Cotton Merchants Operating on a Cooperative Basis

A. Cotton merchants operating on a cooperative basis shall pay the assessment rate of 1/25 of 1 percent of the value of the commodity at the time of each payment, including any initial advance payment, progress payments and final payment to its members as proceeds of the crop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009).

§201. Claim Provisions

A. The monies in the Grain and Cotton Indemnity Fund shall be used solely for the administration and operation of the fund.

B. Any claimant who wishes to assert a claim must provide under oath written and notarized proof of a loss covered by this fund within 60 days of the loss.

C. A written claim shall include all of the following information:

1. name and address of claimant;
2. name of the licensee against whom claimant is asserting a loss;
3. nature of the relationship and transaction between claimant and licensee;
4. the date of the loss which shall be defined as the date on which the claimant knew or should have known that a loss had occurred;
5. the amount of the loss and how calculated;
6. a concise explanation of the circumstances that precipitated the loss;
7. copies of those documents relied upon by claimant as proof of said loss.

D. Failure to furnish such proof of loss within the required time shall not invalidate nor reduce the claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

E. Upon receipt of a proof of loss, the commission shall review the claim to determine whether it is covered under the program. The burden of proof to establish the loss shall be upon the claimant.

F. Once proof of loss has been filed against a licensee, the commission may make a complete inspection of the licensee's physical facilities and the contents thereof, as well as an examination of all books and records of the licensee and/or claimant, subject to the confidentiality requirements of R.S. 3:3421.

G. Once proof of loss has been filed against a licensee, any other claimants alleging a loss caused by said licensee shall have a period of 60 days within which to post and thereby file a written claim.

H. The said 60 day period shall begin to run upon publication by the commission of the notice of claim in the official local journal for legal notices, or the print publication with the highest circulation in the area serviced by the licensee.

I. If claims for indemnity payments from the fund exceed the amount in the fund, the commission shall prorate the claims and pay the prorated amounts. As future assessments are collected, the commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this Subchapter.

J. Distributions from the fund shall be made on a periodic basis as deemed necessary by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009).

§203. Distribution of Funds for Claims from Prior Insolvency

A. Any claimant who wishes to assert a claim against a licensee who became or becomes insolvent after January 1, 2008, but before the promulgation of these rules must provide under oath, written and notarized proof of a loss covered by this fund within 30 days of notification of claim process.

B. A written claim shall include all of the following information:

1. name and address of claimant;
2. name of the licensee against whom claimant is asserting a loss;
3. nature of the relationship and transaction between claimant and licensee;
4. the date of the loss which shall be defined as the date on which the claimant knew or should have known that a loss had occurred;
5. the amount of the loss and how calculated;
6. a concise explanation of the circumstances that precipitated the loss;
7. copies of those documents relied upon by claimant as proof of said loss.

C. Upon receipt of proof of loss, the commission shall review the claim to determine whether it is covered under the program. The burden of proof to establish the loss shall be upon the claimant.

D. The said 30 day period shall begin to run upon publication by the commission of the notice of claim process in the official local journal for legal notices or the print publication with the highest circulation in the area serviced by the licensee.

E. If claims for indemnity payments from the fund exceed the amount in the fund, the commission shall prorate the claims and pay the prorated amounts. As future assessments are collected, the commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009).

§205. Appeal Procedure

A. Any decision of the commission to deny or grant a claim for payment from the fund may be appealed to the commission by the licensee or claimant by seeking an adjudicatory hearing to have said decision reconsidered by the commission in accordance with Chapter 13 of Title 49 of the Louisiana Revised Statutes, as well as all subsequent appeals there from, provided said appellant files with the commission a written notice of appeal within 30 days of the mailing of the decision of the commission to the affected party.

B. The notice of appeal shall contain an expressed statement of each and every basis upon which said appeal is sought and the hearing to consider same shall be limited accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009).

§207. Subrogation

A. Whenever a claim is paid by the commission from the fund, the claimant, by accepting said payment, subrogates his rights to the commission up to the full amount of payment.

B. Any recovery for reimbursement to the fund shall include interest computed at the U.S. Treasury two-year note coupon rate as published in the Wall Street Journal on the date of the claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Louisiana Agricultural Commodities Commission, LR 35:631 (April 2009).

§209. Reimbursement Limitations

A. Where any loss is or may be covered by other insurance or bond, the other insurance or bond is primary and the commission shall require the claimant to exhaust his remedies as to the other insurer before considering the payment of the claim.

B. After all other remedies are exhausted, claimants shall be entitled to recover the full amount of claims filed against the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009).

§211. Pending Litigation or Arbitration; Stay of Claims

A. Where the commission finds that litigation is pending, which could determine whether payment of a claim is due or to whom payment of a claim is due, the claim in question may be stayed until the judgment in said litigation has become final and definitive. The commission shall give notice of the stay to any claimants whose claims have been stayed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009).

§213. Violations

A. Providing false information to the commission by a claimant or licensee regarding a claim for reimbursement from the fund is a violation of this Subchapter, if the person providing the information knew or should have known the information was false.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009).

§215. Adjudicatory Hearings

A. Findings of violations and imposition of penalties may be made only by a ruling of the commission based upon an adjudicatory proceeding held in accordance with the provisions of the Administrative Procedure Act.

B. Whenever the commissioner has any reason to believe that a violation of R.S. 3:3410.2, or of any rules and regulations adopted pursuant to this Subchapter has occurred, the commissioner may present the alleged violations to the commission for a determination.

C. A hearing officer shall be appointed by the office of the attorney general to preside over the hearing.

D. Notice of the alleged violation, the date of the adjudicatory hearing, and the conduct of discovery shall be as provided in the Administrative Procedure Act.

E. The ruling of the commission shall be in writing and provided to the person charged with the violation, as provided by the Administrative Procedure Act.

F. Any appeal from a ruling of the commission shall be in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009).

§217. Civil Penalties

A. Any claimant or licensee who has been found in an adjudicatory hearing to be in violation of the provisions of this Subchapter shall be subject to the following civil penalties.

B. Any claimant or licensee who knew or should have known that he was providing the commission with false information regarding a claim may be denied payment of the claim on that basis.

C. Any claimant or licensee who knew or should have known that he was providing the commission with false information regarding a claim, or regarding any other matters pertaining to the fund, shall be subject to a maximum civil penalty of \$1,000 for each violation. Each day the false information is with the commission without correction shall be considered a separate violation.

D. Any licensee who intentionally refuses or fails to collect the assessment or refuses to remit the collected assessment to the commission shall be subject to a maximum civil penalty of \$1,000 for each violation. Each day the assessment is not collected shall be a separate violation. Each day the collected assessment is not remitted to the commission shall be a separate violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009).

Mike Strain, DVM
Commissioner

0904#073

RULE

**Department of Agriculture and Forestry
Office of the Commissioner**

Market Bulletin Subscriber Fee (LAC 7:I.101)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statutes, R.S. 3:2 and 3:3, the Commissioner of Agriculture and Forestry, amends the regulations establishing the *Louisiana Market Bulletin* (Market Bulletin) subscriber fee to allow an increase in the subscriber fee to help offset the increased cost of producing and distributing the Market Bulletin. The current fee is set at \$10 payable every two years for 52 issues (26 issues per year). The current cost per subscriber for producing and distributing the Market Bulletin is \$10.34 per year. The amendment to the regulations would authorize a yearly subscription fee, to be paid annually upon the ordering or renewal of a subscription. The yearly subscription fee does not exceed the cost of publication and distribution. The subscription fee will currently be increased by \$5 per year from \$5 to \$10.

Title 7

AGRICULTURE AND ANIMALS

Part I. Administration

Chapter 1. Administration Procedure

§101. Market Bulletin Subscriber Fee

A. The fee for a yearly subscription to the *Louisiana Market Bulletin* shall not exceed the annual cost of publication and distribution.

B. The subscription fee shall be paid by the subscriber to the Department of Agriculture and Forestry annually at the time the subscription is ordered or renewed. Upon payment of the subscription fee, the subscriber shall be entitled to 26 issues of the *Louisiana Market Bulletin*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2 and 3:3

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 15:75 (February 1989), amended LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 35:632 (April 2009).

Mike Strain, DVM
Commissioner

0904#071

RULE

**Economic Development
Office of Business Development
Office of Entertainment Industry Development**

**Entertainment Industry Tax Credit
Programs—Digital Media Act
(LAC 61:I.1661-1671)**

The Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development pursuant to the authority of R.S. 47:6022 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby adopts the following Rule of the

Louisiana Entertainment Industry Tax Credit Programs, specifically the Louisiana Digital Media Act. The purpose of the Rule is to establish program policies and procedures in the administration of the Louisiana Digital Media Act.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

**Chapter 16. Louisiana Entertainment Industry Tax
Credit Programs**

Subchapter D. Louisiana Digital Media Act

§1661. Purpose

A. The purpose of this Chapter is to administer the Louisiana Digital Media Act as established by R.S. 47:6022.

B. The purpose of this program is to encourage the development of digital interactive media in order to create an independent, self-supporting industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009).

§1663. General Description

A. The program offers a tax credit for the producers of digital interactive media projects, which are certified prior to January 1, 2010.

B. Tax credits are earned per calendar year, when qualified expenditures are approved by the director and receive final certification from the director, the commissioner and the Secretary of the Department of Economic Development.

C. Tax credits shall never exceed the total base investment in a state certified production.

D. Tax credits shall be transferable.

E. These rules shall become effective upon approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

F. Applicants may apply for more than one entertainment tax credit program administered by the Office and the Department of Economic Development, provided that:

- 1. separate applications are submitted per program;
- 2. expenditures shall only qualify for one specified program; and
- 3. multiple applications shall not result in any duplication of tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009).

§1665. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6022, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

3D Geometry—electronic media representations, three dimensional representations of geometric data for the purposes of rendering 2D image and performing calculations.

Animated Images—electronic media representation of images that comprise a series of chronological fixed images.

Base Investment—the actual funds expended in this state by a state-certified production as production-related costs.

Commissioner—Commissioner of the Division of Administration.

Component Parts—all elements that are integral to the functioning or development of such products. Some examples may be, but are not limited to; software, computer code, image files, music files, scripts and plays, concept mock-ups, software tools, and testing procedures.

Department—Department of Revenue.

Digital Interactive Media—products that are intended for commercial use or distribution, and that are:

a. produced for distribution on electronic media, including file downloads over the Internet;

b. a computer controlled virtual universe with which users may interact in order to achieve a goal or set of goals; and

c. include an appreciable quantity of three or more of the following five types of data; text, sound, fixed image, animated images and 3D geometry:

i. some examples of qualifying products may be, but are not limited to computers and video games;

ii. some examples of non-qualifying products may be, but are not limited to interpersonal communication services, such as videoconferencing and text-based channels and chat rooms, and products regulated under the Louisiana Gaming Control Law.

Director—the Director of Digital Media, who is the designee of the secretary of the Department of Economic Development.

Division—Division of Administration.

Electronic Media—tools used to store, transmit, and receive digitized information that utilizes electronics or electromechanical energy to access the content.

Expended in Louisiana—for purposes of R.S. 47:6022(D), shall mean:

a. in the case of tangible property, property which is acquired from a source within the state;

b. in the case of services, shall mean services procured and performed in the state.

Expenditure—actual payment of cash or cash equivalent for goods or services, as evidenced by an invoice, receipt or other such document.

Fixed Images—electronic media representation in two dimensions that are static.

Indirect Costs—not direct production related costs. Costs of operation that are not directly associated with a specific production, such as clerical salaries and general administrative costs.

Interpersonal Communication Services—websites and other digital media that are primarily for the purposes of exchanging personal or business information, photos or news. Examples of this may be, but are not limited to: those listed in R.S. 47:6022(C)(4), web logs, product websites, social networking websites, video conferencing, internet telephony and instant messaging platforms.

Office—Office of Entertainment Industry Development.

Production Expenditures—development, production, or operating expenditures in this state for a state-certified production, as follows:

a. eligible expenditures shall include, but not be limited to; computer hardware, labor for development of creative content and licensing fees associated with creating content;

b. ineligible expenditures shall include, but not be limited to:

1. indirect costs;

2. any amounts that are later reimbursed by a third party;

3. any amounts that are paid to person or entities as a result of their participation in profits from the exploitation of the production;

4. the application fee; and

5. any costs related to the transfer of tax credits.

Secretary—Secretary of the Department of Revenue.

State-Certified Production—a digital interactive media production, or a component part thereof, approved by the director.

Tax Credit—digital interactive media producer tax credit.

Transferee—an individual or entity that receives a transfer of investor tax credits.

Transferor—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009).

§1667. Certification Procedures

A. Application

1. An application for a state certified production shall be submitted to the director, including:

a. an application fee of 0.2 percent of the estimated total tax credits, with a minimum application fee of \$200, and a maximum fee of \$5,000;

b. a distribution plan;

c. a preliminary budget, including estimated base investment;

d. a statement that the project will qualify as a state certified production; and

e. the applicant shall provide additional information upon request.

B. Qualification

1. The director, the Secretary of the Department of Economic Development and the Commissioner of the Division of Administration shall determine whether a production or project qualifies, by meeting all requirements of R.S. 47:6022 and these regulations, and taking the following factors into consideration.

a. The contribution of the production or project to the goal of creating an independent, self-supporting digital interactive media industry.

b. The impact of the production or project on the employment of Louisiana residents.

c. The impact of the production or project on the overall economy of the state.

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6022 for projects certified prior to January 1, 2010.

b. Tax credits shall be allowed against the income tax due from a taxpayer for the taxable period in which the credit is earned, as well as the immediately preceding period. Any unused credit may be carried forward for a period not to exceed 10 years, pursuant to R.S. 47:6022(D)(5).

3. Amount of Tax Credits

a. The producer shall earn tax credits at the rate of 20 percent of the base investment for the first and second years following certification of the project as a state certified production.

b. The producer shall earn tax credits at the rate of 15 percent of the base investment for the third and fourth years following certification of the project as a state certified production.

c. The producer shall earn tax credits at the rate of 10 percent of the base investment for the fifth and sixth years following certification of the project as a state certified production.

d. No tax credits may be earned after the sixth year following certification of the project as a state certified production.

C. Initial Certification

1. After review and upon a determination of qualification, initial certification will be issued by the director, the Secretary of the Department of Economic Development and the Commissioner of the Division of Administration, including:

a. classification of the project as a state certified production;

b. a unique identifying number;

c. the total anticipated base investment;

d. the entity names and allocation percentages for tax credits; and

e. notice that final certification of tax credits requires a commitment by the producer to continue business operations in this state for at least one year following final certification of tax credits, pursuant to R.S. 47:6022(D)(9).

2. Additional information may be requested by the director in order to make a determination of eligibility for the program.

3. Initial certification shall be issued in the amount determined to be eligible, and shall be sent to each producer and to the secretary.

4. Duration of Effect

a. Once an initial certification is issued, the applicant or official representative must countersign and return an original to the director, within 30 business days, acknowledging initial certification status.

b. Initial certification shall be effective for a period of 12 months prior to and 12 months after the date of initial certification.

D. Final Certification and Audit Requirements

1. After review and upon a determination of qualification, final certification will be issued as follows.

a. A cost report, certified by an independent certified public accountant shall be submitted.

b. An additional audit may be requested at the applicants expense.

c. Additional information may be requested in order to make a determination of eligibility.

d. A final certification letter may be issued by the Director, the secretary of the Department of Economic Development and the Commissioner of the Division of Administration, indicating:

i. the amount of tax credits;

ii. the unique identifying number for the state certified production; and

iii. a commitment by the producer to continue business operations in the state for at least one year after the certification of any tax credit.

2. Multiple requests for final certification may be submitted.

a. Each submission must be accompanied by an audited cost report indicating expenditures.

b. Two submissions shall be certified at no additional fee by the director.

c. Additional charges may apply for three or more certification requests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:633 (April 2009).

§1669. Application and Transfer of Tax Credits

A. Prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain final certification.

B. After receiving final certification, an owner of tax credits may claim tax credits against its Louisiana income tax liability pursuant to these rules and R.S. 47:6022(D), by submitting its final certification, or written notice of transfer, evidencing the dollar amount of tax credits being claimed.

C. After receiving final certification, a person may transfer the credit pursuant to R.S. 47:6022(D)(7).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:634 (April 2009).

§1671. Recapture and Recovery of Tax Credits

A. Tax credits previously granted but later disallowed, may be subject to recapture and recovery pursuant to R.S. 47:6022(F) and (G).

B. Producers who fail to continue business operation in this state for one year following final certification, shall either surrender or pay back credits to the department, pursuant to R.S. 47:6022(D)(9)(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:634 (April 2009).

Sherri McConnell
Director

0904#058

RULE

Department of Economic Development Office of the Secretary and Office of Business Development

Regional Awards and Matching Grant Awards Program (LAC 13:III.Chapter 17)

The Department of Economic Development, Office of the Secretary and Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and in accordance with R.S.36:104 and 36:108 hereby adopts the following Rule of the Regional Awards and Matching Grant Awards Program.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 17. Regional Awards and Matching Grant Awards Program

§1701. General

A. The Louisiana Department of Economic Development (“LED” or “department”) has determined that the support of regional economic development efforts is critical to the long-term economic health of the state of Louisiana. The following rules for the regional awards and matching grant awards program (“program”) implement the program and provide funding for projects in accordance with the goals of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1703. Program Description

A. The program is designed to provide assistance to eligible economic development organizations in their comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes, regions or the state as a site for new and/or expanded business development. The program also seeks to encourage economic development through multi entity cooperation and communication. The program has two objectives:

1. regional awards (Tier 1); and
2. matching grant awards (Tier 2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1705. Eligible Participants

A. Eligible applicants for the benefits of this program shall be nonprofit economic development organizations (“EDO”) established in accordance with Louisiana law and in good standing in the state of Louisiana. The EDO must have as one of its primary objectives promoting Louisiana to national and world markets for business and industrial location and expansion.

B. Applicants for funding under the program must have federal and state tax identification numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1707. Qualifications

A. Eligible applicants may qualify for grants in the manner hereinafter provided under this program through either:

1. regional awards that are to be administered on behalf of an association of the EDOs acting in concert to promote regional economic development strategies for the region; or through

2. matching grant awards, to an EDO or a combination of EDOs, from LED for a specific project marketing industrial location and expansion or a specific project aimed at supporting future industrial location and expansion.

B. Under either regional awards or matching grant awards, funding for the awards must be for implementation of new and/or continuing programs through the fulfillment of deliverables in accordance with the goals and objectives as shall be hereinafter provided.

C. Eligible funding shall be consistent with the examples of eligible funding as provided by LED as an exhibit to the cooperative endeavor agreements (“CEA”) for either the regional awards or the Matching Grant Awards Program. Generally, the exhibits to the CEA will provide for funding of core production costs of marketing and promotional activities and may distinguish the availability of allowable recovery for administrative costs between regional awards and matching grant awards program as hereinafter provided.

D. Award agreements shall be executed and performed in accordance with statutes, rules and Executive Orders as administered by the Louisiana State Division of Administration Office of Contract Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1709. Regional Awards (Tier 1)

A. Regional awards shall total at least \$2,000,000 of the total appropriation of the Louisiana Legislature to this program and shall be allocated to the eight regions of this state in accordance with the map to be provided by LED. The regions will closely approximate the regions of the state presently served by LED regional representatives. Subject to Subsection E below, each region shall receive such portion of the available amount in accordance with its percentage of population of the state as established by the most recent census of the state. The secretary of LED shall determine the association of the EDOs for each region with which the department will enter into a CEA through which deliverables reflective of the goals and objectives of this program shall be established. The EDO identified by the regional association and approved by LED as the fiduciary agent for the region

shall be responsible for coordination within the region to provide for the delivery of certain administrative documents. The costs related to the production of these documents are to be paid for using funds provided by Louisiana Economic Development (LED).

B. Each region shall produce the following core deliverables as a minimum. A regional business retention and expansion program in coordination with the statewide business retention and expansion program designed and implemented by LED, an inventory of industrial/commercial buildings, an inventory of industrial/commercial building sites, an inventory of industrial parks with available building sites, a comprehensive existing business and industry report (regional overview, major employers, etc.), a comprehensive feature attraction report, a comprehensive new infrastructure report, comprehensive labor information, and a regional business development plan as described in §1709.C. LED, at its sole discretion, may also require additional deliverables from any region. The balance of regional funds available after the production of required core deliverables shall be spent based on a written plan submitted to and approved by LED. This plan will be approved by the issuance and execution of a cooperative endeavor agreement which will be drafted by LED after submission of a regional award application.

C. A forward looking regional business development plan that lists regional business development goals and objectives and that contains the following components at a minimum:

1. target industry sectors;
2. a marketing plan that will accomplish outreach to selected target industry sectors; and
3. a plan to secure local and regional funding support for the regional business development effort.

D. At a minimum, each regional association shall demonstrate to the secretary of LED that it is constituted by EDOs representing a majority of the parishes and a majority of the population in the region.

E. Notwithstanding population percentages for each region, the minimum funding for any region is \$200,000 and the secretary of LED is empowered to place caps on the maximum amount of funding a regional EDO shall receive so as to ensure an appropriate distribution of resources.

F. At a minimum, each EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall demonstrate the following to the secretary of LED:

1. that its core responsibility is to market and promote the recruitment of new and diversified businesses in accordance with a regional marketing plan;
2. that it has the capacity to administer the cooperative endeavor agreements (CEAs) for the region;
3. that it has the capacity to act as a fiscal agent for the funds made available to the region in accordance with the CEA;
4. that it is acting to market and promote regional economic development in accordance with a marketing plan as described in §1709.C.2.

G. LED and each EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall enter into agreements that shall include deliverables, goals and objectives for projects to be funded

with regional awards. In addition to deliverables, goals and objectives, and such other necessary terms and conditions as may be provided by the CEA between LED and the EDO; projects shall be funded only upon providing the following:

1. a detailed budget and complete description of fund use;
2. demonstration that regional marketing initiatives are being addressed through the funding;
3. use of no more than 30 percent of the funding for eligible administrative costs and costs associated with economic development programs as specified in the LED Tier 1 Eligible Uses section;
4. database, labor information, real estate information, industrial site and building surveys and selection and other empirical data obtained or used in connection with the award shall be provided to the LED for its research and data collection use;
5. the secretary of LED may vary the terms and conditions of the CEA with EDO's including deliverables, goals and objectives and exhibits in order to accommodate extraordinary situations;
6. the agreement shall provide for submission of projects meeting the goals and objectives of the agreement by the EDO for advance approval by LED and for funding of the project by LED upon completion of the project and the submission by the EDO of the deliverables in accordance with the goals and objectives of the agreement.

H. Tier 1—LED Regional Funds—Eligible Uses

Tier 1—LED Regional Funds—Eligible Uses
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Specific, time-limited research studies.
Purchases of demographic data including payment of yearly licensing fees.
Up to 30 percent of funds may be used for administrative costs and costs associated with economic development programs as delineated in the Tier 1 LED Regional Funds Ineligible Uses listed below (e.g. salaries, benefits, etc).
Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
Direct mail pieces to targeted audiences such as relocation consultants including related postage.
Participant registration, trade show exhibit fees and/or registration fees for events that support national or international strategic marketing events. Costs may include booth design, booth rental, and furniture rental for a tradeshow booth, booth construction, giveaway items or other show specific costs. Meals, lodging, per diem, and travel expenses are not eligible for reimbursement.
Registration fees for EDO staff members to attend professional development seminars and professional development conferences that are required as prerequisites for certification in the field of economic development. Registration fees may also be paid to attend continuing education classes needed to maintain certifications in the field of economic development. Meals, lodging, per diem and travel expenses are not eligible for reimbursement.
Production of printed materials, such as brochures and inserts.
Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.
Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-

Tier 1—LED Regional Funds—Eligible Uses
up requirements.
Design of an Internet web site, not for ongoing Internet access or website hosting costs.
Familiarization tours for site location consultants visiting Louisiana. To be used for site location consultant related expenses only, and may include site location consultant travel, meals, lodging and event hosting expenses.
Professional fees and informational materials associated with building prospect development and prospect visit hosting capacity at the regional level.
Initial fees and yearly licensing and or subscription fees associated with region wide GIS systems.
Initial fees and yearly licensing and or subscription fees associated with systems supporting the regional business retention and expansion program.
Professional fees to augment regional capacity supporting the regional business retention and expansion program

I. Tier 1—LED Regional Funds—Ineligible Uses

Tier 1—LED Regional Funds—Ineligible Uses
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Administrative salaries, benefits, general administrative costs, economic development program costs, and economic development program related salaries and benefits exceeding an aggregate of 20 percent of funds provided.
Administrative costs (e.g. salaries and benefits for accounting, finance, human resources, building management, and information technology functions, etc.) exceeding 10 percent of funds provided.
Entertainment.
Overhead expenses (postage and shipping charges, office space, furniture, fixtures, equipment, magazine and newspaper subscriptions, utilities, general office software, etc.).
Travel, food, beverages, and/or lodging for any persons including volunteers and paid staff of economic development organizations.
Equipment purchases/rentals with the exception of those charges allowed for tradeshow booths as mentioned in the Tier 1 LED Regional Funds Eligible Uses section above.
Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature.
Promotional items, unless part of an out-of-state marketing activity.
Stationery, toll-free numbers, membership solicitation literature.
Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.).
Unreasonable or excessive technical costs.
Construction costs.
Activities or materials that violate the law.
Ongoing Internet access or web site hosting costs.
Organization membership directories and organization memberships.
In state event hosting, in state event sponsorship and venue rental charges.
In state conferences.
Alcoholic Beverages.
Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1711. Matching Grant Awards (Tier 2)

A. The remainder of funds available shall be for matching grant awards (Tier 2). Any eligible EDO or a combination of eligible EDOs may apply to LED for a matching grant award which shall include deliverables, goals and objectives for the marketing and promotion of business and industrial development or for programs designed to increase or enhance local, regional or statewide economic development consistent with regional and statewide strategic marketing for such development. Matching grant awards applications demonstrating the use or development of new or innovative programs for the marketing and promotion of business and industrial development shall be given a preference in determining suitability for matching grant awards.

1. Each EDO submitting an application for matching grant awards funding must inform the organization administering their regional award of the existence of the application for matching grant awards funding. Program rules shall not vest any regional EDO with the right to interfere with or prevent an eligible applicant from submitting a matching grant awards application or grant the regional EDO the power to deny the matching grant award application.

B. In reviewing the merits of matching grant awards applications, LED will also give preference to those applications that demonstrate a clear regional benefit (meaning a benefit for all parishes within a region as the region is defined by LED under the Tier 1 program) and those applications that provide for the use of cash as a matching contribution.

C. The award agreement may provide such terms and conditions as are necessary to the fulfillment of the purposes of the award and shall include the following terms and conditions:

1. the award may not exceed \$150,000.
2. the award must be matched dollar for dollar or its equivalents by the EDO or combination of EDOs making application for the award;
3. a detailed budget and complete description of fund use;
4. data, surveys and/ or other empirical information obtained or used in connection with the award shall be provided to the LED for its research and data collection use;
5. the secretary of LED may vary the terms and conditions of the award including deliverables, goals and objectives and exhibits in order to accommodate extraordinary situations.
6. applicants and awardees are not allowed to use monies appropriated by the state of Louisiana as a matching contribution. Applicants and awardees are not allowed to use facility and administrative overhead charges as a matching contribution to acquire matching grant awards funding.

D. Tier 2—LED Matching Grant Awards Funds—Eligible Uses

Tier 2—LED Matching Grant Funds—Eligible Uses
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the direct grant recipients:
Specific, time-limited research studies.
Purchases of demographic data including yearly licensing fees.
Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
Direct mail pieces to targeted audiences such as relocation consultants including related postage.
Participant registration, trade show exhibit fees and/or registration fees for events that support national or international strategic marketing events. Costs may include booth design, booth rental, and furniture rental for a tradeshow booth, booth construction, giveaway items or other show specific costs. Individual participant meals, travel, lodging or per diem costs are not eligible for reimbursement. LED may approve registration for in-state trade shows of national significance.
Registration fees for EDO staff members to attend professional development seminars and conferences that are required as prerequisites for certification in the field of economic development. Registration fees may also be paid to attend continuing education classes needed to maintain certifications in the field of economic development. Meals, lodging, per diem and travel expenses are not eligible for reimbursement.
Production of printed materials, such as brochures and inserts.
Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.
Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements.
Design of an Internet web site, not for ongoing Internet access or website hosting costs.
Familiarization tours for site location consultants visiting Louisiana. To be used for site location consultant related expenses only, and may include site location consultant travel, meals, lodging and event hosting expenses.
Professional fees and informational materials associated with building prospect development and prospect visit hosting capacity at the regional level.
Professional fees to augment regional capacity supporting the regional business retention and expansion program

E. Tier 2—LED Matching Grant Awards Funds—Ineligible Uses

Tier 2—LED Matching Grant Funds—Ineligible Uses
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the direct grant recipients:
Salaries, benefits or administrative fees.
Entertainment.
Overhead expenses (postage and shipping charges, office space, furniture, fixtures, equipment, magazine and newspaper subscriptions, utilities, general office software, etc.).
Travel, food, beverages, and/or lodging for any persons other than site location consultants. This includes volunteers and paid staff of EDOs and consultants or professionals hired to perform work for EDOs.
Equipment purchases/rentals except as permitted in the Tier 2 LED Matching Grant Funds Eligible Uses section above.
Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature.

Tier 2—LED Matching Grant Funds—Ineligible Uses
Promotional items, unless part of an out-of-state marketing activity.
Stationery, toll-free numbers, membership solicitation literature.
Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.).
Unreasonable or excessive technical costs.
Construction costs.
Activities or materials that violate the law.
Ongoing Internet access or web site hosting costs.
Organization membership directories and organization memberships.
In state event hosting, in state event sponsorship and venue rental charges.
In state conferences.
Alcoholic Beverages.
Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:43 (January 2007), amended LR 35:637 (April 2009)

Donald M. Pierson, Jr.
Assistant Secretary

0904#059

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System
(LAC 28:LXXXIII.301, 611, 1101, 1501-1505, 1701-1707, 2401, 3905, and 4311)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *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. The changes in Bulletin 111, §301, establish reasonable guidelines for preliminary accountability results to be issued on August 1, which shall include preliminary school performance scores and subgroup component analysis. The changes in Bulletin 111, §611 establish reasonable guidelines for maintaining documents in all schools that had students leave and transfer to a non-public school. The changes in Bulletin 111, §§1101 and 4311 establish reasonable guidelines for the definition of an academically unacceptable school. The changes in Bulletin 111, §2401 establish reasonable guidelines for the Recovery School District to retain jurisdiction of certain schools transferred to the district under specific timelines. The changes in Bulletin 111, §3905 establish reasonable guidelines for post-appeal reconfiguration calculations.

**Title 28
EDUCATION**

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

Chapter 3. School Performance Score Goal

§301. School Performance Score Goal

A. - D. ...

E. Preliminary accountability results issued August 1 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. Preliminary accountability results issued August 1 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.

E.1. - L. ...

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, 2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007), LR 33:2593 (December 2007), LR 34:430 (March 2008), LR 35:639 (April 2009).

Chapter 6. Graduation Index

§611. Documenting a Graduation Index

A. Beginning with academic year 2005-2006, all schools are required to maintain the following documentation if the corresponding exit code is used.

Exit Code Documentation		
Code	Descriptions	Required Documentation
	* * *	
14	Transferred to non-public school (must award high school diplomas)	Request for records from the receiving school
	* * *	

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 35:639 (April 2009).

Chapter 11. Performance Labels

§1101. Performance Labels

A. School Performance Score

Performance Label	School Performance Score
Academically Unacceptable	Below 60.0
★	60.0 – 79.9
★★	80.0 – 99.9
★★★	100.0 – 119.9
★★★★	120.0 – 139.9
★★★★★	140.0 and above

B. - C.4. ...

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 31:2764 (November 2005), LR 33:2349 (November 2007), LR 35:639 (April 2009).

Chapter 15. School Improvement (formerly called Corrective Actions)

§1501. Levels of School Improvement

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2745 (December 2003), amended LR 30:2744 (December 2004), LR 31:1513 (July 2005), LR 31:2764 (November 2005), LR 32:1026 (June 2006), repealed LR 35:639 (April 2009).

§1503. Entry into School Improvement

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2745 (December 2003), amended LR 30:2257 (October 2004), LR 30:2445 (November 2004), LR 31:1514 (July 2005), LR 32:1027 (June 2006), repealed LR 35:639 (April 2009).

§1505. Exit from School Improvement

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2257 (October 2004), LR 31:1514 (July 2005), LR 32:1027 (June 2006), repealed LR 35:639 (April 2009).

Chapter 17. Requirements for Schools in School Improvement (SI)

§1701. School Improvement Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2744 (December 2004), LR 31:1514 (July 2005), repealed LR 35:639 (April 2009).

§1703. School Improvement 2 Requirements (SI 2)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:2257 (October 2004), LR 30:2745 (December 2004), LR 31:1515 (July 2005), LR 32:1027 (June 2006), repealed LR 35:639 (April 2009).

§1704. School Improvement 3 Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:2257 (October 2004), LR 30:2745 (December 2004), LR 31:1515 (July 2005), LR 32:1027 (June 2006), repealed LR 35:639 (April 2009).

§1705. School Improvement 4 Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2747 (December

2003), amended LR 30:2257 (October 2004), LR 30:2446 (November 2004), LR 31:1515 (July 2005), LR 31:2764 (November 2005), LR 32:1027 (June 2006), repealed LR 35:639 (April 2009).

§1706. School Improvement 5 Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2747 (December 2003), amended LR 30:2257 (October 2004), LR 31:1515 (July 2005), repealed LR 35:640 (April 2009).

§1707. School Improvement 6 Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2747 (December 2003), amended LR 30:2257 (October 2004), LR 31:1515 (July 2005), repealed LR 35:640 (April 2009).

Chapter 24. Recovery School District

§2401. Recovery School District

A. - A. 4. ...

B. The Recovery School District under R.S. 17:10.5 shall retain jurisdiction of any school transferred to it for a period of not less than five school years not including the school year in which the transfer occurred if the transfer occurred during a school year.

1. No later than nine months prior to the expiration of the five-year period, the Recovery School District shall make a report to the State Board of Elementary and Secondary Education.

a. The report shall include at a minimum each of the following elements:

- i. The status of each school transferred
- ii. the nature of its faculty and administration
- iii. the demographics and size of its student body
- iv. its organizational and management structure
- v. whether there has been improvement in student academic performance and, if so, how much and, if not, why not;

vi. a recommendation as to whether the school should be continued in the Recovery School District pursuant to its reported operational status, continued in the Recovery School District with a change in its operational status and the nature of the recommended change, closed and the reasons therefor, or returned to the administration and management of the transferring system with proposed stipulations and conditions for the return.

2. No later than six months prior to the expiration of the five-year period, the State Board of Elementary and Secondary Education shall take action on the recommendations of the Recovery School District.

C. - D. ...

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 33:2599 (December 2007), LR 34:431 (March 2008), LR 35:640 (April 2009).

Chapter 39. Inclusion of Students with Disabilities

§3905. Inclusion of Alternate Assessment Results

A. Beginning with the 2008 post-appeal reconfiguration calculations, all SPS shall include LAA1 scores.

B. Each LAA 1 exam will be assigned 1 of 3 performance levels (Exceeds Standard, Meets Standard, Working Toward Standard) and each performance level will be assigned points for use in assessment index calculations as follows.

LAA 1 Performance Level	Assessment Points
Exceeds Standard	150
Meets Standard	100
Working Toward Standard	50

1. Students scoring Meets Standard or Exceeds Standard on a LAA 1 exam will be considered Proficient in Subgroup Component calculations.

2. Students taking LAA 1 or LAA 2 exams shall be included in accountability calculations at the grade level in which they are enrolled in the Student Information System (SIS).

C. - 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 29:2754 (December 2003), amended LR 30:767 (April 2004), LR 31:2763 (November 2005), LR 33:254 (February 2007), LR 35:2031 (October 2008), LR 35:640 (April 2009).

Chapter 43. District Accountability

§4311. Performance Labels

A. - A.1. ...

Performance Label	District Performance Score
Academically Unacceptable	Below 60.0
★	60.0 – 79.9
★★	80.0 – 99.9
★★★	100.0 – 119.9
★★★★	120.0 – 139.9
★★★★★	140.0 and above

B. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:635 (March 2005), LR 33:635 (April 2007), LR 35:640 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#023

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Academic Assistance Waivers and LAA1 Results (LAC 28:LXXXIII.1403 and 3905)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *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 that are required to change in response to state and federal laws and regulations. The changes in §3905 establish reasonable guidelines for LAA1 results to be included in 2007-08 subgroup component decisions. The districts will implement the sanctions upon notification and this information will be included in the accountability reports during appeals. The changes in §1403 establish reasonable guidelines for districts requesting waivers from academic assistance status if certain conditions exist.

Title 28

EDUCATION

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

Chapter 14. Academic Assistance (formerly School Improvement 1)

§1403. Entry into Academic Assistance

A. - B. ...

1. The total number of academically unacceptable (AUS) schools, schools in subgroup component failure, and schools in academic assistance exceeds 30 percent of the non-alternative schools in the district.

B.1.a - B. 2.b. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 33:2349 (November 2007), amended LR 35:641 (April 2009).

Chapter 39. Inclusion of Students with Disabilities

§3905. Inclusion of Alternate Assessment Results

A. ...

1. In accordance with a directive from the US Department of Education, LAA 1 results will be included in 2007-08 subgroup component decisions. Because the test results arrive at the LDE in late Sept., any schools/district that must implement sanctions (offer choice or SES, submit plans, etc.) as a result of the inclusion of this data will be notified by LDE at the earliest possible date. The districts must implement the sanctions upon notification. Inclusion of this information in the accountability reports will occur during appeals.

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 29:2754 (December

2003), amended LR 30:767 (April 2004), LR 31:2763 (November 2005), LR 33:254 (February 2007), LR 35:2031 (October 2008), amended LR 35:641 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#024

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28:CV.1103 and 1118)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 741—Louisiana Handbook for School Administrators*, §1103, "Compulsory Attendance," and §1118, "Dropout Prevention and Recovery." In the 2008 Legislative Session, R.S. 17:221(e) regarding compulsory school attendance was amended to require the parent or legal guardian to provide written acknowledgment that the student's withdrawal from school would likely reduce the student's future earning potential and increase the student's likelihood of being unemployed in the future.

In addition, R.S. 17:221.4, the Dropout Recovery Act, was enacted to require LEAs with a four-year cohort graduation rate of less than 70 percent as determined by the state board to provide specific methods of targeted intervention. LEAs that do not show a decrease in the annual dropout rate will provide a written report to document the outcomes of the dropout prevention strategies to date at the school and how the school system dropout prevention strategies and activities will be modified based on the data.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1103. Compulsory Attendance

A. ...

B. Students between the ages of 17 and 18 may withdraw from school prior to graduation with the written consent of their parents, tutors, or legal guardians. A parent, tutor, or legal guardian who has given written consent for a student under his or her control or charge to withdraw from school prior to graduation, or who has a student who is under the age of 17 and is attending or is seeking admission to a National Guard Youth Challenge Program in this state, shall not be considered to be in violation of the compulsory attendance law.

1. An exit interview shall be conducted with the student and his parent, tutor, or legal guardian.\

a. The student and his parent, tutor, or legal guardian shall provide written acknowledgment that withdrawal from school shall likely reduce the student's future earning potential and increase the student's likelihood of being unemployed in the future.

b. During such exit interview, a student who is withdrawing from school shall be given information that has been prepared and supplied by the Louisiana Workforce Commission regarding available training and employment

opportunity programs, provided such information is available.

2. The parent, tutor, or other person responsible for the school attendance of a student who is under age 18 and who is enrolled in school beyond his sixteenth birthday may request that the student be allowed to attend an alternative education program or a career and technical education program. In the case of a student who has no parent, tutor, or other person responsible for his school attendance, the superintendent of the LEA may act on behalf of the student in making such a request. Upon such request, the superintendent of the LEA in which the student is enrolled shall be responsible for determining whether the student remains in the regular school setting or attends an alternative education program or a career and technical education program, and for developing and implementing an individualized plan of education for such student.

3. The compulsory attendance law does not prohibit a student who is at least 16 years of age and who meets the criteria in §2703 from attending an adult education program approved by BESE. A parent, tutor, or other person responsible for the school attendance of a child who is at least 16 years of age but under age 18 and who is enrolled in and is fulfilling the attendance requirements of an adult education program that is approved by BESE shall be considered to be in compliance with the compulsory attendance law.

C. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221(e).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:641 (April 2009).

§1118. Dropout Prevention and Recovery

A. LEAs with a cohort graduation rate of less than 70 percent as determined by BESE shall identify specific methods of targeted interventions for dropout prevention and recovery that may include:

1. early intervention for students who are at risk of failing Algebra I or any ninth grade math class;
2. alternative programs designed to reengage dropouts;
3. increased availability of Advanced Placement courses.
4. comprehensive coaching for middle school students who are below grade level in reading and math;
5. teacher advisories such as the use of graduation coaches and other supports that are designed to specifically address the needs of youth most at risk of dropping out of school;
6. strategies specifically designed to improve the high school graduation rate of students at highest risk for dropping out, including youth in the foster care system, pregnant and parenting youth, Limited English Proficient students, and students with special education needs;
7. communicating with students and their parents or legal guardians about the availability of local after-school programs and the academic enrichment and other activities the programs offered;
8. opportunities for credit recovery;
9. opportunities to participate in the Jobs for America's Graduates program.

B. LEAs that fail to show a decline in their annual dropout rates shall prepare and submit each year to BESE a written report that documents:

1. the outcomes of the dropout prevention strategies to date at the school system level;
2. how the school system dropout prevention strategies and activities will be modified, based on the data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:642 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#025

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Foreign Language Special Certificate (LAC 28:CXXXI.311)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §311, "Foreign Language Special Certificate PK-8." This revision to the Foreign Language Special Certification (FLS) policy will allow an individual who is teaching foreign language in an elementary school (FLES) to renew his/her teaching certificate by the completion of 150 hours of continuing learning units (CLUs) of district approved and verified professional development. This policy will also allow for the reinstatement of a lapsed FLS certificate upon the completion of six semester hours of credit in state-approved courses during the five year period immediately preceding the request for reinstatement. Current policy does not allow for the renewal or reinstatement of a Foreign Language Special Certificate.

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—Valid for Six-Years and Renewable with CLU's

A. - C. ...

D. Eligibility guidelines:

1. a bachelor's degree in education or equivalent preparation in education from a foreign country. The status of this degree will be determined by the Louisiana Department of Education (LDE). If LDE staff cannot make a degree equivalent determination, the candidate's credentials must be evaluated by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or by World Education Services (WES). In the case of an AACRAO or WES evaluation, the determination must be on "safe script" paper and must include a course-by-course evaluation;

2. a teaching certificate in the foreign country for the certification area and/or grade level that the candidate will teach in Louisiana;

3. evidence of two years of successful teaching experience in the country of origin; and

4. a native speaker of the language to be taught.

E. A teacher holding an FLES certificate may qualify for a renewal or professional level certificate by completing one of the following.

a. Renewal. The FLES certificate may be renewed by completing 150 continuing learning units (CLUs) of district-approved and verified professional development over the five year time period during which he/she holds the certificate, or during the five year time period immediately preceding the request for renewal. The Louisiana employing authority must request renewal of a FLES certificate. If the 150 continuing learning units were completed abroad then the request must come from the Division of Curriculum Standards.

b. Level 1. A Professional Level 1 certificate by completing the PRAXIS I Pre-Professional Skills Test and PRAXIS II content area examination(s) and pedagogy exam at the appropriate grade level.

c. If the holder did not earn six semester hours or equivalent, the lapsed certificate may be reactivated upon request (at the level that was attained prior to disuse) for a period of one year, during which time the holder must complete reinstatement requirements.

F. Professional Level 1. A Professional Level 1 certificate may be issued after successful completion of the PRAXIS I Pre-Professional Skills Test, PRAXIS II content area examination(s), and pedagogy exam at the appropriate grade level. For renewal and reinstatement guidelines of a Level 1 certificate see Chapter 3.

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), LR 34:233 (February 2008), LR 35:642 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#026

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Highly Qualified Policy for Teachers (LAC 28:CXXXI.1103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §1103, "Highly Qualified Policy for Teachers." This revision in current Bulletin 746 policy amends the Highly Qualified definition for "not new" (experienced) elementary teachers specifically pertaining to Louisiana's High Objective Uniform State Standard of Evaluation (HOUSSE) option. This revision in policy is based upon a recommendation made by the

Academic Improvement and Teacher Quality Programs Office of the U.S. Department of Education's Office of Elementary and Secondary Education during a program review conducted in Louisiana during May 2008.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 11. State and Federal Guidelines Related to No Child Left Behind Federal Legislation: Qualifications for Teachers and Paraprofessionals

§1103. Highly Qualified Policy for Teachers

A. - L.2.c.i. ...

ii. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard of Evaluation (HOUSSE) Plan for Not New Elementary Teachers, as follows:

(a) hold a current National Board for Professional Teaching Standards (NBPTS) certification in early childhood, middle childhood, or in a content area basic to the elementary school (e.g., Early Language Arts, Early Mathematics) and is teaching in the NBPTS area of certification;

(b) has at least 12 semester hours of credit in each of the four core disciplines (English/language arts, including reading and writing; math; science; and social studies);

(c) a teacher who does not meet the requirements of Subparagraphs (a)-(b) above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 continuing learning units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(d) a teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(e) the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs), as follows:

(i) identifying teachers in their employment using the HOUSSE option;

(ii) providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(f) see the Section at the end of this Chapter entitled "Continuing Learning Units (CLUs)."

L.3. - 6.c.v.(3). ...

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 33:2053 (October 2007), amended LR 35:643 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#027

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—PRAXIS I Scores (LAC 28:CXXXI.241)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §241, "PRAXIS I SCORES." This revision of the PRAXIS examination policy would allow the transition of the Praxis Family and Consumer Science (0120) exam to the Praxis Family and Consumer Science (0121) exam enabling the Praxis scale of 100-200 which is used for the majority of the Praxis exams.

The effective date of this transition is January 1, 2009. Educational Testing Services (ETS) undergoes a periodic review, revision, and regeneration of all assessments offered in the Praxis program. The Family and Consumer Sciences test has been changed by ETS from the old NTE scale to the new Praxis scale.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 2. Louisiana Teacher Preparation Programs
Subchapter B. Alternate Teacher Preparation Programs
§241. PRAXIS I Scores**

A. - B. ...

C. Certification Areas

1. Grades 6-12 Certification

Grades 6-12 Certification Areas		Score	PLT 7-12		
Agriculture	Agriculture (0700) Effective 7/1/05	510	---	---	161
Business	Business Education (0100) Prior to 5/31/04	540	---	---	161
	Effective 6/1/04	570			
English	English Language, Literature, & Composition: Content Knowledge (0041)	160	---	---	161
	Pedagogy (0043)	130			
Family & Consumer Sciences (formerly Home Economics)	Family & Consumer Sciences (0120) Prior to 12/31/08	510	---	---	161
	Family & Consumer Sciences (0121) Effective 1/1/09	141			
French	French (0170) Prior to 5/31/04	520	---	---	161
	French: Content Knowledge (0173) Effective 6/1/04	156			
German	German (0180) Prior to 6/30/06	500	---	---	161
	German: Content Knowledge (0181) Effective 7/1/06	151			
Mathematics	Mathematics (0060) Prior to 5/31/04	550	---	---	161
	Mathematics: Content Knowledge (0061) Effective 6/1/04	125			
	Effective 6/1/07	130			
	Effective 6/1/10	135			
School Librarian	Library Media Specialist (0310)	560	---	---	---
Social Studies	Social Studies: Content Knowledge (0081)	149	---	---	161
	Interpretation of Materials (0083)	152			
Science Areas					
Biology	Biology & General Science (0030) Prior to 6/30/05	580	---	---	161
	Biology: Content Knowledge (0235) Effective 7/1/05	150			
Chemistry	Chemistry/Physics/General Science (0070) Prior to 6/30/06	530			161
	Chemistry: Content Knowledge (0245) Effective 7/1/06	151			
Earth Science	None Available**				161
Environmental	None Available**				161
General Science	General Science: Content Knowledge (0435) Effective 7/1/05	156	---	---	161
	Biology & General Science (0030) Prior to 6/30/05	580			
	or Chemistry/Physics/General Science (0070) Prior to 6/30/06	530			
Physics	Chemistry/Physics/General Science (0070) Prior to 6/30/06	530			161
	Physics: Content Knowledge (0265) Effective 7/1/06	141			
Spanish	Spanish (0190) Prior to 5/31/04	540	---	---	161
	Spanish: Content Knowledge (0191) Effective 6/1/04	160			
Speech	Speech Communications (0220) Effective 7/1/05	575	---	---	161
Technology Education (formerly Industrial Arts)	Technology Education (0050) Effective 7/1/05	600	---	---	161
Computer Science, Journalism Latin, Marketing (formerly Distributive Education)	At this time, a content area exam is not required for certification in Louisiana.	---	---	---	161

C.2. - E. ...

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 32:1836 (October 2006), amended LR 33:2355 (November 2007), LR 35:644 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#028

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Turnaround Specialist Endorsement (LAC 28:CXXXI.710)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §710, "Turnaround Specialist Endorsement (Optional)." This revision will allow the issuance of a Turnaround Specialist add-on endorsement to a valid Louisiana teaching certificate. An applicant for this endorsement must complete the Louisiana School Turnaround Specialist Program (LSTS), which is designed to strengthen the organizational and leadership skills of certified and experienced principals. This option will be included in the Add-On Endorsement Policy of Bulletin 746. The additional endorsement of Turnaround Specialist could provide districts with candidates who have received the necessary training and are certified to lead a chronically failing school in Louisiana.

Title 28

EDUCATION

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

Chapter 7. Administrative and Supervisory Credentials

Subchapter A. The Educational Leadership Certification Structure—Effective July 1, 2006

§710. Turnaround Specialist Endorsement (Optional)

A. The Louisiana School Turnaround Specialist Program (LSTS) is a leadership development program designed to strengthen the organizational and instructional leadership skills of currently certified and experienced principals to prepare them to lead low-performing schools to higher student achievement. This endorsement is valid for five years and is renewable based upon successful completion and verification of required continuing learning units.

1. To receive a Turnaround Specialist Endorsement the individual must meet all of the following requirements:

- a. hold a valid Level 2, Level 3, Type B, Type A or out-of-state (OS) certificate with three years of teaching in the certified area and certification as an elementary/secondary principal, principal, or educational leader;
- b. successfully complete the LSTS Program;
- c. meet all achievement targets which are a part of the LSTS program;

d. receive the recommendation of the Louisiana employing authority.

2. Renewal Requirements. For the purpose of maintaining a valid endorsement, holders of the Turnaround Specialist Endorsement are required to complete 150 continuing learning units (CLUs) of professional development consistent with the Individual Professional Growth Plan (IPGP).

a. If an individual holds a Louisiana Level 2 or 3 teaching certificate, then the renewal date is tied to the renewal date on the teaching certificate.

b. If an individual does not hold a Louisiana Level 2 or 3 teaching certificate, but does hold an educational leader endorsement, then the renewal date is tied to the renewal date on the educational leader endorsement.

c. If an individual holds neither a Louisiana Level 2 nor Level 3 teaching certificate nor an Educational Leader endorsement, then the renewal time period begins with the date of issue of the Turnaround Specialist Endorsement.

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 35:645 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#029

RULE

Board of Elementary and Secondary Education

Bulletin 1191—School Transportation Handbook (LAC 28:XXVII.2511)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1191—School Transportation Handbook*, §2511, "Transportation of Students with Special Needs by Other than a Regularly Equipped School Bus" Special School District and the Board Special Schools submitted the revisions to be incorporated into the document which add a transportation option for transporting students with disabilities in these facilities. Current policy requires the use of a school bus when any student needs to be transported under any situation. There are several concerns with this policy, including financial cost, efficiency, and the social stigma attached for students. For example, if one student needs to attend a counseling session off campus, the school would have to utilize a school bus to transport that student. The department drafted language to address this issue; the legal staff has ensured the language is not in violation of existing state and federal guidelines.

Title 28

EDUCATION

Part XXVII. Bulletin 1191—School Transportation Handbook

Chapter 25. Special Education Transportation

§2511. Transportation of Students with Special Needs by Other than a Regularly Equipped School Bus

A. - A.5. ...

6. Students in special schools as defined in R.S. 17:43 may be transported in properly insured vehicles, other than school buses, by a school employee holding a valid Louisiana driver's license, under the following circumstances:

a. a student is being transported during school hours to a non-academic appointment/activity, e.g., a visit to the dentist;

b. a student, or a small group of students (seven or less), is being transported before or after school hours to a recreational or personal event/activity or to a life skills activity, e.g., going shopping or going to a movie;

c. a student, or a small group of students (seven or less), is being transported to a job or a job interview.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:636 (April 1999), amended LR 35:645 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#030

RULE

Board of Elementary and Secondary Education

Bulletin 1213—Minimum Standards for School Buses
(LAC 28:XXV.1101)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1213—Minimum Standards for School Buses*, §1101, "General Requirements." This revision to *Bulletin 1213—Minimum Standards for School Buses*, §1101, merely allows the concurrent amendment to Bulletin 1191, §2511. SSD and the Board Special Schools submitted the revisions which add an option for transporting students with disabilities in these facilities. Current policy requires the use of a school bus when any student needs to be transported under any situation. There are several concerns with this policy, including financial cost, efficiency, and the social stigma attached for students. For example, if one student needs to attend a counseling session off campus, the school would have to utilize a school bus to transport that student. The department drafted this revision to address this issue; the legal staff has ensured the language is not in violation of existing state and federal guidelines.

Title 28 EDUCATION

Part XXV. Bulletin 1213—Minimum Standards for School Buses

Chapter 11. Standards for Specially Equipped School Buses; Vehicles Designed to Transport Students with Disabilities

§1101. General Requirements

A. Vehicles designed to transport students with disabilities shall comply generally with all minimum standards for school buses, except as otherwise provided in Bulletin 1191.

B. - B.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:651 (April 1999), amended LR 35:646 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#031

RULE

Board of Elementary and Secondary Education

Bulletin 1794—State Textbook Adoption Policy and
Procedure Manual (LAC 28:XXXIII.301 and 311)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 1794—State Textbook Adoption Policy and Procedure Manual* (LAC 28:XXXIII). This action is a result of growing inequities caused by the allowance of free material offers with the purchase of state approved textbooks. A taskforce has recommended, and the State Board of Elementary and Secondary Education has approved, that "free items with purchase" are limited to instructional materials with intellectual content.

Title 28 EDUCATION

Part. XXXIII. Bulletin 1794—State Textbook Adoption Policy and Procedure Manual

Chapter 3. General Provisions

§301. Definitions

Ancillary—materials shall be defined as materials that are intended and designed to be used with a comprehensive basal program submitted by the same publisher and may include materials such as workbooks, puzzles, assessment materials, black line masters, transparencies, etc. Ancillary materials will be added to the publisher's contract after the SBESE's approval of the basal textbook and teacher's edition. These materials shall be limited to *instructional materials* (see definition herein).

Basal—student-based curricular materials (print or non-print) that encompass the SBESE-approved Louisiana Grade-Level Expectations for specified subject areas. These curricular materials are considered a major teacher and student resource for attainment of the state standards and benchmarks and for the locally designed and aligned curriculum and course. These materials shall be limited to *instructional materials* (see definition herein).

Instructional Materials—limited to items having intellectual content that by design assist in the instruction of a subject or course. Instructional Materials may be transmitted via "storage mechanisms" (such as CD-ROMs, DVDs, flash drives, etc.), but "delivery mechanisms" (such as iPods, laptops, whiteboards, etc.) shall not be included in the adopted materials. Instructional Materials may be available in bound, unbound, bundled or package form and

may consist of hardbound or softbound textbooks, consumables, manipulatives, electronic media, and computer courseware or software. Instructional Materials do not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies.

Textbook—any medium or material (print or non-print), book, or electronic medium that constitutes the principal source for teaching and learning in a specified subject area. A textbook shall be a systematically organized core of stand alone instructional materials (which may be hardbound, softbound, electronic or other media) designed to support the teaching and learning of a curriculum based on the SBESE-approved Grade-Level Expectations or state curricular guides (e.g., home economics, foreign language, health, business education). These materials shall be limited to *instructional materials* (see definition herein).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1436 (August 1999), repromulgated LR 26:992 (May 2000), amended LR 32:1030 (June 2006), LR 33:636 (April 2007), repromulgated LR 34:64 (January 2008), amended LR 35:646 (April 2009).

§311. Invitation Circular Letter

A. - G. ...

H. Any items designated as "free" by publishers must also be submitted on the appropriate "LT Submission" Form(s). Publishers may modify their free offerings by providing a written explanation and a detailed listing of items to be added to their original submission to the Department of Education within 60 days of the original due date. Any additions or offers of free materials or services made to local school systems verbally or in writing that are not included on forms submitted to the department will be considered a violation and may cause the publisher to be disqualified. All free items shall be *instructional materials* (see definitions in §301).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1440 (August 1999), repromulgated LR 26:995 (May 2000), amended LR 29:124 (February 2003), LR 35:647 (April 2009).

Amy B. Westbrook, Ph.D.
Executive Director

0904#032

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Go Grant Displaced Students
(LAC 28:IV.1203)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S.

17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6). (SG09100R).

Title 28

EDUCATION

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

Chapter 12. Louisiana GO Grant

§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.

Louisiana Resident—

a. - e.iv. ...

f.i. a displaced student who has been certified by the principal or headmaster to have graduated during the 2006-2007, 2007-2008 and 2008-2009 school years 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 is a *Louisiana Resident* for the purposes of this Chapter if:

(a). such dependent or independent student actually resided in Louisiana during the entire 2004-2005 school year and was enrolled for such time in an eligible Louisiana school; or

(b). such dependent student has a parent or court-ordered custodian who actually resided in a parish listed in Subclause f.ii.(a). below for at least the 12 months prior to August 26, 2005, or in a parish listed in Subclause f.ii.(b). below for at least the 12 months prior to September 20, 2005;

ii. for the purposes of this Subsection, *displaced student* means:

(a). a student who on August 26, 2005, was actually residing in Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, or Washington Parish; and

(i). was enrolled in an eligible Louisiana school; or

(ii). was enrolled in a home study program approved by the State Board of Elementary and Secondary Education; or

(b). a student who on September 20, 2005, was actually residing in Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Mary, Terrebonne, or Vermilion Parish; and

(i). was enrolled in an eligible Louisiana school; or

(ii). was enrolled in a home study program approved by the State Board of Elementary and Secondary Education.

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,

George Badge Eldredge
General Counsel

0904#077

RULE

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

Concentrated Animal Feeding Operations
(LAC 33:IX.2501, 2505, 2515, 2703,
2903, 2905, and 4903)(WQ077ft)

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 Water Quality regulations, LAC 33:IX.2501, 2505, 2515, 2703, 2903, 2905, and 4903 (Log #WQ077ft).

This Rule is identical to federal regulations found in 73 FR 70418-70486, November 20, 2008, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3471 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

The Rule is necessary to implement the Environmental Protection Agency (EPA) rule published in the *Federal Register* on November 20, 2008, to make changes to requirements for Concentrated Animal Feeding Operations (CAFOs). The changes require submittal of a nutrient management plan (NMP) for manure as part of a CAFO's permit application; require review of the NMP by the permitting authority and incorporation of its terms as enforceable terms of the permit; and require that the proposed NMP and permit be available for public review and comment before becoming final. The Rule specifies that an owner or operator of a CAFO that actually discharges, or plans to discharge, to streams, lakes, or other waters apply for a permit. CAFO operators who do not discharge or proposed to discharge may obtain certification as zero dischargers. Technical clarifications regarding water quality-based effluent limitations and use of best management practices to meet zero discharge requirements, as well as affirmation of the 2003 rule requirement for reducing fecal coliform, are included. These federal regulation changes were promulgated by EPA in response to a February 2005 federal court ruling that directed further action or clarification on some portions of the current regulations governing discharges from CAFOs. The department became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. This Rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. The basis and rationale for this Rule are to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report

regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. – I.1.i. ...

j. a nutrient management plan that at a minimum satisfies the requirements specified in LAC 33:IX.2703.E, including, for all CAFOs subject to 40 CFR Part 412, Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.

I.2. – R.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 33:2069, 2165 (October 2007), LR 33:2360 (November 2007), LR 35:648 (April 2009).

§2505. Concentrated Animal Feeding Operations

A. Permit Requirement for CAFOs. *Concentrated animal feeding operations*, as defined in Subsection B of this Section or designated in accordance with Subsection C of this Section, are point sources, subject to LPDES permitting requirements as provided in this Chapter. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the LPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

B. - C.3.b. ...

D. Who must seek coverage under an LPDES permit?

1. The owner or operator of a CAFO must seek coverage under an LPDES permit if the CAFO discharges or proposes to discharge a regulated wastewater. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge of regulated wastewater will occur. Specifically, the CAFO owner or operator must either apply for an individual LPDES permit or submit a notice of intent for coverage under an LPDES general permit. If the state administrative authority has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the state administrative authority.

2. Information to Submit with Permit Application or Notice of Intent. An application for an individual permit must include the information specified in LAC 33:IX.2501. A notice of intent for a general permit must include the information specified in LAC 33:IX.2501 and 2515.

E. Land application discharges from a CAFO are subject to LPDES requirements. The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to LPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this Subsection, where the manure, litter, or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified under LAC 33:IX.2703.E.1.f-i, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

1. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural storm water discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in LAC 33:IX.2703.E.1.f-i.

2. Unpermitted Large CAFOs must maintain documentation specified in LAC 33:IX.2703.E.1.i either on site or at a nearby office, or otherwise make such documentation readily available to the state administrative authority upon request.

F. When must the owner or operator of a CAFO seek coverage under an LPDES permit? Any CAFO that is required to seek permit coverage under Paragraph D.1 of this Section must seek coverage when the CAFO proposes to discharge, unless a later deadline is specified as follows.

1. Operations Defined as CAFOs Prior to April 14, 2003. For operations defined as CAFOs under regulations that were in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an LPDES permit as of April 14, 2003, and comply with all applicable LPDES requirements, including the duty to maintain permit coverage in accordance with Subsection G of this Section.

2. Operations Defined as CAFOs as of April 14, 2003, That Were Not Defined as CAFOs Prior to That Date. For all operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by February 27, 2009.

3. Operations That Become Defined as CAFOs After April 14, 2003, but Which Are Not New Sources. For a newly-constructed CAFO or AFO that makes changes to its operations that result in its becoming defined as a CAFO for the first time after April 14, 2003, but that is not a new source, the owner or operator must seek to obtain coverage under an LPDES permit, as follows:

or newly-constructed operations not subject to effluent limitations guidelines, within 180 days prior to the time the CAFO commences operation;

or other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; or

f an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later, to seek coverage under an LPDES permit.

4. New Sources. The owner or operator of a new source must seek to obtain coverage under an LPDES permit at least 180 days prior to the time that the CAFO commences operation.

5. Operations That Are Designated as CAFOs. For operations designated as a CAFO in accordance with Subsection C of this Section, the owner or operator must seek to obtain coverage under an LPDES permit no later than 90 days after receiving notice of the designation.

G. Duty to Maintain Permit Coverage. No later than 180 days before the expiration of the permit, or as provided by the state administrative authority, any permitted CAFO must submit an application to renew its permit, in accordance with LAC 33:IX.2501.D, unless the CAFO will not discharge or propose to discharge upon expiration of the permit.

H. Procedures for CAFOs Seeking Coverage Under a General Permit

1. CAFO owners or operators must submit a notice of intent when seeking authorization to discharge under a general permit in accordance with LAC 33:IX.2515.B. The state administrative authority must review notices of intent submitted by CAFO owners or operators to ensure that the notice of intent includes the information required by LAC 33:IX.2501.I.1, including a nutrient management plan that meets the requirements of LAC 33:IX.2703.E and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. When additional information is necessary to complete the notice of intent or clarify, modify, or supplement previously submitted material, the state administrative authority may request such information from the owner or operator. If the state administrative authority makes a preliminary determination that the notice of intent meets the requirements of LAC 33:IX.2501.I.1 and 2703.E, the state administrative authority must notify the public of the state administrative authority's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan that will be incorporated into the permit. The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in LAC 33:IX.3115, 3117, and 3119. The state administrative authority may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and/or request a hearing that differs from the time period specified in LAC 33:IX.3113. The state administrative authority must respond to significant comments received during the comment period, as provided in LAC 33:IX.3125, and, if necessary, require the CAFO owner or operator to revise the nutrient

management plan in order to be granted permit coverage. When the state administrative authority authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The state administrative authority shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

2. Nothing in this Subsection shall affect the authority of the state administrative authority to require an individual permit under LAC 33:IX.2515.B.3.

I. No Discharge Certification Option

1. The owner or operator of a CAFO that meets the eligibility criteria in Paragraph I.2 of this Section may certify to the state administrative authority that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge, or propose to discharge, manure, litter, or process wastewater is not required to seek coverage under an LPDES permit pursuant to Paragraph D.1 of this Section, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of Paragraphs I.2 and 3 of this Section, and subject to the limitations in Paragraph I.4 of this Section.

2. Eligibility Criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:

a. the CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO must maintain documentation that demonstrates that:

i. any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) - (viii);

ii. any part of the CAFO's production area that is not addressed by Clause I.2.a.i of this Section is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and

iii. the CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b);

b. the CAFO has developed and is implementing an up-to-date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:

i. the elements of LAC 33:IX.2703.E.1.a - i and 40 CFR 412.37(c); and

ii. all site-specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to Clause I.2.a.i of this Section; and

c. the CAFO will maintain documentation required by this Paragraph either on site or at a nearby office, or otherwise make such documentation readily available to the state administrative authority upon request.

3. Submission to the State Administrative Authority. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the state administrative authority, by certified mail or an equivalent method of documentation, a certification that includes, at a minimum, the following information:

a. the legal name, address, and phone number of the CAFO owner or operator (see LAC 33:IX.2501.B);

b. the CAFO name and address, the county name, and the latitude and longitude where the CAFO is located;

c. a statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in Paragraph I.2 of this Section; and

d. the following certification statement, signed in accordance with the signatory requirements of LAC 33:IX.2503:

"I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of LAC 33:IX.2505.I. I have read and understand the eligibility requirements of LAC 33:IX.2505.I.2 for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by LAC 33:IX.2505.I.3. I also understand the conditions set forth in LAC 33:IX.2505.I.4, 5, and 6 regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Term of Certification. A certification that meets the requirements of Paragraphs I.2 and 3 of this Section shall become effective on the date it is submitted, unless the state administrative authority establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in Paragraph I.2 of this Section.

5. Withdrawal of Certification

a. At any time, a CAFO may withdraw its certification by notifying the state administrative authority by certified mail or an equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the state administrative authority. The CAFO does not need to specify any reason for the withdrawal in its notification to the state administrative authority.

b. If a certification becomes invalid in accordance with Paragraph I.4 of this Section, the CAFO must withdraw its certification within three days of the date on which the CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in Paragraph D.1 of this Section to seek permit coverage if it discharges or proposes to discharge.

6. Recertification

a. A previously-certified CAFO that does not discharge or propose to discharge may recertify in accordance with this Subsection, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:

i. the CAFO had a valid certification at the time of the discharge;

ii. the owner or operator satisfies the eligibility criteria of Paragraph I.2 of the Section, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future;

iii. the CAFO has not previously recertified after a discharge from the same cause; and

iv. the owner or operator submits to the state administrative authority for review a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge, in addition to submitting a certification in accordance with Paragraph I.3 of this Section.

b. Notwithstanding Paragraph I.4 of this Section, a recertification that meets the requirements of Clauses I.6.a.iii and iv of this Section shall only become effective 30 days from the date of submission of the recertification documentation.

J. Effect of Certification

1. An unpermitted CAFO certified in accordance with Subsection I of this Section is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to Paragraph D.1 and Subsection F of this Section, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act Section 301(a) prohibition against unauthorized discharges from point sources.

2. In any enforcement proceeding for failure to seek permit coverage under Paragraph D.1 or Subsection F of this Section that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided in Paragraph I.3 or Clause I.6.a.iv of this Section within at least five years prior to the discharge, or withdrew its certification in accordance with Paragraph I.5 of this Section. Design, construction, operation, and maintenance in accordance with the criteria of Paragraph I.2 of this Section satisfies this burden.

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 Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:819 (May 2006), LR 33:2360 (November 2007), LR 35:648 (April 2009).

§2515. General Permits

A. - B.2.f. ...

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in LAC 33:IX.2505.H.

B.3. - C.3. ...

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 Office of Environmental Assessment, Environmental Planning Division, LR 26:2276 (October 2000), LR 26:2553 (November 2000), LR 28:468 (March 2002), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2511 (October 2005), LR 33:2167 (October 2007), LR 35:651 (April 2009).

Chapter 27. LPDES Permit Conditions

§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. - D. ...

E. Concentrated Animal Feeding Operations (CAFOs). Any permit issued to a CAFO must include the requirements in Paragraphs E.1-6 of this Section.

1. Requirement to Implement a Nutrient Management Plan. Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this Paragraph and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. The nutrient management plan must, to the extent applicable:

1.a. - 4.f. ...

g. a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a Natural Resource Conservation Service (NRCS) certified nutrient management planner; and

h. the actual crop(s) planted and actual yield(s) for each field; the actual nitrogen and phosphorus content of the manure, litter, and process wastewater; the results of calculations conducted in accordance with Clauses E.5.a.ii and 5.b.iv of this Section; and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months, and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with Subparagraph E.5.b of this Section, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with Clause E.5.b.iv of this Section, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the Nutrient Management Plan. Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the state administrative authority to be necessary to meet the requirements of Paragraph E.1 of this Section. The terms of the nutrient management plan, with respect to protocols for

land application of manure, litter, or process wastewater required by Subparagraph E.1.h of this Section and, as applicable, 40 CFR 412.4(c), must include the fields available for land application; field-specific rates of application properly developed, as specified in Subparagraphs E.5.a and b of this Section, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches, unless the state administrative authority specifies a particular one of the approaches that shall be used.

a. **Linear Approach.** A linear approach is an approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications.

i. The terms must include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the state administrative authority, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors used in the terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field, such as a pasture or fallow field; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the state administrative authority for each crop or use identified for each field; credits for all nitrogen in the field that will be plant-available; consideration of multi-year phosphorus application; and accounting for all other additions of plant-available nitrogen and phosphorus to the field. In addition, the terms must include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

ii. Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application.

b. **Narrative Rate Approach.** A narrative rate approach is an approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications.

i. The terms must include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the state administrative authority, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors used in the terms must include: the outcome of the field-specific

assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses, such as pasture or fallow fields (including alternative crops identified in accordance with Clause E.5.b.ii of this Section); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the state administrative authority for each crop or use identified for each field. In addition, the terms must include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by Subparagraph E.1.g of this Section; credits for all nitrogen in the field that will be plant-available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant-available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

ii. The terms of the nutrient management plan may include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the state administrative authority for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in Clause E.5.b.i of this Section.

iii. For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the state administrative authority, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant-available; consideration of multi-year phosphorus application; accounting for all other additions of plant-available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

iv. CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in Clause E.5.b.i of this Section before land applying manure, litter, and process wastewater, and must rely on the following data:

(a) a field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a

concurrent determination of nitrogen that will be plant available consistent with the methodology required by Clause E.5.b.i of this Section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the state administrative authority; and

(b). the results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

6. Changes to a Nutrient Management Plan. Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan that was previously submitted to the state administrative authority.

a. The CAFO owner or operator must provide the state administrative authority with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of Clauses E.5.a.ii and 5.b.iv of this Section are not subject to the requirements of this Paragraph.

b. The state administrative authority must review the revised nutrient management plan to ensure that it meets the requirements of this Section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the state administrative authority must notify the CAFO owner or operator, and, upon such notification, the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the state administrative authority must determine whether such changes are substantial changes as described in Subparagraph E.6.c of this Section.

i. If the state administrative authority determines that the changes to the terms of the nutrient management plan are not substantial, the state administrative authority must make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

ii. If the state administrative authority determines that the changes to the terms of the nutrient management plan are substantial, the state administrative authority must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments and hearing requests, and the hearing process, if a hearing is held, must follow the procedures applicable to draft permits set forth in LAC 33:IX.3115, 3117, and 3119. The state administrative authority may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from

the time period specified in LAC 33:IX.3113. The state administrative authority must respond to all significant comments received during the comment period as provided in LAC 33:IX.3125, and require the CAFO owner or operator to further revise the nutrient management plan, if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the state administrative authority incorporates the revised terms of the nutrient management plan into the permit, the state administrative authority must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

i. addition of new land application areas not previously included in the CAFO's nutrient management plan, except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing LPDES permit in accordance with the requirements of Paragraph E.5 of this Section, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the CAFO owner or operator's nutrient management plan, but not a substantial change for purposes of this Section;

ii. any changes to the field-specific maximum annual rates for land application, as set forth in Subparagraph E.5.a of this Section, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in Subparagraph E.5.b of this Section;

iii. addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with Paragraph E.5 of this Section; and

iv. changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the state.

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 Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:819 (May 2006), LR 33:2168 (October 2007), LR 33:2360 (November 2007), LR 35:651 (April 2009).

Chapter 29. Transfer, Modification, Revocation and Reissuance, and Termination of LPDES Permits

§2903. Modification or Revocation and Reissuance of Permits

A. - A.1.p. ...

q. Nutrient Management Plans. The incorporation of the terms of a CAFO's nutrient management plan into the

terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with LAC 33:IX.2505.H and 2515 is not a cause for modification pursuant to the requirements of this Section.

l.r. – 3. . . .

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 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:470 (March 2002), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 32:1033 (June 2006), LR 35:653 (April 2009).

§2905. Minor Modifications of Permits

A. – A.6. . . .

7. incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in LAC 33:IX.6121 (or a modification thereto that has been approved in accordance with the procedures in LAC 33:IX.6135) as enforceable conditions of the POTW's permit; and

8. incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of LAC 33:IX.2703.E.6.

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 Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 35:654 (April 2009).

Chapter 49. Incorporation by Reference

§4903. 40 CFR, Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2007, are hereby incorporated by reference.

B. Amendments as promulgated on July 24, 2007, in the *Federal Register*, 72 FR 40245-40250, to 40 CFR Part 412, Concentrated Animal Feeding Operations (CAFO) Point Source Category, and to 40 CFR 412.37 and 412.46 in 73 FR 70485-70486, November 20, 2008, are hereby incorporated by reference.

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 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division LR 32:604 (April 2006), LR 32:819 (May 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 35:654 (April 2009).

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0904#007

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Dissolved Oxygen Criteria for Barataria and Terrebonne Basins (LAC 33:IX.1105, 1113, and 1123)(WQ075)

Editor's Note: A portion of this Rule is being republished to correct a printing error. The original Rule was published on pp. 445-449 of the March 20, 2009, *Louisiana Register*.

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 Water Quality regulations, LAC 33:IX.1105, 1113, and 1123 (Log #WQ075).

The dissolved oxygen criteria have been revised for 60 water quality management subsegments in the Barataria and Terrebonne Basins, and Table 3 of LAC 33:IX.1123 has been revised accordingly. This rule also includes minor clarifications to the narrative dissolved oxygen standard in LAC 33:IX.1113. The criteria are based on the results presented in the department's Use Attainability Analysis of Barataria and Terrebonne Basins for Revision of Dissolved Oxygen Water Quality Criteria, which was technically approved by EPA Region 6 on May 5, 2008. Nationally-recommended dissolved oxygen (DO) criteria of 5 mg/L for freshwater and marine and 4 mg/L for estuarine waters are the current criteria in Louisiana, except where site-specific revisions have been made. For many Louisiana water bodies, natural, physical conditions (such as lack of slope and re-aeration potential) prevent attainment of the current nationally-based DO criteria. The Barataria and Terrebonne Basins in southeast Louisiana constitute one such area where levels of dissolved oxygen in ambient surface waters are naturally low.

Because incorrect criteria can result in erroneous use impairment decisions that impact a multitude of the state's water quality programs (e.g., total maximum daily load determinations, wastewater permitting, implementation of best management practices to reduce non-point source pollutant loads), it is critical to establish appropriate and protective DO criteria that are supportive of fish and wildlife propagation in these regions. Therefore, a Use Attainability Analysis (UAA) was conducted to support the development of ecoregion-based dissolved oxygen criteria for the Barataria and Terrebonne Basins.

According to the regulations, a UAA is defined as a structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors (see 40 CFR 131.3(g) and LAC 33:IX.1105). The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to revise or establish uses and criteria. The results presented in the Barataria and Terrebonne UAA indicate the currently adopted dissolved oxygen criteria are inappropriate for some water bodies in the Barataria and Terrebonne Basins. The biological data collected supports

that in these ecoregions diverse fish species are abundant in reference areas with naturally occurring, seasonal periods of low dissolved oxygen, and therefore, the fish and wildlife propagation use is supported. The basis and rationale for this rule are to revise the dissolved oxygen criteria for the Barataria and Terrebonne Basins, based on the Use

Attainability Analysis. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 1. Water Pollution Control
Chapter 11. Surface Water Quality Standards
§1123. Numerical Criteria and Designated Uses
A. - E. ...

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
Atchafalaya River Basin (01)									
*** [See Prior Text in 010101 – 010901]									
Barataria Basin (02)									
020101	Bayou Verret, Bayou Chevreuil, Bayou Citamon, and Grand Bayou	A B C F	65	50	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	430
020102	Bayou Boeuf, Halpin Canal, and Theriot Canal	A B C F	500	150	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,000
020103	Lake Boeuf	A B C	500	150	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,000
020201	Bayou Des Allemands—From Lac Des Allemands to old US-90 (Scenic)	A B C G	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020202	Lac Des Allemands	A B C	600	100	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,320
020301	Bayou Des Allemands—From US-90 to Lake Salvador (Scenic)	A B C G	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020302	Bayou Gauche	A B C	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020303	Lake Cataouatche and Tributaries	A B C	500	150	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,000
020303-001	Luling Wetland—Forested wetland located 1.8 miles south of US-90 at Luling, east of the Luling wastewater treatment pond, bordered by Cousin Canal to the west and Louisiana Cypress Lumber Canal to the south	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
020304	Lake Salvador	A B C	600	100	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,320
020401	Bayou Lafourche—From Donaldsonville to ICWW at Larose	A B C D	70	55	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
020402	Bayou Lafourche—From ICWW at Larose to Yankee Canal (Estuarine)	A B C	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	N/A
020403	Bayou Lafourche—From Yankee Canal and saltwater barrier to Gulf of Mexico (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	32	N/A
020501	Sauls, Avondale, and Main Canals	A B C	65	50	5.0	6.0-8.5	1	32	430
020601	Intracoastal Waterway—From Bayou Villars to Mississippi River (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1	35	N/A
020701	Bayou Segnette—From headwaters to Bayou Villars	A B C	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
020801	Intracoastal Waterway—From Larose to Bayou Villars and Bayou Barataria (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	35	N/A

Table 3. Numerical Criteria and Designated Uses

A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
Barataria Basin (02)									
020802	Bayou Barataria and Barataria Waterway–From ICWW to Bayou Rigolettes (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	35	N/A
020901	Bayou Rigolettes and Bayou Perot to Little Lake (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
020902	Little Lake (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020903	Barataria Waterway (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	35	N/A
020904	Wilkinson Canal and Wilkinson Bayou (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
020905	Bayou Moreau (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
020906	Bay Rambo (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
020907	Bay Sansbois, Lake Judge Perez, and Bay De La Cheniere (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
021001	Lake Washington, Bastian Bay, Adams Bay, Scofield Bay, Coquette Bay, Tambour Bay, Spanish Pass, and Bay Jacques (Estuarine)	A B C E	N/A	N/A	4.0	6.5-8.5	4	35	N/A
021101	Barataria Bay; includes Caminada Bay, Hackberry Bay, Bay Batiste, and Bay Long (Estuarine)	A B C E	N/A	N/A	4.0	6.5-9.0	4	35	N/A
021102	Barataria Basin Coastal Bays and Gulf Waters to the State 3-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A
Calcasieu River Basin (03)									
* * *									
[See Prior Text in 030101 – 110701]									
Terrebonne Basin (12)									
120102	Bayou Poydras–From headwaters to Bayou Choctaw	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120103	Bayou Choctaw–From Bayou Poydras to Bayou Grosse Tete	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120104	Bayou Grosse Tete–From headwaters to ICWW near Wilbert Canal	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
120105	Chamberlin Canal–From Chamberlin to Bayou Choctaw	A B C	250	75	5.0	6.0-8.5	1	32	500
120106	Bayou Plaquemine–From Plaquemine Lock to ICWW	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120107	Upper Grand River and Lower Flat River–From headwaters to ICWW	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120108	False River	A B C	25	25	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	200
120109	Intracoastal Waterway–From Port Allen Locks to Bayou Sorrel Locks	A B C D	60	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	300
120110	Bayou Cholpe–From headwaters to Bayou Choctaw	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
120111	Bayou Maringouin–From headwaters to East Atchafalaya Basin Levee	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
120201	Lower Grand River and Belle River–From Bayou Sorrel Lock to Lake Palourde; includes Bay Natchez, Lake Natchez, Bayou Milhomme, and Bayou Long	A B C	60	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	300
120202	Bayou Black–From ICWW to Houma	A B C D	85	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120203	Bayou Boeuf–From Lake Palourde to ICWW	A B C D	250	75	5.0	6.0-8.5	1	32	500
120204	Lake Verret and Grassy Lake	A B C	100	75	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	350
120205	Lake Palourde	A B C D	100	75	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	350
120206	Grand Bayou and Little Grand Bayou–From headwaters to Lake Verret	A B C	60	40	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	300

Table 3. Numerical Criteria and Designated Uses

A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO₄	DO	pH	BAC	°C	TDS
120207	Thibodaux Swamp—Forested wetland located in Lafourche and Terrebonne Parishes, 6.2 miles southwest of Thibodaux, east of Terrebonne-Lafourche Drainage Canal, and north of Southern Pacific Railroad; also called Pointe Au Chene Swamp	B C	[5]	[5]	[5]	[5]	2	[5]	[5]
120208	Bayou Ramos Swamp Wetland—Forested wetland located 1.25 miles north of Amelia in St. Mary Parish, south of Lake Palourde	B C	[18]	[18]	[18]	[18]	2	[18]	[18]
120301	Bayou Terrebonne—From Thibodaux to ICWW in Houma	A B C	540	90	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,350
120302	Bayou Folse—From headwaters to Company Canal	A B C D F	500	150	5.0	6.5-9.0	1	32	1,000
120303	Bayou L'eau Bleu—From Company Canal to ICWW	A B C	500	150	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.5-9.0	1	32	1,000
120304	Intracoastal Waterway—From Houma to Larose	A B C D F	250	75	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	32	500
120401	Bayou Penchant—From Bayou Chene to Lake Penchant	A B C G	500	150	5.0	6.5-9.0	1	32	1,000
120402	Bayou Chene—From ICWW to Bayou Penchant	A B C	250	75	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-8.0	1	32	500
120403	Intracoastal Waterway—From Bayou Boeuf Locks to Bayou Black in Houma; includes segments of Bayous Boeuf, Black, and Chene	A B C D F	250	75	3.8 June-Aug.; 4.0 Sept.-May	6.5-8.5	1	32	500
120404	Lake Penchant	A B C	500	150	5.0	6.5-9.0	1	32	1,000
120405	Lake Hache and Lake Theriot	A B C	500	150	5.0	6.0-8.5	1	32	1,000
120406	Lake de Cade	A B C E	N/A	N/A	5.0	6.0-9.0	4	35	N/A
120501	Bayou Grand Caillou—From Houma to Bayou Pelton	A B C	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-8.5	1	32	1,000
120502	Bayou Grand Caillou—From Bayou Pelton to Houma Navigation Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
120503	Bayou Petit Caillou—From Bayou Terrebonne to LA-24 bridge	A B C E	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	1,000
120504	Bayou Petit Caillou—From LA-24 bridge to Boudreaux Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	N/A
120505	Bayou Du Large—From Houma to Marmande Canal	A B C	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
120506	Bayou Du Large—From Marmande Canal to 1/2 mile north of St. Andrews Mission (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	35	N/A
120507	Bayou Chauvin—From Ashland Canal to Lake Boudreaux (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	32	N/A
120508	Houma Navigation Canal—From Bayou Pelton to 1 mile south of Bayou Grand Caillou (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
120509	Houma Navigation Canal—From Houma to Bayou Pelton	A B C D	500	150	3.8 June-Aug.; 4.0 Sept.-May	6.0-8.5	1	32	1,000
120601	Bayou Terrebonne—From Houma to Company Canal (Estuarine)	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	1	32	1,230
120602	Bayou Terrebonne—From Company Canal to Humble Canal (Estuarine)	A B C E	5,055	775	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	32	10,000
120603	Company Canal—From ICWW to Bayou Terrebonne	A B C	500	150	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1	32	1,000
120604	Bayou Blue—From ICWW to Grand Bayou Canal	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
120605	Bayou Pointe Au Chien—From headwaters to St. Louis Canal	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
120606	Bayou Blue—From Grand Bayou Canal to Bully Camp Canal (Estuarine)	A B C	5,055	775	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	10,000
120701	Bayou Grand Caillou—From Houma Navigation Canal to Caillou Bay (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
120702	Bayou Petit Caillou—From Boudreaux Canal to Houma Navigation Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	N/A

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
120703	Bayou Du Large-From 1/2 mile north of St. Andrews Mission to Caillou Bay (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	35	N/A
120704	Bayou Terrebonne-From Humble Canal to Lake Barre (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	4	35	N/A
120705	Houma Navigation Canal-From 1/2 mile south of Bayou Grand Caillou to Terrebonne Bay (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
120706	Bayou Blue-From Bully Camp Canal to Lake Raccourci (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4	35	N/A
120707	Lake Boudreaux	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120708	Lost Lake and Four League Bay	A B C E	N/A	N/A	5.0	6.0-9.0	4	35	N/A
120709	Bayou Petite Caillou-From Houma Navigation Canal to Terrebonne Bay	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.0-9.0	4	32	N/A
120801	Caillou Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120802	Terrebonne Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120803	Timbalier Bay	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120804	Lake Barre	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120805	Lake Peltó	A B C E	N/A	N/A	5.0	6.5-9.0	4	35	N/A
120806	Terrebonne Basin Coastal Bays and Gulf Waters to the State 3-mile limit	A B C E	N/A	N/A	5.0	6.5-9.0	4	32	N/A

ENDNOTES:

[1] - [24] ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918, 921 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:815, 816, 817 (May 2006), LR 33:832 (May 2007), LR 34:1901 (September 2008), LR 35:446 (March 2009), repromulgated LR 35:655 (April 2009).

Herman Robinson, CPM
Executive Counsel

0904#004

RULE

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

General Conditions for Air Permits
(LAC 33:III.535 and 537)(AQ286)

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 adopted the Air regulations, LAC 33:III.535 and 537 (Log #AQ286).

Every air permit issued by LDEQ contains General Conditions. Part 70 (Title V) permits for major sources include both 40 CFR Part 70 and Louisiana General Conditions, whereas minor source and prevention of significant deterioration (PSD) permits contain only Louisiana General Conditions. This rule will codify the General Conditions into LAC 33:III.Chapter 5. The General Conditions are subject to revision as underlying federal and state rules are amended or internal department procedures change. Because the most current version of the General Conditions is incorporated into permits as they are finalized, the universe of effective permits includes differing versions of these conditions. Once codified, all permittees will be subject to the same General Conditions. Further, future revisions to the General Conditions must be effected by the rulemaking process in accordance with the Administrative Procedure Act, ensuring transparency and opportunity for public review and comment. The basis and rationale for this rule are to codify the 40 CFR Part 70 and Louisiana General Conditions for air permits into LAC 33:III.Chapter 5. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 5. Permit Procedures
§535. Part 70 General Conditions**

A. The Part 70 General Conditions listed in the table in this Section (numbered as historically designated in a permit) apply to each *Part 70 source* as defined in LAC 33:III.502 upon issuance of the initial Part 70 permit for the source and shall continue to apply until such time as the Part 70 permit is terminated, rescinded, or replaced in its entirety by a state (minor source) permit issued pursuant to LAC

33:III.501. These Part 70 General Conditions shall supersede any previous versions of such conditions contained in Part 70 permits.

40 CFR Part 70 General Conditions
A. The term of the permit shall be five years from date of issuance unless otherwise specified. Unless a timely and complete renewal application has been submitted pursuant to LAC 33:III.507, the permit shall expire at the end of the effective duration. Permit expiration terminates the owner's and operator's right to operate the source pursuant to 40 CFR 70.7(c)(ii). Any permit application to renew an existing permit shall be submitted at least six months prior to the date of permit expiration, or at such earlier time as may be required by the existing permit or approved by the permitting authority. In no event shall the application for permit renewal be submitted more than 18 months before the date of permit expiration. Operation may continue under the conditions of the permit during the period of the review of the application for renewal.
B. The conditions of the permit are severable; and if any provision of the permit or the application of any provision of the permit to any circumstance is held invalid, the application of that provision to other circumstances, and the remainder of the permit, shall not be affected thereby.
C. The permittee shall comply with all conditions of the 40 CFR Part 70 permit. Any permit noncompliance constitutes a violation of the Clean Air Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
D. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
E. The permit does not convey any property right of any sort, or an exclusive privilege.
F. The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality. A claim of confidentiality does not relieve the permittee of the requirement to provide the information.
G. The permittee shall pay fees in accordance with LAC 33:III.Chapter 2 and 40 CFR 70.6(a)(7).
H. Upon presentation of such credentials and other documents as may be required by law, the permittee shall allow the permitting authority or authorized representative to: <ol style="list-style-type: none"> 1. enter upon the permittee's premises where a 40 CFR Part 70 source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit; 2. have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit; 3. inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and 4. as authorized by the Clean Air Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
I. All required monitoring data and supporting information shall be kept available for inspection at the facility or alternate location approved by the agency for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Supporting information includes calibration and maintenance records and all original strip-chart recordings from continuous monitoring instrumentation, and all reports required by the permit.
J. Records of required monitoring shall include the following: <ol style="list-style-type: none"> 1. the date, place as defined in the permit, and time of sampling or measurements; 2. the dates analyses were performed; 3. the company or entity that performed the analyses; 4. the analytical techniques or methods used; 5. the results of such analyses; and 6. the operating conditions that existed at the time of sampling or measurement.

K. The permittee shall submit, at least semiannually, a report of any required monitoring, clearly identifying all instances of deviations from permitted monitoring requirements. For previously-reported deviations, in lieu of attaching the individual deviation reports, the semiannual report may clearly reference the communications or correspondences constituting the prior report, including the date the prior report was submitted. The semiannual report shall be certified by a responsible official and submitted to the Office of Environmental Compliance by March 31 for the preceding period encompassing July through December, and by September 30 for the preceding period encompassing January through June. The semiannual report shall be submitted for each reporting period after the permit has been issued, including during any construction phase and regardless of whether the facility or unit was in operation. The semiannual report may include any semiannual deviation report required to be submitted by March 31 or September 30 in accordance with Part 70 General Condition R as long as the report clearly indicates this, and all required information is included and clearly delineated in the consolidated report.
L. The permittee shall submit at least semiannual reports on the status of compliance pursuant to 40 CFR 70.5(c)(8) and a progress report on any applicable schedule of compliance pursuant to 40 CFR 70.6(c)(4).
M. Compliance certifications required by LAC 33:III.507.H.5 shall be submitted to the administrator as well as the permitting authority. For previously-reported compliance deviations, in lieu of attaching the individual deviation reports, the annual report may clearly reference the communications or correspondences constituting the prior report, including the date the prior report was submitted. The compliance certifications shall be submitted to the Office of Environmental Compliance by March 31 for the preceding calendar year. The compliance certification shall be submitted for each reporting period after the permit has been issued, including during any construction phase and regardless of whether the facility or unit was in operation.
N. If the permittee seeks to reserve a claim of an affirmative defense as provided in LAC 33:III.507.J.2, the permittee shall, in addition to complying with any emergency or upset provisions in any applicable regulation, notify the permitting authority within two working days of the time when emission limitations were exceeded due to the occurrence of an <i>upset</i> , as defined in LAC 33:III.507.J.1. In the event of such an upset, which results in excess emissions, the permittee shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that: <ol style="list-style-type: none"> 1. an upset occurred and the cause was identified; 2. the permitted facility was being operated properly at the time; 3. during the period of the upset, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standard or requirement of the permit; and 4. the permittee notified the permitting authority in accordance with LAC 33:I.Chapter 39.
O. The permittee shall maintain emissions at a level less than or equal to that provided for under the allowances that the 40 CFR Part 70 source lawfully holds in accordance with Title IV of the Clean Air Act or the regulations promulgated thereunder. No permit revision shall be required for increases in emissions that are authorized by allowances acquired in accordance with the federal acid rain program (40 CFR Parts 72-78), provided that such increases do not require a permit revision under any other applicable requirement. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act.
P. Any permit issued in accordance with 40 CFR Part 70 may be subject to reopening prior to the expiration of the permit for any of the conditions specified in 40 CFR 70.7(f) or LAC 33:III.529.
Q. The permittee may request an administrative amendment to the permit to incorporate test results from compliance testing if the criteria in LAC 33:III.523.A.1.a-f are met.
R. The permittee shall submit prompt reports of all permit deviations as specified below to the Office of Environmental Compliance. All such reports shall be certified by a <i>responsible official</i> as defined in LAC 33:III.502.A. <ol style="list-style-type: none"> 1. A written report shall be submitted within seven days of any emission in excess of permit requirements by an amount greater than the reportable quantity established for that pollutant in LAC 33:I.Chapter 39. 2. A written report shall be submitted for any emission in excess of permit emission limitations, regardless of the amount, where such emission occurs over a period of seven days or longer. The report shall be submitted no later than 14 days from the initial occurrence of the release event. 3. A written report shall be submitted semiannually to address all permit deviations not included in Paragraph 1 or 2 of Part 70 General Condition R. Unless required by an applicable reporting requirement, a written report is not required during periods in which there is no deviation. The semiannual

deviation reports may be consolidated with the semiannual reports required by Part 70 General Condition K as long as the report clearly indicates this, and all required information is included and clearly delineated in the consolidated report. For previously-reported permit deviations (not reported in accordance with Paragraph 1 or 2 of Part 70 General Condition R), in lieu of attaching the individual deviation reports, the semiannual report may clearly reference the communications or correspondences constituting the prior report, including the date the prior report was submitted. The semiannual report shall be submitted by March 31, for the preceding period encompassing July through December, and by September 30, for the preceding period encompassing January through June.

4. Any written report submitted in advance of the time frames specified in Paragraphs 1-3 of Part 70 General Condition R, in accordance with an applicable regulation, may serve to meet the reporting requirements of this Condition provided the report is certified in accordance with 40 CFR 70.5(d) and contains all information relevant to the permit deviation. Reporting under this Condition does not relieve the permittee from the reporting requirements of any applicable regulation, including LAC 33.I.Chapter 39, LAC 33.III.Chapter 9, and LAC 33.III.5107.

S. The permittee shall continue to comply with applicable requirements on a timely basis, and shall meet on a timely basis applicable requirements that become effective during the permit term.

T. The permittee shall comply with the standards for recycling and emissions reduction in 40 CFR Part 82, Subpart F, except as provided for Motor Vehicle Air Conditioners (MVACs) in Subpart B.

1. Persons opening appliances for maintenance, service, repair, or disposal must comply with the practices required in 40 CFR 82.156.

2. Equipment used during the maintenance, service, repair, or disposal of appliances must comply with the standards for recycling and recovery equipment in 40 CFR 82.158.

3. Persons maintaining, servicing, repairing, or disposing of appliances must be certified by an approved technician certification program in accordance with 40 CFR 82.161.

4. Persons disposing of small appliances and MVACs, and MVAC-like appliances as defined in 40 CFR 82.152, must comply with recordkeeping requirements in 40 CFR 82.166.

5. Persons owning commercial or industrial process refrigeration equipment must comply with the leak repair requirements in 40 CFR 82.156.

6. Owners/operators of appliances normally containing 50 or more pounds of refrigerant must keep records of refrigerant purchased and added to such appliances in accordance with 40 CFR 82.166.

U. If the permittee performs a service on motor vehicles that involves an ozone-depleting substance refrigerant (or a regulated substitute substance) in the motor vehicle air conditioner (MVAC), the permittee is subject to all the applicable requirements specified in 40 CFR Part 82, Subpart B, Servicing of Motor Vehicle Air Conditioners. The term "motor vehicle" as used in Subpart B does not include a vehicle whose final assembly has not been completed. The term "MVAC" as used in Subpart B does not include an air-tight sealed refrigeration system used for refrigerated cargo, or a system used on passenger buses that uses HCFC-22 refrigerant.

V. Data Availability for Continuous Monitoring, or Monitoring to Collect Data at Specific Intervals. Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including calibration checks and required zero and span adjustments), the permittee shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the emissions unit is operating. For purposes of reporting monitoring deviations under Part 70 General Conditions K and R, and unless otherwise provided for in the permit or an applicable federal or state regulation, the minimum degree of data availability shall be at least 90 percent (based on a monthly average) of the operating time of the emissions unit or activity being monitored. This Condition does not apply to leak detection and repair (LDAR) programs for fugitive emissions (e.g., 40 CFR 60 Subpart VV, 40 CFR 63 Subpart H).

W. Associated with each Specific Requirement in the permit shall be a citation of a federal or state regulation upon which the authority to include that Specific Requirement is based. In the event of a discrepancy between an applicable federal or state regulation and the corresponding permit Specific Requirement, the federal or state regulation shall prevail. If an applicable federal or state regulation is modified during the term of this permit such that it conflicts with the corresponding permit Specific Requirement, the modified regulation shall prevail, and the permittee shall comply with the modified regulation by any compliance dates established in the modified regulation. This Condition shall not be construed as a "permit shield" as described in 40 CFR 70.6(f) and LAC 33:III.507.I.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:658 (April 2009).

§537. Louisiana General Conditions

A. The Louisiana General Conditions listed in the table in this Section (numbered as historically designated in a permit) apply to each source that requires an air permit according to LAC 33:III.501 upon issuance of the initial air permit for the source and shall continue to apply until such time as the permit is terminated or rescinded. These Louisiana General Conditions shall supersede any previous versions of such conditions contained in air permits.

Louisiana Air Emission Permit General Conditions	
I.	Permits are issued on the basis of the emissions reported in the application for approval of emissions and in no way guarantee that the design scheme presented will be capable of limiting the emissions to the type and quantities stated. Failure to install, properly operate, and/or maintain all proposed control measures and/or equipment as specified in the application and supplemental information shall be considered a violation of the permit and LAC 33:III.501. If the emissions are determined to be greater than those allowed by the permit (e.g., during the shakedown period for new or modified equipment) or if proposed control measures and/or equipment are not installed or do not perform according to design efficiency, an application to modify the permit must be submitted. All terms and conditions of the permit shall remain in effect unless and until revised by the permitting authority.
II.	The permittee is subject to all applicable provisions of the Louisiana Environmental Quality Act (the EQA, R.S. 30:2001 et seq.) and the Louisiana air quality regulations. Violation of any of the terms and conditions of the permit constitutes a violation of the EQA.
III.	The Emission Rates for Criteria Pollutants, Emission Rates for TAP/HAP and Other Pollutants, and Specific Requirements sections of the permit establish the emission limitations and are a part of the permit. Any operating limitations are noted in the Specific Requirements of the permit.
IV.	A permit issued in advance of commencement of construction shall become invalid, for the sources not constructed, if: A. construction is not commenced, or binding agreements or contractual obligations to undertake a program of construction of the project are not entered into, within two years (18 months for PSD permits) after issuance of the permit; or B. construction is discontinued for a period of two years (18 months for PSD permits) or more. The permitting authority may extend this time period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. However, each phase must commence construction within two years (18 months for PSD permits) of its projected and approved commencement date.
V.	Reserved.
VI.	The permittee shall notify the Department of Environmental Quality, Office of Environmental Services, of construction completion, within ten calendar days from the date that construction is complete, and provide the estimated date of start-up of operation. The appropriate Regional Office shall also be so notified within the same time frame.
VII.	Any emissions testing performed for purposes of demonstrating compliance with the limitations set forth in Louisiana General Condition III shall be conducted in accordance with the methods described in the Specific Requirements of the permit. Any deviation from or modification of the methods used for testing shall have prior approval from the Office of Environmental Assessment.
VIII.	The emission testing described in Louisiana General Condition VII, or established in the Specific Requirements of the permit, shall be conducted within 60 days after achieving normal production rate or after the end of the shakedown period, but in no event later than 180 days after initial start-up (or restart-up after modification). The Office of Environmental Assessment shall be notified at least 30 days prior to testing and shall be given the opportunity to conduct a pretest meeting and observe the emission testing. The test results shall be submitted to the Office of Environmental Assessment within 60 days after the completion of testing. As required by LAC 33:III.913, the permittee shall provide necessary sampling ports in stacks or ducts and such other safe and proper sampling and testing facilities as are necessary for proper determination of the emission limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

IX. The permittee shall, within 180 days after start-up and shakedown of each project or unit, report to the Office of Environmental Compliance any significant difference in operating emission rates as compared to those limitations specified in Louisiana General Condition III. This report shall also include, but not be limited to, malfunctions and upsets. A request for permit modification shall be submitted, if necessary, as required in Louisiana General Condition I.

X. The permittee shall retain records of all information resulting from monitoring activities and information indicating operating parameters as specified in the specific conditions of the permit for a minimum of at least five years.

XI. If for any reason the permittee does not comply with, or will not be able to comply with, the emission limitations specified in the permit, the permittee shall provide the Office of Environmental Compliance with a written report as specified below.

A. A written report shall be submitted within seven days of any emission in excess of permit requirements by an amount greater than the reportable quantity established for that pollutant in LAC 33:I.Chapter 39.

B. A written report shall be submitted for any emission in excess of permit emission limitations, regardless of the amount, where such emission occurs over a period of seven days or longer. The report shall be submitted no later than 14 days from the initial occurrence of the release event.

C. A written report shall be submitted semiannually to address all emission limitation exceedances not included in Paragraph A or B of Louisiana General Condition XI. The semiannual report shall be submitted by March 31 for the preceding period encompassing July through December, and by September 30 for the preceding period encompassing January through June.

D. Each report submitted in accordance with this Condition shall contain the following information:

1. a description of noncomplying emissions;
2. the cause of noncompliance;
3. the anticipated time the noncompliance is expected to continue or, if it has been corrected, the duration of the period of noncompliance;
4. the steps taken by the permittee to reduce and eliminate the noncomplying emissions; and
5. the steps taken by the permittee to prevent recurrences of the noncomplying emissions.

E. Any written report submitted in advance of the time frames specified in Paragraphs A-C of Louisiana General Condition XI, in accordance with an applicable regulation, may serve to meet the reporting requirements of this Condition provided all information specified in Paragraph D of Louisiana General Condition XI is included. For Part 70 sources, reports submitted in accordance with Part 70 General Condition R set forth in LAC 33:III.535.A shall serve to meet the requirements of this Condition provided all specified information is included. Reporting under this Condition does not relieve the permittee from the reporting requirements of any applicable regulation, including LAC 33:I.Chapter 39, LAC 33:III.Chapter 9, and LAC 33:III.5107.

XII. The permittee shall allow the authorized officers and employees of the Department of Environmental Quality, at all reasonable times and upon presentation of identification, to:

A. enter upon the permittee's premises where regulated facilities are located, where regulated activities are conducted, or where records required under the permit are kept;

B. have access to and copy any records that are required to be kept under the terms and conditions of the permit, the Louisiana Environmental Quality Act, or the federal Clean Air Act;

C. inspect any facilities, equipment (including inspections of monitoring methods and operation and maintenance inspections), or operations regulated under the permit; and

D. sample or monitor, for the purpose of assuring compliance with the permit or as otherwise authorized by the Clean Air Act or regulations adopted thereunder, any substances or parameters at any location.

XIII. If samples are taken under Louisiana General Condition XII, the officer or employee obtaining such samples shall give the owner, operator, or agent in charge a receipt describing the samples obtained. If requested to do so prior to leaving the premises, the officer or employee shall give a portion of each sample equal in volume or weight to the portion retained to the owner, operator, or agent in charge. If an analysis is made of such samples, a copy of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

XIV. The permittee shall allow authorized officers and employees of the Department of Environmental Quality, upon presentation of identification, to enter upon the permittee's premises to investigate potential or alleged violations of the Clean Air Act or the regulations adopted thereunder. In such investigations, the permittee shall be notified at the time entrance is requested of the nature of the suspected violation. Inspections under this Condition shall be limited to the aspects of alleged violations. However, this shall not in any way preclude prosecution of all violations found.

XV. Reserved.

XVI. In the event of any change in ownership of the source described in the permit, the permittee and the succeeding owner shall notify the Office of Environmental Services in accordance with LAC 33:I.Chapter 19.

XVII. Very small emissions to the air, resulting from routine operations, that are predictable, expected, periodic, and quantifiable and that are submitted by the permitted facility to, and approved by, the Office of Environmental Services are considered authorized discharges. Approved activities are noted in the Louisiana General Condition XVII Activities List of the permit. To be approved as an authorized discharge, such very small releases must:

1. generally be less than 5 TPY;
2. be less than the minimum emission rate (MER);
3. be regularly scheduled (e.g., daily, weekly, monthly, etc.); or
4. be necessary prior to plant start-up or after shutdown (line or compressor pressuring/depressuring, for example).

This Condition does not authorize the maintenance of a nuisance, or a danger to public health and safety. The permitted facility must comply with all applicable requirements, including release reporting requirements in LAC 33:I.Chapter 39.

XVIII. Provisions of the permit may be appealed to the secretary in writing pursuant to La. R.S. 30:2024(A) within 30 days from notice of the permit action. Only those provisions specifically appealed will be suspended by a request for hearing, unless the secretary or the assistant secretary elects to suspend other provisions as well. Construction cannot proceed, except as specifically approved by the secretary or assistant secretary, until a final decision has been rendered on the appeal. A request for hearing must be sent to the Office of the Secretary.

XIX. If any Part 70 General Condition conflicts with any Louisiana General Condition, then the Part 70 General Condition controls. If any Part 70 General Condition duplicates any Louisiana General Condition, then the Part 70 and Louisiana provisions shall be enforced as one Condition.

XX. Associated with each Specific Requirement in the permit shall be a citation of a federal or state regulation upon which the authority to include that Specific Requirement is based. In the event of a discrepancy between an applicable federal or state regulation and the corresponding permit Specific Requirement, the federal or state regulation shall prevail. If an applicable federal or state regulation is modified during the term of this permit such that it conflicts with the corresponding permit Specific Requirement, the modified regulation shall prevail, and the permittee shall comply with the modified regulation by any compliance dates established in the modified regulation.

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 the Secretary, Legal Affairs Division, LR 35:660 (April 2009).

Herman Robinson, CPM
Executive Counsel

0904#006

RULE

Office of the Governor Office of Elderly Affairs

State Plan on Aging (LAC 4:VII.1301-1305)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Governor's Office of Elderly Affairs (GOEA) amended LAC 4:VII.1301-1305.

The purpose of this amended Rule is to acknowledge that the Office of Elderly Affairs will develop a state plan that will be submitted to the U.S. Department of Health and Human Services, Administration on Aging to receive grants from its allotment under Title III of the Older Americans Act of 1965 as amended (the Act). Title III authorizes formula grants to state agencies on aging to assist states and local communities to develop comprehensive and coordinated systems for the delivery of services to older persons.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 13. State Plan on Aging

§1301. State Plan on Aging

A. To receive funding from the Older Americans Act the State Agency on Aging must have an approved state plan on Aging. This plan must be on file with the Administration on Aging and be available for public review. At the minimum, the plan must include:

1. identification by the state of the sole state agency that has been designated to develop and administer the plan;
2. statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the commissioner through the rulemaking process;
3. a resource allocation plan indicating the proposed use of all Title III funds administered by the state agency and the distribution of Title III funds to each planning and service area;
4. identification of the geographic boundaries of each planning and service area and of area agencies on aging;
5. prior federal fiscal year information related to low income minority and rural older individuals;
6. all assurances and provisions as outlined in the Older Americans Act and regulations, as well as the following assurances:
 - a. reference is given to older persons in greatest social or economic need in the provision of services under the plan;
 - b. procedures exist to ensure that all services under this part are provided without use of any means tests;
 - c. all services provided under Title III meet any existing state and local licensing, health and safety requirements for the provisions of those services;
 - d. older persons are provided opportunities to voluntarily contribute to the cost of services;
 - e. other such assurances as are needed for compliance with the Act, regulations, other applicable federal law, state statutes, and/or state policy.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:342 (April 1985), amended LR 12:366 (June 1986), LR 12:511 (August 1986), LR 13:569 (October 1987), LR 17:1207 (December 1991), LR 19:1317 (October 1993), LR 23:1146 (September 1997), LR 26:1610 (August 2000), LR 30:1695 (August 2004), LR 35:662 (April 2009).

§1303. Development of the State Plan

A. The state agency will develop a state plan according to the following:

1. elect to utilize a one, two, three, or four-year format for the state plan;
2. develop a data profile on the older Louisianan from available census data;
3. conduct statewide needs assessment activities including, but not limited to, public hearings;
4. assurances for state and area agencies on aging as set forth by the Older Americans Act;
5. goals and objectives;
6. publicize public hearing(s) giving dates, times, locations to public officials and other interested parties for their participation;
7. conduct public hearings and incorporate written and verbal comments into the revised plan, as appropriate;
8. submit final revised plan for approval by the governor;
9. submit approved plan from the governor to the Administration on Aging Regional Office for approval.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:342 (April 1985), amended LR 12:366 (June 1986), LR 12:511 (August 1986), LR 13:569 (October 1987), LR 15:263 (April 1989), LR 17:1207 (December 1991), LR 19:1317 (October 1993), LR 23:1146 (September 1997), LR 26:1611 (August 2000), LR 30:1696 (August 2004), LR 35:662 (April 2009).

§1305. Intrastate Funding Formula

A. Intrastate Funding Formula

1. The following is a descriptive summary of the current intrastate funding formula's assumptions and goals, and the application of the definitions of greatest economic or social need and a demonstration of the allocation of funds, pursuant to the formula, to each PSA.

2. Descriptive Statement

a. The current intrastate funding formula for the distribution of Older Americans Act Title III funds in Louisiana provides for a base allocation by parish. The following factors are considered in the distribution of funds remaining after base allocations are made: population aged 60 and over; population aged 60 and over below the Bureau of the Census poverty threshold; population aged 75 and over; and land area in square miles. Each of these factors is derived by dividing the planning and service area total by the state total.

b. Population aged 60 and over, and land area in square miles is assigned weights of one each. Population aged 60 and over below the Bureau of the Census poverty

threshold is assigned a weight of nine-tenths. Population aged 75 and over is assigned a weight of one-tenth. The sum of these four factors is three.

c. Those elderly in greatest economic need are defined as persons aged 60 and older whose incomes are at or below the poverty threshold established by the Bureau of the Census. Those elderly in greatest social need are defined as persons aged 60 and over who have needs based on noneconomic factors such as social isolation caused by living in remote areas, or who are especially vulnerable due to the heightened possibility of frailty among elderly aged 75 and older. Other social needs are those, which restrict an elderly individual's ability to perform normal daily tasks, or which restrict his or her ability to live independently; they can be caused by racial or ethnic status or language barriers. The intra-state funding formula accounts for these individuals by not allocating funds solely on the basis of population. The land area in square miles factor is included to compensate area agencies serving predominantly rural areas for the special problems encountered by sparse populations who may be spread over large geographical areas. The four funding factors combine to meet the special needs of socially and economically needy elderly, urban elderly and rural elderly.

d. The base funding allocation of \$12,000 per parish is established on the assumption that this amount represents a minimum allocation for the administration of Older Americans Act programs. There is an increasing need to provide a continuum of care for the very old (aged 75 and older) as this segment of the population gets larger each year. Funding limitations dictate that this group is given special emphasis.

3. Numerical Statement of the Intrastate Funding Formula

- a. Base Allocation per PSA: \$12,000 per parish
- b. Formula Allocation per PSA

Factors	Weight
i. <u>PSA 60+Population</u> State 60+Population	1.0
ii. <u>PSA 60+Population below Poverty Threshold</u> State 60+Population below Poverty Threshold	0.9
iii. <u>PSA Land Mass in Square Miles</u> State Land Mass in Square Miles	1.0
iv. <u>PSA 75+Population</u> State 75+Population	<u>0.1</u>
v. Sum	3.0

4.
$$PSA \text{ FORMULA} = \frac{(i) X 1 + (ii) X 0.9 + (iii) X 1 + (iv) X 0.1}{3}$$

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 11:342 (April 1985), amended LR 12:366 (June 1986), LR 12:511 (August 1986), LR 13:569 (October 1987), LR 17:1207 (December 1991), LR 19:1317 (October 1993), LR 23:1146 (September 1997), LR 26:1611 (August 2000), LR 30:1695 (August 2004), LR 35:662 (April 2009).

Jay Bulot, Ph.D.
Executive Director

0904#055

RULE

**Office of the Governor
Public Defender Board**

Trial Court Performance Standards (LAC 22:XV.Chapter 7)

The Louisiana Public Defender Board hereby adopts LAC 22:XV.Chapter 7 (Trial Court Performance Standards) in accordance with R.S. 15:142 et seq and the Administrative Procedure Act, R.S. 49:950 et seq. The Rule will establish the uniform application of statewide public defender standards of practice for public defender services. Notwithstanding any other provision of law to the contrary, the Louisiana Public Defender Board sets forth the following standards for trial performance to promote professionalism and quality representation of indigent defendants.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

**Part XV. Louisiana Public Defender Board
Chapter 7. Trial Court Performance Standards
§701. Purpose**

A. The standards are intended to serve several purposes, first and foremost to encourage public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent defendants.

B. The standards are intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that must be taken in each case to ensure that the client receives the best representation possible. The standards are also intended to provide a measure by which the performance of individual attorneys and district public defender offices may be evaluated, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate." In those instances where a particular action is absolutely essential to providing quality representation, the standards use the words "should" or "shall." Even where the standards use the words "should" or "shall," in certain situations the lawyers' best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. The standards may or may not be relevant to such a judicial determination, depending upon all of the circumstances of the individual case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:663 (April 2009).

§703. Obligations of Defense Counsel

A. The primary and most fundamental obligation of a criminal defense attorney is to provide zealous and effective representation for his or her clients at all stages of the

criminal process. The defense attorney's duty and responsibility is to promote and protect the best interests of the client. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct and to act in accordance with the Louisiana Rules of Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:663 (April 2009).

§705. Training and Experience of Defense Counsel

A. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the state of Louisiana. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

B. Prior to agreeing to undertake representation in a criminal matter, counsel should have sufficient experience or training to provide effective representation.

C. Attorneys who are being considered for appointment to represent individuals who are charged with capital offenses in which the state is seeking death must meet the special criteria as adopted by the Supreme Court of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§707. General Duties of Defense Counsel

A. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Louisiana Rules of Court and in accordance with the Louisiana Rules of Professional Conduct.

E. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director, the court or courts before whom counsel's cases are pending. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§709. Obligations of Counsel Regarding Pretrial Release

A. Counsel or a representative of counsel have an obligation to meet with incarcerated defendants within 72 hours of appointment, and shall take other prompt action necessary to provide quality representation including:

1. Counsel shall invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

2. Where possible, counsel shall represent an incarcerated client at the La.C.Cr.P. Art. 230.1 First Appearance hearing (*County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)) in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full pretrial release hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

B. Counsel has an obligation to attempt to secure the pretrial release of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§711. Counsel's Initial Interview with Client

A. Preparing for the Initial Interview

1. Prior to conducting the initial interview the attorney should, where possible:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and

b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available.

2. In addition, where the client is incarcerated, the attorney should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

c. be familiar with any procedures available for reviewing the trial judge's setting of bail.

B. Conducting the Interview

1. The purpose of the initial interview is to acquire information from the client concerning the case, the client and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

2. Information that should be acquired from the client, includes, but is not limited to:

a. the facts surrounding the charges leading to the client's arrest, to the extent the client knows and is willing to discuss these facts;

b. the client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and if so, was a statement given; client's physical and mental status at the time the statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or body fluids;

c. the names and custodial status of all co-defendants and the name of counsel for co-defendants (if counsel has been appointed or retained);

d. the names and locating information of any witnesses to the crime and/or the arrest; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the state (when appropriate, counsel should take steps to insure this evidence is preserved);

e. the client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or alias used, family relationships, immigration status (if applicable), employment record and history, and Social Security number;

f. the client's physical and mental health, educational, vocational and armed services history;

g. the client's immediate medical needs including the need for detoxification programs and/or substance abuse treatment;

h. the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation (including the nature of the probation, such as "first offender") or parole and the client's past or present performance under supervision;

i. the names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals);

j. the ability of the client to meet any financial conditions of release (for clients who are incarcerated); and

k. where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

3. Information to be provided to the client, includes, but is not limited to:

a. a general overview of the procedural progression of the case, where possible;

b. an explanation of the charges and the potential penalties;

c. an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney; and

d. the names of any other persons who may be contacting the client on behalf of counsel.

4. For clients who are incarcerated:

a. an explanation of the procedures that will be followed in setting the conditions of pretrial release;

b. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense; and

c. warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

C. Counsel must be alert to a potential plea based on client's incompetency, insanity, mental illness or mental retardation. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or mental retardation, and should become familiar with the procedures related to the evaluation and to subsequent proceedings.

1. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals that such a plea is appropriate.

2. Where appropriate, counsel should advise the client of the potential consequences of the plea of incompetency, the defense of insanity, or a plea of guilty but mentally ill or guilty but mentally retarded. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client, should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate.

D. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:664 (April 2009).

§713. Counsel's Duty in Pretrial Release Proceedings

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:665 (April 2009).

§715. Counsel's Duties at Preliminary Hearing

A. Where the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;
2. the law of the jurisdiction for establishing probable cause;
3. factual information which is available concerning probable cause; and
4. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:666 (April 2009).

§717. Duty of Counsel To Conduct Investigation

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, insure that the charges and disposition are factually and legally correct and the client is aware of potential defenses to the charges.

B. Sources of investigative information may include the following.

1. Arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:

- a. the elements of the offense(s) with which the accused is charged;
- b. the defenses, ordinary and affirmative, that may be available;
- c. any lesser included offenses that may be available; and
- d. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

2. Information from the Defendant. If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment of counsel. The interview with the client should be used to obtain information as described above under the performance standards applicable to the initial interview of the client. Information relevant to sentencing should also be obtained from the client, when appropriate.

3. Interviewing Witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses adverse to the accused should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview, either by having an investigator present or, if that

is not possible, by sending the investigator to conduct the interview.

4. The Police and Prosecution Reports and Documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain NCIC or other states criminal history records for the client and for the prosecution witnesses.

5. Physical Evidence. Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.

6. The Scene of the Incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).

7. Securing the Assistance of Experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:

- a. the preparation of the defense;
- b. adequate understanding of the prosecution's case;

or

- c. rebut the prosecution's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:666 (April 2009).

§719. Formal and Informal Discovery

A. Counsel has a duty to pursue as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

B. Counsel should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;
2. potential mitigating information;
3. the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
4. all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;
5. the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;
6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
8. statements of co-defendants;
9. all investigative reports by all law enforcement and other agencies involved in the case; and

10. all records of evidence collected and retained by law enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:666 (April 2009).

§721. Development of a Theory of the Case

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case. Counsel, during the investigatory stages of the case preparation must understand and develop strategies for advancing the appropriate defenses on behalf of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§723. The Duty to File Pretrial Motions

A. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a pretrial motion are:

1. the pretrial custody of the accused;
2. the constitutionality of the implicated statute or statutes;
3. the potential defects in the charging process;
4. the sufficiency of the charging document;
5. the propriety and prejudice of any joinder of charges or defendants in the charging document;
6. the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;
7. the suppression of evidence gathered as a result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional provisions, including:
 - a. the fruits of illegal searches or seizures;
 - b. involuntary statements or confessions;
 - c. statements or confessions obtained in violation of the accused's right to counsel or privilege against self-incrimination;
 - d. unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification;
8. suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
9. access to resources which, or experts, who may be denied to an accused because of his or her indigence;
10. the defendant's right to a speedy trial;
11. the defendant's right to a continuance in order to adequately prepare his or her case;
12. matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;
13. matters of trial or courtroom procedure.

D. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default. In making this decision,

counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

1. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;

2. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted;

3. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§725. Preparing, Filing, and Arguing Pretrial Motions

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

1. investigation, discovery and research relevant to the claim advanced;
2. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
3. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and
4. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§727. Continuing Duty to File Pretrial Motions

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§729. Performance Standard 6.A Duty of Counsel in Plea Negotiation Process

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.

C. Counsel shall not accept any plea agreement without the client's express authorization.

D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:667 (April 2009).

§731. The Process of Plea Negotiations

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:

1. the maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system; and counsel should make the client aware that a guilty plea may have adverse impact upon;

2. the possibility of forfeiture of assets;

3. other consequences of conviction including but not limited to deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office; and the registration and notification requirements for sexual offenders;

4. any possible and likely sentence enhancements or parole consequences.

B. In developing a negotiation strategy, counsel should be completely familiar with:

1. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

a. not to proceed to trial on merits of the charges;

b. to decline from asserting or litigating any particular pretrial motions;

c. an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and

d. providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

2. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

a. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

b. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

c. that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;

d. that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

e. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications

with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

f. that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and

g. that the defendant will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

3. the position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:

a. consider whether interviewing the alleged victim or victims is appropriate and if so, who is the best person to do so and under what circumstances;

b. consider to what extent the alleged victim or victims might be involved in the plea negotiations;

c. be familiar with any rights afforded the alleged victim or victims under the Victim's Rights Act or other applicable law; and

d. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

C. In conducting plea negotiations, counsel should be familiar with:

1. the various types of pleas that may be agreed to, including but not limited to a plea of guilty, not guilty by reason of insanity, a plea of nolo contendere, a conditional plea of guilty, (*State v. Crosby*, 338 So.2d 584 (La. 1976)), and a plea in which the defendant is not required to personally acknowledge his or her guilt (*North Carolina v. Alford* plea);

2. the advantages and disadvantages of each available plea according to the circumstances of the case; and

3. whether the plea agreement is binding on the court and prison and parole authorities.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:668 (April 2009).

§733. The Decision to Enter a Plea of Guilty

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client, and counsel should not attempt to unduly influence that decision.

C. If the client is a juvenile, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed to writing whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:668 (April 2009).

§735. Entering the Negotiated Plea before the Court

A. Prior to the entry of the plea, counsel should:

1. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

2. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

3. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and

4. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

C. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:669 (April 2009).

§737. Counsel's Duty of Trial Preparation

A. The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

B. Where appropriate, counsel should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. voir dire questions;
4. outline or draft of opening statement;
5. cross-examination plans for all possible prosecution witnesses;
6. direct examination plans for all prospective defense witnesses;
7. copies of defense subpoenas;
8. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;
9. prior statements of all defense witnesses;
10. reports from defense experts;
11. a list of all defense exhibits, and the witnesses through whom they will be introduced;
12. originals and copies of all documentary exhibits;

13. proposed jury instructions with supporting case citations;

14. where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions;

15. copies of all relevant statutes and cases; and

16. outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

E. Throughout the trial process counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing. If necessary, counsel should file pre-trial motions to insure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:669 (April 2009).

§739. Jury Selection

A. Preparing for Voir Dire

1. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

2. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

3. Prior to jury selection, counsel should seek to obtain a prospective juror list.

4. Where appropriate, counsel should develop voir dire questions in advance of trial. Counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:

- a. to elicit information about the attitudes of individual jurors, which will inform counsel and defendant about peremptory strikes and challenges for cause;
- b. to convey to the panel certain legal principles which are critical to the defense case;
- c. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;
- d. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and
- e. to establish a relationship with the jury.

5. Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

6. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

7. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors

- 1. Counsel should personally voir dire the panel.
- 2. Counsel should take all steps necessary to protect the voir dire record for appeal, including, where appropriate, filing a copy of the proposed voir dire questions or reading proposed questions into the record.

3. If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the other jurors and counsel should consider requesting that the court, rather than counsel, conduct the voir dire as to those sensitive questions.

4. In a group voir dire, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

C. Challenging the Jurors for Cause

1. Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35669 (April 2009).:

§741. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case.

D. Counsel's objective in making an opening statement may include the following:

- 1. to provide an overview of the defense case;
- 2. to identify the weaknesses of the prosecution's case;
- 3. to emphasize the prosecution's burden of proof;

- 4. to summarize the testimony of witnesses, and the role of each in relationship to the entire case;
- 5. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;
- 6. to clarify the jurors' responsibilities;
- 7. to state the ultimate inferences which counsel wishes the jury to draw; and
- 8. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

- 1. the significance of the prosecutor's error;
- 2. the possibility that an objection might enhance the significance of the information in the jury's mind;
- 3. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:670 (April 2009).

§743. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

- 1. consider the need to integrate cross-examination, the theory of the defense and closing argument;
- 2. consider whether cross-examination of each individual witness is likely to generate helpful information;
- 3. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
- 4. consider a cross-examination plan for each of the anticipated witnesses;
- 5. be alert to inconsistencies in a witness' testimony;
- 6. be alert to possible variations in witnesses' testimony;
- 7. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
- 8. have prepared a transcript of all audio or video tape recorded statements made by the witness;
- 9. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

10. be alert to issues relating to witness credibility, including bias and motive for testifying; and

11. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:670 (April 2009).

§745. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the defendant's testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;

2. determine the implications that the order of witnesses may have on the defense case;

3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

4. consider the possible use of character witnesses;

5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

6. review all documentary evidence that must be presented; and

7. review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:671 (April 2009).

§747. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:

1. highlighting weaknesses in the prosecution's case;

2. describing favorable inferences to be drawn from the evidence;

3. incorporating into the argument:

a. helpful testimony from direct and cross-examinations;

b. verbatim instructions drawn from the jury charge; and

c. responses to anticipated prosecution arguments;

4. and the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

1. whether counsel believes that the case will result in a favorable verdict for the client;

2. the need to preserve the objection for appellate review; or

3. the possibility that an objection might enhance the significance of the information in the jury's mind.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:671 (April 2009).

§749. Jury Instructions

A. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, counsel should provide citations to case law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including, where appropriate, filing a written copy of proposed instructions.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:672 (April 2009).

§751. Obligations of Counsel at Sentencing Hearing

A. Among counsel's obligations in the sentencing process are:

1. where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial and collateral implications;

2. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;

3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;

4. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing

provisions, and other information pertinent to the sentencing decision;

5. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the pre-sentence investigation report before distribution of the report; and

6. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147 and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:672 (April 2009).

§753. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

1. any sentencing guideline structure;
2. deferred sentence, judgment without a finding, and diversionary programs;
3. expungement and sealing of records;
4. probation or suspension of sentence and permissible conditions of probation;
5. the potential of recidivist sentencing;
6. fines, associated fees and court costs;
7. victim restitution;
8. reimbursement of attorneys' fees;
9. imprisonment including any mandatory minimum requirements;
10. the effects of "guilty but mentally ill" and "not guilty by reason of insanity" pleas; and
11. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

1. credit for pre-trial detention;
2. parole eligibility and applicable parole release ranges (if applicable);
3. place of confinement and level of security and classification criteria used by Department of Corrections;
4. eligibility for correctional and educational programs;
5. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
6. deportation and other immigration consequences;
7. loss of civil rights;
8. impact of a fine or restitution and any resulting civil liability;
9. possible revocation of probation, possible revocation of first offender status, or possible revocation of parole status if client is serving a prior sentence on a parole status;
10. suspension of a motor vehicle operator's permit;
11. prohibition of carrying a firearm; and
12. other consequences of conviction including but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender, loss of public housing and the loss of the right to hold public office.

C. Counsel should be familiar with the sentencing procedures, including:

1. the effect that plea negotiations may have upon the sentencing discretion of the court;
2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
3. the use of "victim impact" evidence at any sentencing hearing;
4. the right of the defendant to speak prior to being sentenced;
5. any discovery rules and reciprocal discovery rules that apply to sentencing hearings; and
6. the use of any sentencing guidelines.

D. Where the court uses a pre-sentence report, counsel should be familiar with:

1. the practices of the officials who prepare the pre-sentence report and the defendant's rights in that process;
2. the access to the pre-sentence report by counsel and the defendant;
3. the prosecution's practice in preparing a memorandum on punishment; and
4. the use of a sentencing memorandum by the defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:672 (April 2009).

§755. Preparation for Sentencing

A. In preparing for sentencing, counsel should consider the need to:

1. inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
2. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
3. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, family obligations, and obtain from the client sources through which the information provided can be corroborated;
4. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;
5. inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
6. prepare the client to be interviewed by the official preparing the pre-sentence report; and ensure the client has adequate time to examine the pre-sentence report, if one is utilized by the court;
7. inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;
8. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to

testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and

9. inform the client of the operation of the Louisiana Sentence Review Panel and the procedures to be followed in submitting any possible sentence to the Panel for review, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§757. The Prosecution's Sentencing Position

A. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§759. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will beheld, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§761. Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

1. the likelihood of success of the motion, given the nature of the error or errors that can be raised; and

2. the effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:673 (April 2009).

§763. The Defendant's Right to an Appeal

A. Following conviction, counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the defendant wants to file an appeal but is unable to do so without the assistance of counsel, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

B. Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

§765. Bail Pending Appeal

A. Where a client indicates a desire to appeal the judgment and/or sentence of the court, counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

B. Where an appeal is taken and the client requests bail pending appeal, trial counsel should cooperate with retained appellate counsel in providing information to pursue the request for bail. Pursuant to the contracts between the Louisiana Appellate Project and the district defender offices, district defenders are responsible for pursuing bail pending appeal for those clients requesting bail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

§767. Expungement or Sealing of Record

A. Counsel should inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

§769. Children Prosecuted as Adults

A. Counsel representing a child as an adult should be familiar with the law and procedure covering children prosecuted as adults and the law and procedure of the juvenile courts. Counsel should, where possible, have received specialized training in the defense of children in the adult and juvenile courts.

B. When representing a child who is prosecuted as an adult a transfer to Juvenile Court may be a desirable defense goal; counsel should consider involving the Juvenile Court in plea negotiations.

C. The use of experts in evaluating juvenile sex offenders should be strongly considered.

1. Developing issues of competency, developmental disability, Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder should also be explored.

D. The Juvenile Courts have, unlike the adult courts, treatment resources for children. Counsel should be familiar with Juvenile Court, Office of Juvenile Justice and the resources and policies at the parish, district and regional levels regarding treatment programs and funding.

E. Counsel should, whenever a child is eligible, pursue expungement of the child's criminal record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:142, 147and 148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 35:674 (April 2009).

Jean M. Faria
State Public Defender

0904#020

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Non-Rural, Non-State
Hospitals Reimbursement Methodology Coverage of
Hemophilia Blood Products (LAC 50:V.965)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.965 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 V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§965. Hemophilia Blood Products

A. - B.1. ...

2. have provided clotting factors to a Medicaid recipient who has been diagnosed with hemophilia or other rare bleeding disorders for which the use of one or more clotting factors is FDA approved and has been hospitalized at the qualifying hospital for a period exceeding six days; and

B.3. - C.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2176 (October 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:674 (April 2009).

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

(CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine
Secretary

0904#080

RULE

Department of Insurance Office of the Commissioner

Regulation 93—Named Storm and Hurricane Deductibles (LAC 37:XIII.Chapter 135)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted under R.S. 22:1 et seq., and R.S. 22:1333(D) and 22:1265(F), the Commissioner of Insurance has adopted Regulation 93 to implement the provisions of Acts 2008, No. 854 of the Regular Session of the Louisiana Legislature, which allows insurers to make a filing to deviate from the requirements of R.S. 22:1333(C) and 22:1265(D) concerning deductibles for named storms and hurricanes.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 135. Regulation Number 93—Named Storm and Hurricane Deductibles

§13501. Authority

A. Regulation 93 is issued pursuant to the authority vested in the commissioner pursuant to the provisions of R.S. 49:953 et seq., of the Administrative Procedure Act; R.S. 22:11, R.S. 22:1333(D) and 22:1265(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:675 (April 2009).

§13503. Purpose

A. The purpose of Regulation 93 is to implement the provisions of Acts 2008, No. 854 of the Regular Session of the Louisiana Legislature, which allows an insurer to make a filing to deviate from the requirements of R.S.22:1333(C) and 22:1265(D) concerning deductibles for named storms and hurricanes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:675 (April 2009).

§13505. Scope and Applicability

A. Regulation 93 applies to authorized property and casualty insurers required to submit rates and rating plans for residential property insurance to the Louisiana Department of Insurance.

B. Regulation 93 applies to approved unauthorized insurers, i.e., surplus lines.

C. Regulation 93 applies to modular homes.

D. Regulation 93 does not apply to commercial properties or commercial residential properties with three or more units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:675 (April 2009).

§13507. Definitions

A. As used in Regulation 93, these terms shall have the following meaning ascribed herein unless the context clearly indicates otherwise.

Commissioner—the Commissioner of Insurance for the State of Louisiana.

Department—Louisiana Department of Insurance.

Deductible—a named storm or hurricane deductible as defined in a policy of homeowners' insurance.

Homeowners Insurance—a policy of insurance on a one- or two-family owner-occupied premises, which combines fire and allied lines with any one or more perils of casualty, liability, or other types of insurance within one policy form at a single premium, where the insurer's liability for damage to the premises under said policy is determined with reference to the replacement value of the premises, but does not include insurance policies written to cover manufactured homes or mobile homes.

New Business—the issuance of a new policy of homeowners' insurance.

Region—a designated and contiguous geographic area of the state identified by an insurer for the purpose of establishing regional deductibles pursuant to R.S. 22:1333(D) and R.S. 22:1265(F).

Regional Deductible—a specified named storm deductible or hurricane deductible established by an insurer for a particular region.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:675 (April 2009).

§13509. Business Plan for Authorized Property and Casualty Insurers; Approved Unauthorized Insurers

A. Any authorized property and casualty insurer that makes a filing pursuant to R.S. 22:1464 for authorization to deviate from the requirements of R.S.22:1333(C) and 22:1265(D) concerning deductibles for named storms and hurricanes shall file with the Commissioner a business plan setting forth the insurer's plan to write new business in the state of Louisiana. The business plan shall include, but not be limited to the following:

1. a written description of each proposed region for which mandated, minimum regional deductibles will vary;
2. a statewide graphic representation of each proposed region for which mandated, minimum regional deductibles will vary;
3. the proposed mandated minimum regional deductible for each proposed region;
4. for each region where the proposed regional deductible differs from the existing deductible, the insurer shall indicate in the business plan the methods by which it intends to write new business;
5. for each region where the proposed regional deductible is the same as the existing deductible, the insurer shall make a statement to that effect;
6. for the most recent quarter available, the number of policies in force and premium in force (at current rate level) in each proposed region, categorized by the current deductible on the policy;
7. for the most recent quarter available and categorized by the current deductible on the policy, the number of policies in force in each proposed region expected

to be rolled to the proposed mandated minimum regional deductible;

8. for the most recent quarter available and categorized by the current deductible on the policy, the premium in force (at current rate level) adjusted to reflect the proposed mandated minimum regional deductible;

9. for the most recent quarter available and categorized by the current deductible on the policy, the difference between the current and the expected premium, represented in both premium dollars and percentage change from the policy premiums before policies are rolled to the proposed mandated minimum regional deductibles; and

10. for each proposed mandated minimum regional deductible, the premium credit associated with selected regional deductible.

B. Any approved unauthorized insurer (i.e. surplus lines) seeking authorization to deviate from the requirements of R.S.22:1333(C) and 22:1265(D) concerning deductibles for named storms and hurricanes shall file with the Commissioner a business plan setting forth the insurer's plan to write new business in the state of Louisiana. The business plan shall include, but not be limited to the following:

1. a written description of each proposed region for which mandated, minimum regional deductibles will vary;

2. a statewide graphic representation of each proposed region for which mandated, minimum regional deductibles will vary;

3. the proposed mandated minimum regional deductible for each proposed region;

4. for each region where the proposed regional deductible differs from the existing deductible, the insurer shall indicate in the business plan the methods by which it intends to write new business;

5. for each region where the proposed regional deductible is the same as the existing deductible, the insurer shall make a statement to that effect;

6. for the most recent quarter available and categorized by the current deductible on the policy, the number of policies in force in each proposed region expected to be rolled to the proposed mandated minimum regional deductible.

C. The business plan submitted by an insurer may include documentation or information setting forth why writing new business in a particular region may not be in the best interest of the insurer's policyholders. Factors to be considered in determining whether writing new business is not in the best interest of the insurer's policyholders may include but not be limited to the following:

1. the insurer's total market share based on the insurer's total written premium in the particular region or area;

2. the insurer's total market share based on the insurer's total written premium in the state;

3. the insurer's probable maximum loss (PML) based on the amount of risk the insurer has written in the state;

4. the insurer's total homeowners insurance policies in force in the particular region or area;

5. the insurer's total homeowners insurance policies in force in the state;

6. whether the rate filing and deductible are needed to ensure the insurer's ability to meet its ongoing obligations to its policyholders;

7. whether the rate filing and deductible are needed to ensure the insurer has adequate loss reserves;

8. whether the rate filing and deductible are needed to ensure the insurer's ability to remain competitive in the market;

9. whether the rate filing and deductible are needed to ensure the insurer's ability to adequately manage its business and the risk it has assumed; and

10. any other factors that the Commissioner determines are applicable, relevant, and appropriate.

D. Any business plan, documentation or information filed pursuant to subsections A, B, or C of this Section shall be considered proprietary or trade secret pursuant to the provisions of R.S. 44:3.2 and the Uniform Trade Secrets Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:675 (April 2009).

§13511. Rescission

A. The Commissioner may subsequently rescind his approval of any filing made pursuant to this Subsection if the insurer fails to write new business in accordance with the business plan filed with and approved by the Commissioner pursuant to R.S. 22:1333(D) and 22:1265(F).

B. If a filing made pursuant to R.S. 22:1333(D) and 22:1265(F) has been approved and in effect for at least 180 days, any rescission by the Commissioner shall set forth the date when such rescission shall be effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13513. Notification to Insured of Premium Savings

A. Any insurer receiving approval to deviate from the requirements of R.S. 22:1333(C) and 22:1265(D) concerning deductibles for named storms and hurricanes as a result of a filing made pursuant to Regulation 93 and R.S. 22:1333(D) and 22:1265(F) shall itemize and notify the insured of the premium savings associated with the new deductible by indicating the dollar amount of the premium savings on the renewal notice or as a separate insert with the renewal notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13515 Multiple Deductibles

A. Any homeowners policy of insurance that contains any provision that would apply more than one deductible to a loss resulting from any single incident covered by the policy shall be null and void and unenforceable as contrary to public policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13517. Severability

A. If any Section or provision of Regulation 93 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 93 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and

for these purposes the Sections and provisions of Regulation 93 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13519. Effective Date

A. Regulation 93 shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:677 (April 2009).

James J. Donelon
Commissioner

0904#068

RULE

Department of Public Safety and Corrections Office of the State Fire Marshal

Fire Sprinkler Systems and/or Equipment and/or Fire Hoses (LAC 55:V.Chapter 31)

In accordance with the provisions of R.S.49:950 et seq., and R.S.40:1484.3, relative to the authority of the State Fire Marshal to promulgate and enforce rules, relative to the regulation of Fire Sprinkler Systems and/or Equipment and/or Fire Hoses, the Office of the State Fire Marshal hereby adopts the following Rule.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 31. Fire Sprinkler Systems and/or Equipment and Fire Hose Rules

§3101. Purpose

A. The purpose of these rules is to regulate the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler equipment and/or systems 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:677 (April 2009).

§3103. Applicability of Rules

A. These rules shall apply to all firms and persons engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler systems/equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:677 (April 2009).

§3105. Exceptions

A. These rules shall not apply to firms and/or persons engaging in the activity of certifying, hydrostatic testing, inspecting, installing, integrating, or servicing fire sprinkler systems/equipment in one or two family dwellings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:677 (April 2009).

§3107. 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 or agent of service 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:677 (April 2009).

§3109 Certificate, License Required

A. Each firm engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler systems/equipment 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 engaged in the activity of certifying, hydrostatic testing, or inspecting of commercial fire sprinkler systems/equipment 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 Subsection 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 shall take all steps necessary to enforce an order to cease and desist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:677 (April 2009).

§3111. 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 act of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler equipment and/or systems and/or fire hoses pursuant to R.S.40:1664.1 et seq.

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 functionality, or hydrostatic testing, or inspection, or installation, or maintenance, or service, or testing of fire sprinkler systems/equipment in accordance with 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.

Fire Hose—a flexible conduit used to convey water.

Fire Sprinkler Systems/Equipment—a commercial fire sprinkler system consisting of underground and above ground piping and valves designed to suppress fire by means of water discharge through system piping and sprinkler heads. Fire sprinkler equipment includes but is not limited to standpipes, fire pumps, and hose stations in commercial occupancies. Fire sprinkler systems/equipment is governed by the provisions of NFPA 11, 11A, 13, 13D, 13R, 14, 15, 16, 20, 22, 24, 25, 1961 and 1962.

Firm—a sole proprietorship, partnership, corporation, limited liability company or any other entity. For the purpose of these rules the term *firm* shall also mean *fire sprinkler contractor* as used in R.S.40:1664.1 et seq.

Foreman—an employee designated by a sprinkler firm, who certifies an installation, or service work, or completes the acceptance test, or identifies impairments of fire sprinkler equipment and/or system.

Hydrostatic Testing—pressure testing fire sprinkler equipment and/or systems or fire hoses by approved hydrostatic methods and in accordance with NFPA codes.

Inspection—the act of visually checking the physical condition and placement of fire sprinkler equipment and/or systems or fire hoses and/or certifying the same for functional performance 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.

Inspector—an individual licensed pursuant to R.S. 40:1664.1 et seq., and these rules that certifies, inspects or performs hydrostatically testing of fire sprinkler equipment and/or systems or fire hoses.

Installation—the initial placement of a fire sprinkler system or an extension, or alteration after initial placement.

License—that document issued by the State Fire Marshal to an employee of a certified firm authorizing the employee to be a qualifier or inspector as defined by these rules.

Maintenance—repair service, including periodically recurrent inspections and tests, required to keep fire protection equipment/systems and fire sprinkler systems and their components in an operable condition at all times, together with replacement of the equipment/system or of its components, when for any reason they become undependable or inoperable.

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 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.

Planning—the laying out a fire sprinkler system by a qualifier for installation in a commercial occupancy for protecting the occupants and structure from fire.

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.

Principal—*Principal* means a person or entity that owns at least five percent of a life safety and property protection contracting firm regardless of the form of organization. *Principal* includes a person or entity entitled to exercise the prerogatives or indicia of ownership or control of a life safety and property protection contracting firm whether by direct action, assignment, or any other kind of substitution or subrogation, to the extent that such person or entity would be entitled to receive at least 5 percent of the remaining assets of the life safety and property protection contracting firm upon dissolution. *Principal* includes, if the entity is a partnership, each partner, including any general or limited partner. *Principal* includes, if the entity is organized as a corporation, any person or entity who owns or controls five percent or more of the total aggregate number of shares of all types of stock issued by a life safety and property protection contracting firm organized as a corporation or shares of a corporation that owns or controls a life safety and property protection contracting firm. *Principal* includes any member if the entity is organized as a limited liability company.

Qualifying Person—the employee of a firm who plans fire sprinkler systems.

Required—a system or component of a system which is required by the applicable occupancy chapter of NFPA 101 (Life Safety Code).

Residential Fire Sprinkler System—a fire sprinkler system consisting of underground and above ground piping and valves designed to suppress fire by means of water discharge through system piping and sprinkler heads within a one or two family dwelling.

Service—the act of repair or replacement of fire sprinkler systems or their components to ensure the proper functioning of the equipment/system.

Sprinkler Firm Employee—one who works for a firm for which a certificate is issued as required by R.S.40:1664.1 et seq., in return for financial or other compensation. For the purposes of these rules, only qualifiers, inspectors and foremen are considered employees. Also where the term *employee* is used in the body of these rules, it refers to *sprinkler firm employee*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.1 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:677 (April 2009).

§3113. Certification of Firms

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, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of commercial fire sprinkler systems/equipment.

1. Each firm, as defined by R.S.40:1664.1 et seq., shall have at least one licensed qualifier and one licensed inspector to perform the act or acts authorized by its certificate.

2. Firms as defined by R.S.40:1664.1 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. This change 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 firm 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 firm must submit written notification of the change with the surrendered certificate of registration, accompanied by the required fee specified in 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq..

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:678 (April 2009).

§3115. Licensure of Qualifiers and Inspectors

A. Required. Each employee of a certified firm desiring to act as an inspector or qualifier for the firm shall have a current and valid license issued by the State Fire Marshal.

B. Types of Licenses. Each license shall be identified by class, which indicates the authorized act or acts which may be performed by the licensee.

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 Identification Card. The pocket ID card is for immediate identification purposes only and shall be on the holder's at all times when conducting fire sprinkler work in the field. The pocket ID card need not be visibly displayed

when working in areas where the card may be damaged or lost. The pocket ID card must still be available for inspection upon request.

E. Duplicate License or Pocket Identification Card. A duplicate license or pocket ID card must be obtained from the State Fire Marshal to replace a lost or destroyed one. The holder and his employer must submit written notification within 10 days of the loss or destruction of a license or pocket ID card, 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 any license requirements for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq..

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:679 (April 2009).

§3117. 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:679 (April 2009)>

§3119. Application for Certification of Firms

A. Applications for a certificate of registration for fire sprinkler 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(s) or manager(s) of a corporation;

2. identify the type of endorsement applied for;

3. identify the physical and mailing address, if different, of the firm;

4. identify any and all names by which the firm may conduct activity regulated by R.S. 40:1664.1 et seq., and these rules;

5. identify each principal of the firm;

6. identify the contact person as defined by these rules;

7. identify the qualifying person(s) for each endorsement applied for;

8. include a separate employee application for each qualifying person along with the required training or certification credentials as established by the Life Safety and Property Protection Advisory Board and an originally signed and notarized employment affidavit. A firm must employ and license at least one qualifier. Multiple qualifiers may be licensed;

9. include a separate employee application for each inspector along with the required training or certification credentials as established by the Life Safety and Property Protection Advisory Board. A firm must employ and license at least one inspector;

10. be accompanied by:

a. a current certificate of insurance issued to the Office of State Fire Marshal showing a minimum of \$500,000 coverage;

b. a copy of the local or occupational license for the firm;

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. 40:1664.1 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 et seq..

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:679 (April 2009).

§3121. 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 sprinkler system or equipment shall be certified, hydrostatically tested, inspected, installed, planned, 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, planning and servicing of those fire protection systems or equipment for which the firm holds an endorsement to work on. If a firm holds multiple endorsements, then multiple qualifiers may be utilized to meet this requirement.

D. A qualifier must meet the minimum examination, certification, or training requirements as established by the Life Safety and Property Protection Advisory Board.

E. Currently, the following requirements have been established:

I. Fire Sprinkler System Endorsement B—a current NICET Certificate, minimum Level III in Automatic Sprinkler System Layout, or a professional engineer currently registered with the Louisiana Board of Professional Engineers with a Mechanical 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 anytime that a firm finds itself without a qualifying person, such firm shall only be able to continue certifying, hydrostatic testing, inspecting, maintaining, planning 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. A firm may not submit plans to the Office of the State Fire Marshal when it finds itself without a qualifying person.

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 90 days to hire another qualifying person. If after the loss of such an employee, a replacement cannot be found within the 90 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:680 (April 2009).

§3123. 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 employee licenses shall be accompanied by a written statement from the employer certifying the applicant's competency to certify, hydrostatically test, inspect, maintain or service those systems and/or equipment for which the applicant desires to become licensed.

C. Applications for employee 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:681 (April 2009).

§3125. 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, Louisiana 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:681 (April 2009).

§3127. Fees—Specific Information

A. Certificate of Registration and License Fees

	Initial	Renewal
Firm Certificate Fire Sprinkler	\$500	\$250
Employees		
Qualifier	\$100	\$50
Inspector	\$100	\$50

B. Late Renewal Fee

1. A penalty shall be assessed in accordance with R.S.40:1664.1 et seq., for the late renewal of a certificate of registration or license.

C. Change in ownership—\$500.

D. Changes or alterations—\$20.

E. Duplicate Certificates of Registration or License—\$20.

F. Replacement pocket registration card—\$20.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:681 (April 2009).

§3129. Initial Certification, Continuing Education

A. Initial Certification. Applicants for Qualifier or Inspector initial licenses are required to meet the initial certification requirements as established by the Life Safety and Property Protection Advisory Board.

B. Continuing Education. Applicants for Qualifier or Inspector who wish to renew their licenses are required to meet the continuing education requirements as established by the Life Safety and Property Protection Advisory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:681 (April 2009).

§3131. Fire Sprinkler Systems Installations and Inspections

A. New fire sprinkler systems/equipment shall be certified, installed, maintained, planned and serviced in compliance with NFPA 11, 11A, 13, 13D, 13R, 14, 15, 16, 20, 22, 24, 25, 101, 1961 and 1962, as applicable and adopted by the Office of the State Fire Marshal in LAC-55:V:103 or noted in these rules.

B. Existing fire sprinkler systems/equipment shall be certified, hydrostatically tested and inspected in compliance with NFPA 25, 1961 or 1962, as applicable, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 or noted in these rules.

C. A service tag shall be securely attached to each riser upon completion of any work.

D. When a fire hose is found to be in a condition which would not allow hydrostatic testing as described in NFPA 1961 or 1962, as adopted by the Office of the State Fire Marshal in LAC-55:V:103 noted in these rules, then the fire hose shall be red tagged or removed from service and destroyed in accordance with the applicable code or standard and these rules.

E. All non-required and non-conforming fire sprinkler systems/equipment shall be planned, certified, inspected, installed, planned, 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 3053 as authorized by the Office of the State Fire Marshal.

F. Non-required and/or non-conforming fire sprinkler systems/equipment which only comprise of six sprinkler heads or less connected to a domestic water system need not be inspected and certified annually by a certified fire sprinkler system firm. The owner of these systems must ensure these systems are functional and maintained in

compliance with the manufacturer's specifications, as provided by R.S.40:1561, et seq., and NFPA 101 as adopted by LAC-55:V:103.

G. All systems, except as noted in Section G above, shall be planned, certified, inspected, installed, planned, 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. Distribution piping systems as provided for in NFPA 25, as adopted in LAC 55:V:103 will be certified, inspected, installed, planned, maintained and serviced by certified fire sprinkler contractors as regulated by R.S. 40:1664.1 et seq.

2. Underground water supply and distribution piping systems as provided for in NFPA 25, as adopted in LAC 55:V:103 will be certified, inspected, installed, planned, maintained and serviced by certified fire sprinkler contractors or licensed plumbing contractor as regulated by R.S. 40:1664.1 et seq.

3. Foam systems providing foam solution to fire monitors, portable nozzles, or fire trucks are excluded from this rule.

4. Alarm devices such as flow switches, pressure switches, low air pressure switches that are an integral part of the piping system must be installed by certified fire sprinkler contractors as regulated by R.S. 40:1664.1 et seq., and connected to the fire alarm system by a certified fire detection and alarm firm.

H. 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:681 (April 2009).

§3133. Installation Placards

A. Upon installation of any new fire sprinkler system, the system shall have a placard permanently affixed on each riser. The installation placard shall be a minimum of 2 3/4 inches by 2 3/4 inches. Maximum size cannot exceed 5 inches by 5 inches. 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 placard;
3. installation date;
4. firm's name;
5. firm's certificate number;
6. qualifier's name;
7. qualifier's license number;
8. NFPA Code Edition System was installed under;
9. plan review or exemption number;

10. model number and manufacturer of sprinkler valve;

11. model number and date of each type of sprinkler head on system.

B. If after initial installation a sprinkler system is redesigned because of an occupancy change or the main control valve is replaced for any reason, a new installation placard shall be completed and attached as above, noting the appropriate changes in information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:682 (April 2009).

§3135. Service Tags, Yellow Tags, Red Tags, and Stenciling

A. All fire sprinkler systems/equipment shall be tagged or stenciled in the following manner.

1. Service Tags

a. A service tag shall be completed and attached to a fire sprinkler system, fire pump and fire hoses 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.

b. Service tags shall be green in color. Fire hoses shall be stenciled in a contrasting color to that of the hose.

c. The service tag shall be attached at the following locations.

i. For fire sprinkler systems, the tag shall be attached at the riser.

ii. For fire pumps, the tag shall be attached at pump housing cover.

iii. For fire hoses, the tag shall be located at the female coupling.

iv. For standpipes, the tag shall be attached at the main control valve.

v. For fire hoses, the stencil shall be located at both couplings.

d. The service tag shall be attached in such a way as to not hamper the actuation and operation of the equipment or system.

e. A service tag shall be attached on all equipment/systems 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 placard 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.

f. Service tags must contain all of the information listed below:

i. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

ii. servicing firm's name, physical address and telephone number;

iii. servicing firm's State Fire Marshal certificate number;

iv. employee's name and State Fire Marshal license number (if applicable) to be printed on tag either at the time of service or preprinted;

v. employee's signature to be signed at time of installation, certification or service (no preprinted signatures nor initials are permitted);

vi. day, month and year in which the installation, certification or service was performed (must be punched through service tag at designated marks for month and year; designated marks for month and year shall only be punched once per tag);

vii. 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):

(a). "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;

(b). "Certification" shall be punched on the tag when the fire sprinkler system or equipment has its annual inspection. Punching "Certification" indicates that any required service performed to the system or equipment at the time has been completed;

(c). "Service" shall be punched on the tag when the fire sprinkler system or equipment is repaired or replaced to ensure proper operation in between required certification periods;

(d). specifics as to the type of work performed shall be noted on rear of tag, (i.e., new installation, annual certification, service, etc);

viii. model number and manufacturer of the sprinkler valve(s);

ix. business owner or tenant and physical address of where the sprinkler system is located (to be noted on rear of tag).

g. 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.

h. Stenciled information on fire hoses shall include the test pressure, date of test and firm license number.

2. Partial Impairment Tags (Yellow Tags)

a. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of fire sprinkler system/equipment and fire hoses 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.

b. 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 off-sited monitored but monitoring is not provided.

c. 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. The sprinkler firm does not have to physically return to the building for re-inspection. The mailing of the impairment notice is sufficient.

d. Partial impairment tags must contain all of the information listed below:

i. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

ii. servicing firm's name, physical address and telephone number;

iii. fire sprinkler firm's State Fire Marshal certificate number;

iv. employee's name and State Fire Marshal license number (if applicable) to be printed on tag either at the time of service or preprinted;

v. employee's signature to be signed at time of installation, certification or service (no preprinted signatures nor initials are permitted);

vi. day, month and year in which the impairment was found (to be punched through service tag at designated marks for month and year; designated marks for month and year shall only be punched once per tag);

vii. 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.;

viii. model number and manufacturer of the sprinkler valve;

ix. business owner or tenant and physical address of where the sprinkler system is located (to be noted on rear of tag).

3. Impairment Tags (Red Tags)

a. All firms engaged in the activity of certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of fire sprinkler systems/equipment 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.

b. An impairment tag shall be placed on all fire sprinkler systems/equipment 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.

c. Impairment tags shall also be placed on any equipment or system where life safety is in imminent danger.

d. 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 at the owner's direction.

e. 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.

f. Impairment tags must contain all of the information listed below:

- i. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);
- ii. fire sprinkler firm's name, physical address and telephone number;
- iii. fire sprinkler firm's State Fire Marshal certificate number;
- iv. employee's name and State Fire Marshal license number (if applicable) to be printed on tag either at the time of service or preprinted;
- v. employee's signature to be signed at time of installation, certification or service (no preprinted signatures nor initials are permitted);
- vi. day, month and year in which the inspection was performed (to be punched through service tag at designated marks for month and year; designated marks for month and year shall only be punched once per tag);
- vii. 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.;
- viii. model number and manufacturer of the sprinkler valve(s);
- ix. business owner or tenant and physical address of where the sprinkler system is located (to be noted on rear of tag).
- g. 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.

4. 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:

- a. name, address, and telephone number of the business owner or tenant of where the sprinkler system is located;
- b. name, address, telephone number, and certificate number of the firm noting the impairment;
- c. name and license number (if applicable) of the employee who performed the certification, inspection, maintenance, or service;
- d. type of system (manufacturer and model number should also be included);
- e. code, inspection chapter and year edition firm used for inspection;
- f. reason for the impairment. Note: A copy of the inspection or service report shall be included; and
- f. date system or equipment was red or yellow tagged.

5. 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.

- a. Each firm shall stamp or write on the installation tag and/or service tag one of the following statement as applicable:
 - i. NON-REQUIRED SYSTEM; or
 - ii. NON-CONFORMING SYSTEM; or
 - iii. NON-REQUIRED/NON-CONFORMING SYSTEM.

b. Such print or stamp shall be in all capital letting and be written or stamped so as to not obscure other information provided on the tag.

c. This does not supersede the requirements to place a yellow or red tag on a system that is impaired in any way.

6. Miscellaneous Provisions

a. On all fire sprinkler systems, a plastic pocket pouch/sleeve shall also be attached to the riser where all tags and inspection reports shall be maintained for a period of one year after the system's annual certification. Upon a new annual certification, all previous service tags and inspection reports may be removed and given to the owner to keep on file. This requirement does not apply to fire hoses.

b. 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.

c. All tags shall be 5 1/4 inches in height and 2 5/8 inches in width.

d. 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.

e. All tags remain the property of the certified firm and 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.

f. The following table outlines which individual may place a tag on a fire sprinkler system.

	Installation	Annual Certification	Service	Acceptance Testing	Impairment
Qualifier	Yes	No	Yes	Yes	Yes
Inspector	Yes	Yes	Yes	No	Yes
Foreman	Yes	No	Yes	Yes	Yes

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:682 (April 2009).

§3137. 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, maintaining, planning 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 employee without the appropriate endorsement of license or registration;

9. working without the appropriate endorsement of firm certificate or employee license or registration;

10. working with an expired firm certificate or license;

11. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

12. contracting to a firm or person who is not properly certified, licensed or registered 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;

13. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

14. installing fire sprinkler equipment/systems 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;

15. 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, plan, maintain or service the systems or equipment for which a firm is certified;

16. 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;

17. engaging in false, misleading or deceptive acts or practices;

18. aiding and abetting an unlicensed or unregistered person or firm in the certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of fire sprinkler equipment and/or system or fire hose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:684 (April 2009).

§3139. 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, insurances, equipment, tools, NFPA codes, standards and manufacturer's manuals and work/service performed, and as circumstances dictate, to determine that fire sprinkler firms and their employees are engaging in activity in accordance with the requirements of R.S. 40:1664.1 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:685 (April 2009).

§3141. 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, maintaining, planning or servicing fire sprinkler 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 employee without the appropriate endorsement of license or registration;

iv. working without the appropriate endorsement of firm certificate or employee license or registration;

v. working with an expired (46-60 days) license or firm certificate;

vi. installing fire sprinkler equipment and/or system, or fire hoses 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;

vii. contracting to a firm or person who is not properly certified, licensed or registered 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;

viii. 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, plan, maintain or service the systems or equipment for which a firm is certified;

ix. 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 or unregistered person or firm in the certifying, hydrostatic testing, inspecting, installing, maintaining, planning or servicing of a fire sprinkler system, fire pump or fire hose;

ix. 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 fire sprinkler systems/equipment. 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:685 (April 2009).

§3143. 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:686 (April 2009).

§3145. 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 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:686 (April 2009).

§3147. National Recognized Testing Laboratory

A. This office currently approves the following as nationally recognized testing laboratories for the purpose of these rules:

1. Underwriters Laboratories, Inc.;

2. Factory Mutual Research Corporation;

3. The United States Testing Company, Inc.; and

4. Intertek-ETL.

B. The recognized 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 listed equipment 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:686 (April 2009).

§3149. 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, plan, 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 of fire sprinkler systems/equipment firms.

1. Equipment:

- a. service, partial impairment (optional) and impairment tags;
- b. installation placards;
- c. pipe wrenches;
- d. pipe threader;
- e. pipe reamer;
- f. calibrated gauges and gauge tester;
- g. working hydrostatic test pump for testing fire hose, with flexible connection, check valves and fittings.

2. Code books (latest edition enumerated in LAC 55:V:103 and these rules) NFPA 11, 11A, 13, 13D, 13R, 14, 15, 16, 20, 22, 24, 25, 101, 1961 and 1962.

C. The State Fire Marshal or his representative shall inspect a firm's physical locations or vehicle(s) to ensure the proper equipment, tools, NFPA codes, standards and manufacturer's UL listed installation and service manuals are possessed by the firm. Firms must possess all applicable manufacturers' installation and service manuals for the systems and/or equipment it services.

D. The State Fire Marshal or his representative shall require that a firm or its employee(s) demonstrate a proficiency to use the necessary equipment to properly certify, hydrostatically test, or inspect fire sprinkler 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.

E. 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 thirty 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.

F. The office may specifically enumerate additional required equipment at a later date should it be deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:686 (April 2009).

§3151. Advisory Committee

A. The State Fire Marshal may create an advisory committee to assist him or his representative to create new rules or modify existing rules as necessary to reflect changes or new trends in the industry. Associations requested to participate on the committee shall nominate the members to attend. This committee is to be a volunteer committee. No stipends or mileage will be paid to committee members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:687 (April 2009).

§3153. Plumbing Contractors

A. All plumbing contractors who have met all requirements and passed a prescribed written examination based upon National Fire Protection Association (NFPA) 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 the water supply piping and check valves connecting to a fire sprinkler system.

B. Plumbing contractors performing the installation of underground water supply piping, shall be required to complete the fire marshal approved "Contractor's Material and Test Certificate for Underground Piping".

C. The planning, certifying, inspecting, maintenance and servicing of a fire sprinkler system shall be performed only by a fire sprinkler contractor that is certified, and its employees licensed with the Office of the State Fire Marshal to perform such work.

D. Plumbing contractors are permitted to install up to one single sprinkler head tied into the domestic water supply as authorized by NFPA 101 for protection of isolated hazardous area. Plans shall be submitted to this office prior to installation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:687 (April 2009).

§3155. Plan Review

A. No fire sprinkler system/equipment requiring plan submittal in accordance with R.S. 40:1574 et seq., shall be installed 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 piping only shall be permitted upon receipt of plans and the issuance of a project number by the Office of the State Fire Marshal, Plan Review Section. No control valves shall be installed prior to review or written authorization by the Office of the State Fire Marshal. Any required changes determined by the review shall be the responsibility of the contractor.

B. All submittals for plan review shall identify the licensed firm performing the installation and responsible qualifier.

C. Only listed qualifiers of a firm shall be listed on applications for plan review or exemption forms to 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.

D. A new plan review shall be required when a firm takes over a project from another firm, listing the new firm's information and any changes to the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:687 (April 2009).

§3157. 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, plan, 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 fire sprinkler equipment and/or systems or fire hoses 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:

- a. first being certified or licensed to perform such acts; and
- b. is employed by a firm certified to perform those acts; and
- c. is performing those acts for the certified firm by which he is employed.

6. Nothing in these rules shall prevent an appropriately licensed or registered firm or person from certifying, hydrostatically testing, inspecting, installing, maintaining, planning or servicing any manufacturer's fire sprinkler 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. fire sprinkler systems including but not limited to sprinkler risers, standpipe systems, fire pumps and hose stations shall be certified annually by a firm with a fire sprinkler endorsement;

b. fire hoses shall be certified at a minimum annually by a firm with a fire sprinkler endorsement firm or with a portable fire extinguisher/fire hose endorsement as outlined by R.S.40:1664.1 et seq.

2. 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. Isolated Hazardous Areas. Where areas are permitted to have sprinkler protection from the domestic water supply in lieu of fire rated construction, then the following shall apply.

1. Installation of domestic water sprinklers shall meet all requirements as set forth in the edition NFPA 101 as adopted by the Office of the State Fire Marshal in LAC 55:V:103 or noted in these rules.

2. Installation of more than one but no more than six domestic water sprinklers shall only be performed by a licensed sprinkler contractor.

3. Installation of one domestic water sprinkler may be performed by a Louisiana licensed plumbing contractor or a licensed sprinkler contractor.

4. Inspection of domestic sprinkler heads shall be performed by either a licensed sprinkler contractor, a Louisiana licensed plumbing contractor or owner or his employee who is specifically trained to perform such inspection.

5. Documentation shall be provided on an annual basis that the sprinkler heads meet the specified requirements set forth in NFPA 101 as adopted by the Office of the State Fire Marshal in LAC 55:V:103 or noted in these rules.

E. Upon the completion of any new installation or renovation of a sprinkler system, a fire marshal approved "Contractor's Material and Test Certificate" shall be completed.

F. Inspection Reports. After every annual certification, an inspection report shall be completed and left at the riser or if done electronically, mailed to the owner for placement at the riser. The report shall note the inspector who performed the inspection and the date of the inspection. The building owner is responsible for ensuring the report is at the riser in a plastic pocket sleeve or pouch.

G. Advertising. All advertising, including but not limited to telephone advertising, shall indicate a firm's certificate of registration number.

H. Service Invoices. All service invoices shall reflect all work performed, the date the work was performed, and the employee who did the work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 35:688 (April 2009).

Jill Boudreaux
Undersecretary

0904#062

RULE

Department of Social Services Office of Family Support

Electronic Benefits Issuance System
(LAC 67:III.403, 1957, 1983, 1998, and 2013)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, amended the Louisiana Administrative Code Title 67, Subpart 1 General Administrative Procedures and Subpart 3 Food Stamp Program.

In order to comply with the Food, Conservation and Energy Act of 2008 (P.L. 110-246), the agency amended Subpart 1, §403 in the Electronic Benefits Issuance System to change the period of time that must elapse before unused Food Stamp and cash benefits can be placed in dormant status or be expunged. Additionally, the agency amended §1957 and §1983 in the Food Stamp Program to change the minimum allotment for a household of one or two persons, and removed the limitation on the dependent care deduction. The agency also amended §1998 and §2013 in the Food Stamp Program in order to simplify the change reporting requirements for households that are eligible for 24-month certifications and to add migrant and seasonal farm worker households to the semi-annual reporting system as allowed in P.L. 110-246.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 1. General Administrative Procedures

Chapter 4. Electronic Benefits Issuance System

§403. Cash Benefits

A. ...

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 180 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 185 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998) amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), LR 35:689 (April 2009).

Subpart 3. Food Stamp Program

Chapter 19. Certification of Eligible Households

Subchapter I. Income and Deductions

§1957. Income Eligibility and Benefit Level

A. - B. ...

C. All eligible one and two-person households shall receive a minimum monthly allotment of 8 percent of the

Thrifty Food Plan for one person except when proration of initial month's benefits occurs. All eligible households whose benefits are prorated to \$1, \$3, or \$5, and eligible households with three or more members which are entitled to \$1, \$3, and \$5, allotments shall receive allotments of \$2, \$4, and \$6, respectively to correspond with current coupon denominations. For those eligible households with three or more members, which are entitled to no benefits, the eligibility worker shall deny the household's participation, on the grounds that its net income exceeds the level below which benefits are issued.

D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 35:689 (April 2009).

§1983. Income Deductions and Resource Limits

A. - A.2. ...

3. The dependent care deduction is the amount billed to a member of the household for the cost of caring for a child or an incapacitated adult who lives in the home.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171; Act 58, 2003 Reg. Session, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:423 (July 1986), amended LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 35:689 (April 2009).

Subchapter L. Reporting Changes

§1998. Reporting Requirements

A. Households that are eligible for 24-month certifications in which all adult household members are either elderly or disabled are required to report any changes in gross monthly income which result in household income exceeding 130 percent of the monthly poverty income guideline for the household size.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1486 (July 2004), amended LR 35:689 (April 2009).

Subchapter R. Semi-Annual Reporting

§2013. Semi-Annual Reporting

A. Effective July 1, 2003, all households shall submit a reporting form to the agency on a semi-annual basis except for elderly, disabled households with 24-month certification periods.

B. Households subject to semi-annual reporting will be required to report only:

1. changes in gross monthly income which exceed 130 percent of the monthly poverty income guideline for the household size;

2. changes in work hours of able-bodied adults without dependents (ABAWDs) who are subject to the time limit set forth in §1940 if the change results in the ABAWD working an average of less than 20 hours per week.

C. - H. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:1633 (August 2000), amended LR 27:867 (June 2001), LR 28:103 (January 2002), LR 29:607 (April 2003), LR 35:689 (April 2009).

Kristy H. Nichols
Secretary

0904#066

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Alligator Regulations (LAC 76:V.701)

The Wildlife and Fisheries Commission does hereby amend the regulations governing the definition of an alligator hunter helper and release length for farm raised alligators within the Alligator Regulations (LAC 76:V.701).

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 7. Alligators

§701. Alligator Regulations

A. The Department of Wildlife and Fisheries does hereby establish regulations governing the harvest of wild populations of alligators and alligator eggs, raising and propagation of farmed alligators, tanning of skins and regulations governing the selling of hides, alligator parts and farm raised alligators. The administrative responsibility for these alligator programs shall rest with the department secretary; the assistant secretary, Office of Wildlife; and the Coastal and Nongame Resources Division.

1. Purpose. These regulations are to govern the taking, possession, selling, raising and propagation of alligators statewide, both in the wild and in captivity. They are enacted to prevent depletion or waste, while enhancing utilization of this renewable resource. These regulations are based upon scientific study and population monitoring and are consistent with federal requirements to qualify alligators and alligator parts from Louisiana for international export under the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Alligators in Louisiana are not endangered but their similarity of appearance to endangered crocodilian species requires controls on commerce to minimize illegal trafficking of these species and to regulate and maintain the wild population of alligators. These regulations provide rules to enhance alligator farming operations; establish the methods of alligator harvest; establish minimum facility requirements for alligator farming; regulate commerce in alligators, eggs and parts; streamline necessary reporting requirements; and, establish a regulated nuisance alligator control program.

2. Definitions. The following words and phrases for purposes of these regulations shall have the meaning ascribed to them in this section, unless the context wherein

the particular word or phrase is used clearly indicates a different meaning:

Alligator—American alligator (Alligator mississippiensis).

Alligator Egg Collection Permit—a permit issued by the department allowing for the collection of alligator eggs on designated properties described as part of the permit. The permit will be signed by the secretary or his designee, the permittee and the landowner/land manager.

Alligator Farm (Nongame Quadruped)—an enclosed area, constructed so as to prevent the ingress and egress of alligators from surrounding public or private lands or waters and meeting other specifications and requirements set by the department, where alligators are bred, propagated, or raised as a commercial enterprise under controlled conditions. "Alligator Farm" also includes alligator ranching wherein eggs are collected from the wild, and raised, pursuant to departmental license or permit.

Alligator Farmer—a properly licensed person who raises alligators under controlled conditions which prohibit free movement of the animals onto and off of the farm or controlled area, or who collects and sells wild alligator eggs, and who may harvest alligators under the supervision of the department. An alligator farmer must possess a valid nongame quadruped breeder's license.

Alligator Hide Tag—an official CITES serially numbered tag issued by the department.

Alligator Hunter—a properly licensed resident or nonresident person who takes wild alligators. Resident hunters are divided into four classes.

i. Commercial—anyone who is licensed by the department to take wild alligators after having filed application(s) approved by the department which authorize the issuance of alligator hide tags to him.

ii. Helper—anyone who is licensed by the department to act as an authorized agent of a commercial alligator hunter(s) in conducting alligator harvest activities. The helper may hunt independently of the commercial alligator hunter(s) he is assigned to assist. The helper's license must bear the name and license number of the commercial alligator hunter(s) authorizing the licensing of the helper.

iii. Sport—anyone who is licensed by the department and guided by a commercial hunter during alligator harvest activities; alligator hide tags cannot be issued to a sport license holder.

iv. Nuisance—a licensed alligator hunter who is contracted or otherwise selected by the department to remove designated nuisance alligators and who can be assigned alligator hide tags by the department.

Alligator Part—any part of the carcass of an alligator, except the hide and includes the bony dorsum plates, if detached from the tagged alligator hide.

Alligator Parts Dealer—any properly licensed person who deals in alligator parts other than hides and who:

i. buys unprocessed alligator parts from an alligator hunter, another parts dealer, or an alligator farmer for the purpose of resale; or

ii. manufactures within the state nonedible alligator parts into a finished product; or

iii. purchases unprocessed alligator meat or processes alligator meat for wholesale or retail sale.

Alligator Parts Retailer—any properly licensed person who purchases for retail sale finished alligator parts made from parts other than hides.

Alligator Shipping Label—a serially numbered green label issued by the department required on each shipment of alligators being transported out of the state.

Bona Fide Resident—

i. any person who has resided in the state of Louisiana continuously during the 12 months immediately prior to the date on which he applies for any license and who has manifested his intent to remain in this state by establishing Louisiana as his legal domicile, as demonstrated with all of the following, as applicable:

(a). if registered to vote, he is registered to vote in Louisiana;

(b). if licensed to drive a motor vehicle, he is in possession of a Louisiana driver's license;

(c). if owning a motor vehicle located within Louisiana, he is in possession of a Louisiana registration for that vehicle;

(d). if earning an income, he has filed a Louisiana state income tax return and has complied with state income tax laws and regulations.

ii. as to a corporation or other legal entity, a resident shall be any which is incorporated or otherwise organized under and subject to the laws of Louisiana, and as to which the principal place of business and more than 50 percent of the officers, partners, or employees are domiciled in Louisiana.

Closed Season—that period of time of a calendar year not specifically included in the open season.

Commission—the Louisiana Wildlife and Fisheries Commission.

Common Carrier—any agency or person transporting passengers or property of any description for hire.

Confiscation—the exercise of a right under the police power wherein property is seized and held pending court order if the seized material is nonperishable, or disposed of without judicial intervention if perishable.

Consumer—restaurants and other places where alligator, fish, shrimp, or other aquatic life is prepared for human consumption; or any person using alligator, fish, shrimp, or other aquatic life for bait or personal consumption.

Department—the Louisiana Department of Wildlife and Fisheries.

Designated Collection Agent—anyone who is permitted by the department to assist an alligator egg collection permittee during alligator egg collection.

Dressing, Dressed Skins or Dressed Furs—(see "Tanning").

Finished Alligator Part—any nonedible alligator part that has been completely processed from parts other than hides for retail sale.

Fur Buyer—anyone who buys whole nongame quadrupeds for the purpose of pelting, carcasses of fur bearing animals, raw furs or skins from fur trappers, alligator hunters, alligator farmers, fur buyers, or fur dealers and who sells to another fur buyer or fur dealer within the confines of the state or to a nonresident fur dealer licensed by the state of Louisiana in interstate commerce, or who acts as an agent of another fur buyer or fur dealer in this state in such

purchase or sale. Fur buyers are divided into two classes, resident and nonresident. Resident fur buyers are those who are bona fide residents of this state. All others are nonresident fur buyers.

Fur Dealer—anyone who deals in whole nongame quadrupeds for the purpose of pelting, carcasses of fur bearing animals, raw furs and skins and who:

i. buys from a fur trapper, alligator hunter, or alligator farmer, either directly or indirectly, and ships or exports from this state, either directly or indirectly, the raw furs and skins so bought; or

ii. buys from a fur buyer or other fur dealer and exports from this state the raw furs and skins so bought; or

iii. buys from a fur trapper, alligator hunter, alligator farmer, fur buyer, or other dealer and sells such raw furs and skins for manufacturing into a finished product in this state; or

iv. manufactures such furs and skins into a finished product in this state, buying directly from a fur trapper, alligator hunter, alligator farmer, fur buyer, or fur dealer; or

v. transports raw furs or skins into this state for the purpose of sale within the state. Fur dealers are divided into two classes, resident and nonresident. Resident fur dealers are those who are bona fide residents of this state. All others are nonresident fur dealers;

vi. converts raw alligator skins through the tanning process into finished or partially finished leather and/or converts raw (green or dried) fur pelts into dressed furs ready for manufacturing.

Hatchling—a young of the year alligator which is less than 23 inches in length.

Hide—see *Pelt*.

Hook—any curved or bent device attached to a line or pole for the purpose of taking alligators.

Hunt—in different tenses, attempting to take.

Incubator—an apparatus designed and used for the primary purpose of incubating alligator eggs.

Land Manager—any authorized person who represents the landowner.

Landowner—any person who owns land which the department has designated as alligator habitat.

Licensee—any resident or nonresident lawful holder of an effective license duly issued under the authority of the department.

Nongame Quadruped—alligators, beavers, bobcats, coyotes, gray foxes, minks, muskrats, nutrias, opossums, otters, raccoons, red foxes, skunks, and other wild quadrupeds valuable for their furs or skins.

Nongame Quadruped Breeder—a person properly licensed to engage in the business of raising, exhibiting and selling nongame quadrupeds on alligator or fur farms.

Nongame Quadruped Exhibitor—a person properly licensed to engage in the business of raising and/or exhibiting nongame quadrupeds.

Nonresident—any person who is not a bona fide resident as that term is defined by R.S. 56:8(12).

Nuisance Alligator—a specific (particular) alligator that poses a threat to human life or property.

Open Season—that period of time set by the Louisiana Wildlife and Fisheries Commission, during which wild alligators or their eggs may be lawfully taken.

Out-of-State Shipping Seal—a special locking device or seal supplied by the department and placed on or across a shipping container by department personnel prior to shipping out of state.

Out-Of-State Shipping Tag—an official, serially numbered tag, yellow in color, issued by the department required on each shipment of alligator hides shipped out of state.

Part—for purposes of this Section, a part is a division of a Subsection.

Pelt—the skin or hide of a quadruped.

Pelting—removing the skin and/or fur of a quadruped in such a manner as to render it marketable.

Person—includes any individual person, association, corporation, partnership, or other legal entity recognized by law.

Pole Hunting—the act of taking an alligator from a den with a hook pole or snagging device of any type and includes using such devices to induce an alligator to move from a den prior to taking.

Possess—in its different tenses, the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or as agent, bailee, or custodian for another.

Processed Alligator Part—any part (and its resulting products) that has been removed from a legally taken alligator and for commercial purposes converted into a finished alligator part, or meat prepared and packaged for retail sale.

Propagation—the holding of live alligators for production of offspring.

Raising—the production of alligators under controlled environmental conditions or in outside facilities.

Rearing—see *Raising*.

Resident—see *Bona Fide Resident*.

Secretary—the Secretary of the Louisiana Department of Wildlife and Fisheries.

Skin—see *Pelt*.

Take—in its different tenses, the attempt or act of hooking, pursuing, netting, capturing, snaring, trapping, shooting, hunting, wounding, or killing by any means or device.

Tanning—the conversion of alligator skins or fur pelts into an intermediate or finished form and includes the following: crust tanning alligator leather, dyeing alligator leather, glazing alligator leather, tanning fur pelts, shearing fur pelts, and dyeing fur pelts, and includes the dressing of skins and furs.

Transport—in its different tenses, the act of shipping, attempting to ship, receiving or delivering for shipment, transporting, conveying, carrying, or exporting by air, land, or water, or by any means whatsoever.

Wildlife—all species of wild vertebrates.

Wildlife Management Area—any area set aside, maintained, and supervised by the department for the purpose of managing and harvesting wild birds, wild quadrupeds, fish and other aquatic life under controlled conditions to afford maximum public hunting and fishing opportunity.

Wildlife Refuge—any area set aside and designated by the department as a refuge on which wild birds and animals

are protected. Control of certain forms of wildlife may be conducted by the department.

3. General Rules

a. No person shall take, possess, purchase or sell alligators, alligator eggs, alligator hides, alligator parts, or goods manufactured from alligators, except as provided in these regulations and Title 56.

b. Each alligator, alligator hide, alligator egg, or alligator part taken or possessed in violation of these regulations shall constitute a separate offense.

c. Alligators or hides of alligators harvested in Louisiana shall be tagged in accordance with provisions as prescribed in Subsection A.6.e of this Section and deviation from those requirements shall be a violation and subject hides to confiscation. Violation of this Subparagraph is a Class Four violation as described in Title 56.

d. Pole Hunting is prohibited. It is legal for a hunter to retrieve a shot alligator with a hook pole or to retrieve with a hook pole an alligator taken on a hook and line. Violation of this Subparagraph is a Class Two violation as described in Title 56.

e. An alligator hunter must possess on his person one or more current alligator hide tags issued for the property on which he is hunting; and if participating in a joint hunting operation at least one licensed hunter needs to possess current hide tags issued for the property on which they are hunting among a group of licensed hunters who are physically present in the same location. Violation of this Subparagraph is a Class Two violation as described in Title 56.

f. No person shall release any alligator from any taking device for any purpose without first dispatching the alligator. After the alligator is removed from the taking device the hide tag shall be properly attached immediately upon possession. Violation of this Subparagraph is a Class Four violation as described in Title 56.

g. Taking or collection of any wild alligator illegally is strictly prohibited. Violation of this Subparagraph is a Class Four violation for each alligator taken as described in Title 56. All alligators taken in violation of this Subparagraph shall be confiscated and in addition to all other penalties provided herein, all alligator licenses of any type held by the offender(s) shall be revoked for a period of three calendar years. If violation(s) of this Subparagraph involves a farm operation, no alligators shall be raised or propagated on the offender's facilities for a period of three calendar years. Any live alligator(s) confiscated pertinent to any violation of this Subparagraph must be returned to the wild when appropriate. Selection of the release site and time of year of the release shall be accomplished only after consultation with and in agreement with biological staff of Coastal and Nongame Resources Division.

h. The shipment of alligator eggs out of state is prohibited except where special scientific permits have been obtained in advance from the department which specify all such shipments. Violation of this Subparagraph is a Class Four violation as described in Title 56.

i. No person, firm, or corporation shall transport into this state or possess whole alligator(s) with skin on, alligator parts or alligator skins/hides unless that person, firm or corporation is a Louisiana licensed alligator parts dealer or fur dealer and is in immediate possession of an

alligator parts dealer's license or fur dealer's license, except that a copy of such license shall be sufficient during transportation only. Persons, firms or corporations violating this Subparagraph shall be subject to the penalties as provided in Title 56:34, a Class Four violation; except that when such a violation involves alligator parts only, such offenses shall be subject to the penalties as provided in Title 56:32, a Class Two violation.

j. It is unlawful to ship alligator eggs into the state of Louisiana unless they are to be used for department sponsored scientific studies and these shipments shall have prior written department approval. Violation of this Subparagraph is a Class Four violation as described in Title 56.

k. The shipment of live alligators or alligator eggs out of the United States is strictly prohibited unless they are used for department sponsored scientific studies with an accompanying authorization signed by the secretary. The transfer of ownership of live alligators out of their natural range for commercial purposes is strictly prohibited. However, this Subparagraph does not prohibit a licensed Louisiana alligator farm from raising alligators of Louisiana origin in a nonrange state provided the nonrange farm is in complete compliance with all applicable state(s) and federal regulations. Violation of this Subparagraph is a Class Three violation as described in Title 56.

l. There is levied a severance tax of \$0.25 on each alligator hide taken from within the state, payable to the state through the department by the alligator hunter or alligator farmer shipping or taking his own catch out of state, or shipping to an instate taxidermist, or by the dealer shipping skins or hides out of state or tanning alligator skins in Louisiana. Violation of this Subparagraph is a Class Two violation as described in Title 56.

m. An alligator hunter or alligator farmer may give alligator parts to anyone for personal use. Any part of an alligator shall have affixed thereto the name, address, date, hide tag number, and the license number of the person donating the alligator part(s). This information shall be legibly written in pen or pencil on any piece of paper or cardboard or any material which is attached to the part(s) or to the container enclosing the part or parts. This information must remain affixed until the part(s) has been stored at the domicile of the possessor. Violation of this Subparagraph is a Class Two violation as described in Title 56.

n.i. R.S. 56:280, passed in the regular session of the 1992 Louisiana Legislature established a state policy which protects white or albino alligators and except under department permit prohibits the taking of white or albino alligators from the wild.

ii. Conditions under which any alligator that is white or albino may be taken from the wild and under official department permit include:

(a). landowners or licensed alligator farmers or ranching operators may capture live and unharmed a white or albino alligator for its own protection. All such instances of possession shall be reported immediately to the department;

(b). any white or albino alligator hatchling produced from wild collected eggs authorized by a department alligator egg collection permit will remain in the possession of such licensed operators. Any white or albino

hatchling must be reported immediately upon hatching to the department on a standard activity report form;

(c). any person who unintentionally takes from the wild any alligator that is white or albino by hook and line shall immediately report its presence and location to the department. Department personnel of the Coastal and Nongame Resources Division will on a case by case basis determine the disposition of any such white or albino alligator which is unintentionally hooked.

iii. Any white or albino hatchling produced from a licensed breeding pen will remain in the possession of such licensed operators but must be reported immediately upon hatching to the department on a standard activity report.

iv. It shall be a violation if any person intentionally takes from the wild any alligator that is white or albino by any means.

v. Violation of R.S. 56:280 shall subject the violator to a fine of not less than \$10,000 and imprisonment for not less than six months or more than 12 months, or both.

o. Alligator meat and parts may be shipped in containers that are sealed and the parts identified to the CITES tag of origin. A fully executed alligator hunter, farmer, or parts dealer alligator parts sale or transaction form and shipping manifest shall meet the U.S. Fish and Wildlife Service parts identification requirements, provided such form(s) is/are prominently attached to the outside of each shipping container. Alligator meat/parts shipped to another state must meet applicable state/federal requirements of the receiving state. Alligator meat/parts exported from the United States must meet the requirements of the U.S. Fish and Wildlife Service as well as those of the receiving country. Alligator skulls being exported shall carry a "tag" containing the CITES tag number and the hunter's name and license number. The skull must also be physically marked with the number of the original CITES tag used for the hide of the individual alligator. Violation of this Subparagraph is a Class Three violation as described in Title 56.

p. For the purpose of bonafide educational or promotional functions, including but not limited to school activities, civic groups, fairs and festivals within the state of Louisiana, an alligator farmer/rancher or his designee may transport his own live farm alligators or alligator eggs to such function without the need for a special permit from the department while in possession of a valid nongame quadruped breeder's or exhibitor's license or copy thereof. Such farmer/rancher shall not barter, trade, exchange or attempt to barter, trade or exchange live alligator(s) or alligator eggs while transporting to/or attending such function.

4. Licenses, Permits and Fees

a.i. The licenses and fees required for activities authorized by these regulations are as prescribed under provisions of Title 56, or as prescribed in these regulations, and are:

(a). \$25 for a resident alligator hunter's license; including commercial, helper, sport, and nuisance types;

(b). \$150 for a nonresident alligator hunter's license;

(c). \$25 for a resident fur buyer's license;

(d). \$100 for a nonresident fur buyer's license;

(e). \$150 for a resident fur dealer's license (\$500 deposit required);

(f). \$300 for a nonresident fur dealer's license (\$1,000 deposit required);

(g). \$10 for a nongame quadruped exhibitor's license;

(h). \$25 for a nongame quadruped breeder's license;

(i). \$50 for an alligator parts dealer license;

(j). \$5 for an alligator parts retailer license;

(k). \$4 for each alligator hide tag;

(l). \$4 for each whole alligator leaving the state as alligator shipping label fee;

(m). \$0.25 severance tax for each alligator hide taken from within the state;

(n). \$25 for a Designated Agent Collection Permit.

ii. All license types prescribed above except nongame quadruped exhibitor and breeder expire annually on June 30. Nongame quadruped exhibitor and breeder licenses expire annually on December 31.

b. No person may take, attempt to take, or possess a wild alligator in this state during the open season for taking wild alligators unless he or she has acquired and possesses an alligator hunter's license. An alligator hunter must have in possession a valid alligator hunter license to take or sell alligators, their skins, or parts. Violation of this Subparagraph is a Class Three violation as described in Title 56.

c. No person may engage in the business of buying alligators for the purpose of skinning or buying and selling alligator skins unless he has acquired a resident or nonresident fur buyers license. No resident or nonresident fur buyer shall ship furs, alligators, or alligator skins out of state. Violation of this Subparagraph is a Class Three violation as described in Title 56.

d. No person may engage in the business of buying alligators for the purpose of skinning or buying and selling alligator skins or shipping alligator skins out of state or tanning alligator skins within the state unless he has acquired a resident or nonresident fur dealers license. Violation of this Subparagraph is a Class Three violation.

e. No person may engage in the business of raising and/or exhibiting alligators unless he or she has acquired and possesses a valid nongame quadruped exhibitor license. Violation of this Subparagraph is a Class Three violation as described in Title 56.

f. No person may engage in the business of raising, breeding, collecting and selling alligator eggs from the wild, propagating, exhibiting and selling alligators alive or selling their parts, and killing and transporting them and selling their skins and carcasses unless he or she has acquired and possesses a valid nongame quadruped breeder license and complies with Subsections A.14 and 15 of this Section. Violation of this Subparagraph is a Class Three violation as described in Title 56.

g. No person shall engage in the business of buying and selling unprocessed alligator parts unless he has acquired and possesses a valid alligator parts dealer license. Violation of this Subparagraph is a Class Two violation as described in Title 56.

h. Each retailer purchasing for retail sale, finished alligator parts made from parts other than hides, shall secure from the department an alligator parts retailer license prior to

commencing business. Violation of this Subparagraph is a Class Two violation as described in Title 56.

i. No person shall remove and possess alligator eggs from wild nests unless he has acquired and possesses a valid nongame quadruped breeder license or a valid designated agent collection permit and also has in his possession a valid alligator egg collection permit. Egg collection permits will only be issued to those persons who demonstrate competency in egg collection and handling, have necessary equipment accessible and comply with all department requirements as described in Subsection A.14 of this Section. Violation of this subparagraph is a Class Four violation as described in Title 56.

j. No person shall ship or transport alligators out of the state without first applying for and receiving an alligator shipping label which shall be affixed to each shipment of alligators and is properly completed and validated by department personnel. Violation of this Subparagraph is a Class Three violation as described in Title 56.

k. Every alligator hunter or alligator farmer shipping or transporting his own catch of alligator skins out of state is liable for the alligator hide tag fee and the severance tax thereon, and shall apply for an official out of state shipping tag to be attached to the shipment and shall pay the alligator hide tag fee and the severance tax prior to shipment. Violation of this Subparagraph is a Class Two violation as described in Title 56.

l. Valid holders of alligator hunter license, nongame quadruped breeder license, fur dealers license and alligator parts dealer license must comply with the receiving state/country requirements and with federal licensing, tagging and permit requirements to engage in interstate and international commerce involving alligators, alligator hides, alligator parts and fully manufactured alligator hide products. Violation of this Subparagraph is a Class Two violation as described in Title 56.

5. Wild Harvest Methods

a. Alligators taken from the wild may be removed from hook and line, and other legal capture devices which may be used, only during daylight hours, between official sunrise and official sunset. Violation of this Subparagraph is a Class Four violation as described in Title 56.

b. There are no size restrictions on wild alligators taken during the general open season.

c.i. Legal methods for taking alligators in the wild are as follows:

(a). hook and line;

(b). long (including compound) bow and barbed arrow; and

(c). firearms (the possession of shotguns is prohibited while hunting or taking wild alligators; except as authorized by the department for taking of nuisance alligators by nuisance alligator hunters).

ii. Violation of this Subparagraph is a Class Two violation as described in Title 56.

d. Hooks and arrows may be used only when a line of at least 300-pound test is securely attached to the hook or head of the arrow in such a manner to prevent separation from the hook or head until the carcass is retrieved. The other end of the line must be attached to a stationary or floating object capable of maintaining the line above water

when an alligator is attached. Violation of this Subparagraph is a Class Two violation as described in Title 56.

e. Alligator hunters shall inspect their hooks and lines and remove captured alligators daily. Alligators shall not be cut loose from hooks and lines for the purpose of selecting larger alligators. All hooks and lines shall be removed when an alligator hunter's quota is reached. In the event an alligator is hooked and the hunter's quota has been reached the hunter must release the alligator in the most humane method possible. Violation of this Subparagraph is a Class Two violation as described in Title 56.

f. Baited hooks and lines may be set no more than 24 hours prior to the general open season and shall be removed no later than sunset of the last day of the open season. Violation of this Subparagraph is a Class Two violation as described in Title 56.

g. No person possessing alligator hide tags issued for privately-owned land or water may take alligators on adjacent publicly-owned water unless the taking device is anchored to privately-owned land or the person is on privately-owned land when the taking occurs, provided that any alligator captured on a legal taking device that is anchored to privately-owned land or held by a person on privately-owned land may be dispatched from a floating craft on public water. Violation of this Subparagraph is a Class Two violation as described in Title 56.

h. A person possessing alligator hide tags for publicly-owned areas may take alligators by legal means from a floating craft on public water for which the tags are issued.

6. Alligator Hide Tag Procurement and Tagging Requirements

a. Alligator hide tags may be obtained as follows and only to properly licensed alligator hunters and nongame quadruped breeders.

b. Landowners, Land Managers and Hunters—upon application to the department on forms provided for tag issuance. Applications for alligator tag allotments will be taken annually beginning July 15 and ending the day before the season opens. Tags will not be issued after close of business on the day prior to the season opening date.

i. Maximum tag issuance to individual landowners, land managers, or their hunters shall be determined solely by the department. Landowners, land managers, or their hunters shall certify total acreage owned or represented on a form prescribed by the department at the time of application. The location and acreage of the property must be provided which includes parish, township, range and section delineation figures.

ii. Land managers and hunters must present a signed document from the landowner verifying their selection to represent that landowner and the total acreage represented to obtain hide tags.

iii. Alligator hide tags shall be issued to licensed alligator hunters without charge. Numbered alligator hide tags shall only be issued in the name of the license holder and are nontransferable. All unused alligator tags shall be returned within 15 days following the close of the season.

c. Alligator Farmers. Alligator hide tags shall be issued to properly licensed alligator farmers without charge upon request at any time at least two weeks prior to scheduled harvesting, subject to verification of available

stock by department personnel. All unused alligator tags shall be returned to the department within 15 days following the last day of the year that issued tags are valid.

d. If an alligator hunter is cited for hunting alligators out of season, or at night, or on property other than that for which hide tags were issued, all unused hide tags and alligators in possession shall be confiscated and the violator's alligator hunting license shall be revoked. Violation of this Subparagraph is a Class Four violation as described in Title 56.

e. A hide tag shall be properly attached and locked using the tag's locking device in the alligator's tail immediately upon possession by an alligator hunter. Alligator farmers, fur buyers and fur dealers may wait until farm raised alligators are skinned prior to tagging, but under no circumstances can the tag be attached using the locking device more than 48 hours after dispatching the alligator during the open wild alligator harvest season, or more than 7 days after dispatching the alligator outside of the open wild alligator harvest season. Live or dead farm raised alligators may be transported with their accompanying tags from a licensed alligator farm to a licensed processing facility, however each shipment shall be accompanied with the exact number of alligator hide tags. In the event that an alligator tag contains a factory defect rendering it unusable for the purpose intended or becomes detached from an alligator or hide, the tag must be reattached to the tail of the alligator/hide. The department will be responsible for the replacement of reattached tags prior to shipping out-of-state or prior to tanning within the state. It shall be unlawful to tag or attempt to tag an alligator with a tag that has been locked prior to the taking. Locked tags may be replaced upon request at the discretion of the department. The alteration of hide tags is strictly prohibited and will result in the confiscation of all tags and alligators/hides and the revocation of the violator's alligator hunting license. Violation of this Subparagraph is a Class Four violation as described in Title 56.

f. In the event that an alligator hide tag cannot be located when in the possession of a buyer/dealer, then the following procedure shall be followed.

i. Following discovery of an untagged alligator or alligator hide by the buyer/dealer, they shall notify the Department of Wildlife and Fisheries, Coastal and Nongame Resources Division within 24 hours and the department of Wildlife and Fisheries will place a state tagging device on the alligator or alligator hide.

ii. Upon discovery of an untagged alligator or alligator hide by Department of Wildlife and Fisheries personnel, such personnel shall place a state tagging device on the alligator or alligator hide.

iii. The state tagged alligator or alligator hide will remain in the possession of the buyer/dealer following the placement of the state tagging device until such time as the hide tag is located or until December 31 of that year, whichever comes first. Upon presentation of the missing hide tag and the corresponding buyer/dealer record which documents a match between the tag number and the alligator/hide being held, and if the Department of Wildlife and Fisheries then confirms that such tag number has not been previously shipped, the Department of Wildlife and Fisheries shall attach a replacement alligator hide tag.

iv. If the buyer/dealer does not locate the missing hide tag following the placement of the state tagging device by the end of the allotted time period but is able to identify the tag number on a Department of Wildlife and Fisheries issued or approved buyer/dealer record which documents a match between the tag number and the skin being held, and if the Department of Wildlife and Fisheries then confirms that subject tag number has not been previously shipped, the Department of Wildlife and Fisheries may, in its discretion, issue a replacement alligator hide tag.

v. The failure of the buyer/dealer to produce the correct hide tag and/or correct documentation by the end of the allotted time period shall constitute a violation of this Subparagraph.

vi. The previous or subsequent attachment to an alligator or alligator hide of the missing hide tag as described above shall constitute a violation of this Subparagraph.

vii. Violation of this Subparagraph is a Class Four violation as described in Title 56.

7. Open Season, Open Areas, and Quotas

a. Open seasons are as follows.

i. The state shall be divided into the East and West Alligator Hunting Zones by the following boundary: Beginning at the southwestern most part of Point Au Fer Island thence North along the western boundary of Terrebonne Parish to the Atchafalaya River, thence north along the Atchafalaya River to the East Atchafalaya Protection Levee, thence north along the East Atchafalaya Protection Levee, to Interstate 10, thence east along Interstate 10 to Interstate 12, thence east along Interstate 12 to Interstate 55, thence north along Interstate 55 to the Mississippi state line. The season for taking alligators in the wild shall open on the last Wednesday of August in the East Zone and the first Wednesday of September in the West Zone and will remain open for 30 days thereafter in each zone. The secretary shall be authorized to close, extend, delay, or reopen the season as biologically justifiable.

ii. Nuisance control hunters may take nuisance alligators at any time as prescribed by the department.

iii. Farm raised alligators may be taken at any time following the issuance of hide tags by the department.

iv. The open season for collection of alligator eggs from the wild shall be from May 15 through September 1 of each calendar year. Violation of this Clause is a Class Four violation as described in Title 56.

b. The open areas are as follows.

i. For the general open season, those areas designated by the biological staff of the department as alligator habitat and which can sustain an alligator harvest.

ii. The department may select public lakes and lands for an experimental alligator hunting program. The harvest will be controlled by a tag allotment for each lake as determined by department personnel. Applicants for public lake hunting must be 16 years of age or older. Applications must be received at least 10 days prior to the season opening date. A public drawing will be held to select hunters. An alligator hunter can receive tags for and hunt on only one public lake per season. The tag quota for each lake and hunter will be established by the biological staff of the department. Alligator tags issued on public lakes and lands are nontransferable.

iii. Wild alligators in the remainder of the state may be taken only under provisions as prescribed by the department.

iv. The open alligator egg collection season shall include those areas designated by the biological staff of the department as alligator habitat which can sustain an egg collection harvest and egg quotas will be determined by department biologists.

c. The daily and season quota is equal to the number of valid alligator hide tags that a licensed alligator hunter possesses. Violation of this Subparagraph is a Class Four violation as described in Title 56.

d. Non-resident alligator hunters may only take three alligators during the open season. Violation of this Subparagraph is a Class Three violation as described in Title 56.

e. Harvest rates will be calculated annually by department personnel based on biological data. Alligator hide tag allotments will be established prior to issuance of alligator hunting licenses.

8. Possession

a. No person shall possess alligators or alligator hides in Louisiana without valid official tags properly attached in the tail using the locking device as prescribed in Subsection A.6.e. Violation of this Subparagraph is a Class Four violation as described in Title 56.

b. Alligator farmers may request hide tags or shipping labels from the department to be used on farm-raised alligators that have died and may hold those alligators in freezers until receipt of the requested hide tags or shipping labels. These alligators may be held in freezers for a maximum of 60 days prior to disposal. All farm raised alligators 24 inches and greater in length that die may be skinned and tagged with an alligator hide tag within 48 hours of death during the open wild alligator harvest season, or within 7 days of death outside of the open wild alligator harvest season. Violation of this Subparagraph is a Class Three violation as described in Title 56.

c. No person other than a licensed alligator hunter, licensed alligator farmer, licensed fur buyer or licensed fur dealer may possess a tagged or labeled alligator, a tagged raw or salted hide of an alligator at any time, provided that legally documented tagged or labeled alligators or tagged hides may be possessed without license while in transit, or during processing for tanning or taxidermy. However, properly tagged and documented alligators or hides may be stored at any location at the owner's discretion. Violation of this Subparagraph is a Class Four violation as described in Title 56.

d. No person other than a licensed alligator farmer or licensed nongame quadruped exhibitor shall possess live alligators at any time other than by a permit issued by the department upon request for use in displays and educational purposes, and by holders of valid department issued permits for scientific purposes. Live, farm raised alligators and their accompanying alligator hide tags may be held for processing by a properly licensed alligator skinning facility without a license or permit. Violation of this Subparagraph is a Class Four violation as described in Title 56.

e. No person other than a licensed alligator farmer or licensed nongame quadruped exhibitor shall possess alligator eggs at any time other than department permitted

Designated Collection Agents assisting a licensed and permitted alligator farmer during wild egg collection, or a holder of a valid department issued permit for scientific purposes. Violation of this Subparagraph is a Class Four violation as described in Title 56.

f. Any alligators hatched from scientific permits issued by the department shall be returned to the wild under departmental supervision following completion of the research project. Violation of this Subparagraph is a Class Two violation as described in Title 56.

9. Importation, Exportation, Purchase, and Sale

a. Live alligators may be brought into the state only if the person, firm or corporation bringing the alligators into the state has obtained written permission from the department. Violation of this Subparagraph is a Class Four violation as described in Title 56.

b.i. All alligators, alligator hides (raw or salted), or parts of alligators possessed, sold, purchased, exported, imported, or brought into the state from another state shall be accompanied by documented evidence that they were lawfully taken. Documented evidence shall consist of, but not be limited to:

(a). a resource user license or permit number allowing the taking of alligators and tags or other identification required by the state or country of origin shall be firmly attached to the alligator, alligator hide, or parts of alligators; and

(b). a tag or label is affixed to the outside of any package or container of alligators, alligator hides, or alligator parts that specifies type of contents, indicates quantity contained, and lists applicable license or permit numbers.

ii. Violation of this Subparagraph is a Class Two violation as described in Title 56.

c. Purchases of alligators, alligator hides, alligator eggs, and alligator parts are restricted as follows.

i. A licensed alligator hunter may not purchase alligators or alligator hides from anyone.

ii. A licensed fur buyer may purchase whole alligators or alligator hides from a Louisiana licensed alligator hunter, licensed alligator farmer, licensed fur dealer, or another fur buyer.

iii. A licensed fur dealer may purchase whole alligators or alligator hides from a licensed alligator hunter, licensed alligator farmer, fur buyer or another fur dealer.

iv. A licensed alligator farmer may purchase live alligators only from another licensed alligator farmer (with a department approved alligator transfer authorization permit) or the department.

v. An alligator farmer may purchase alligator eggs only from another alligator farmer, a landowner/land manager (with an approved department alligator egg collection permit), or the department.

vi. A licensed alligator parts dealer may purchase alligator parts from a licensed alligator hunter, alligator farmer, another alligator parts dealer, or the department.

vii. A licensed alligator parts retailer may purchase finished alligator parts for retail sales.

d. Sales of alligators, alligator eggs, and alligator parts are restricted as follows.

i. A licensed alligator hunter may sell alligators, alligator hides, or alligator parts taken by the licensee during

the general open season to anyone who may legally purchase.

ii. A licensed alligator farmer may sell alligators, alligator eggs, alligator hides, or alligator parts to anyone who may legally purchase. The sale of alligator eggs or live alligators shall only occur following the issuance of a Transfer Authorization Permit. Application for the permit shall be made at least 2 weeks prior to the transfer.

iii. A licensed fur buyer may sell whole alligators or alligator hides to a fur dealer or another fur buyer within the confines of the state.

iv. A licensed fur dealer may sell whole alligators or alligator hides to anyone who may legally purchase.

v. A licensed alligator parts dealer may sell alligator parts, other than hides, to anyone.

vi. A licensed alligator parts retailer may sell finished alligator parts to anyone.

e. Legally tagged and documented alligators, alligator hides, and parts of alligators taken in Louisiana may be shipped out of state or exported by alligator hunters, alligator farmers, fur dealers and alligator parts dealers subject to Subsection A.11 of this Section (relating to Report Requirements) provided that no live alligators or eggs originating in Louisiana may be exported outside of their natural range without specific department authorization and the concurrence of the United States Fish and Wildlife Service, to be used only for scientific purposes. Violation of this Subparagraph is a Class Three violation as described in Title 56.

f. A special permit is required of anyone who sells alligator eggs, or live alligators. Violation of this Subparagraph is a Class Four violation as described in Title 56.

10. Nuisance Alligator Control

a. Nuisance alligator hunters will be selected by the department with proper screening by enforcement personnel in the region of appointment. Selection may be based upon recommendations received from the local governing body. Applicants with prior alligator hunting violations will be rejected.

b. Nuisance alligator hunters shall purchase a valid alligator hunter license and are bound by all laws, rules and regulations governing alligator hunting with the exception that nuisance alligators may be taken at anytime.

c. Nuisance alligator complaints will be verified by department personnel prior to being approved for removal.

d. Tags will be issued without charge to nuisance alligator hunters. Nuisance alligator hunters will attempt to catch nuisance alligators and relocate to natural habitat selected by the department. It is unlawful for any nuisance alligator captured alive to be sold or otherwise disposed of on an alligator farm. Alligators and alligator parts taken under these provisions may be retained and sold by the nuisance alligator hunter as any other legally taken wild alligator or alligator part. Violation of this Subparagraph is a Class Four violation as described in Title 56.

e. Nuisance alligator hunters may take alligators by any means prescribed by the department. Failure to comply with departmental instructions may result in immediate termination of the individual's participation in the nuisance alligator program. Violation of this Subparagraph is a Class Two violation as described in Title 56.

11. Report Requirements

a. Report forms provided by or approved by the department must be completed and filed with the department by all persons who have been issued an alligator hunter's license, fur buyer's license, fur dealer's license, nongame quadruped exhibitor's license, nongame quadruped breeder's license, alligator parts dealer's license, or alligator egg collection permit in accordance with this Paragraph. Reports shall include but not be limited to the information specified in this Paragraph.

b. Commercial alligator hunters receiving hide tags from the department are responsible for disposition of all issued tags and must:

i. complete an official alligator parts transaction form furnished by or approved by the department for each alligator part transaction. These forms shall be submitted to the department at the end of the calendar year;

ii. complete an official lost tag form, furnished by the department for any hide tags lost or stolen. These forms shall be submitted to the department within 15 days following the close of the season. Lost or stolen tags will not be replaced;

iii. all unused tags must be returned to the department within 15 days following the close of the season;

iv. the department must be notified of any trophy skins not sold to commercial buyers or dealers within 30 days following the close of the season, on official forms provided by or approved by the department;

v. each licensed alligator hunter selling alligator parts to a person or a restaurant shall provide that person with a bill of sale for each transaction;

vi. all records of commercial transactions involving alligator parts by alligator hunters shall be available for inspection by the department;

vii. the alligator hide tag fee and severance tax shall be collected by the department from the alligator hunter who is shipping his own alligators or raw alligator skins, or who intends to custom tan, or use for taxidermy, the alligators or raw skins;

viii. violation of this Subparagraph is a Class Two violation as described in Title 56.

c. A nuisance alligator hunter shall comply with the same report requirements as a commercial alligator hunter and complete any other reports required by the department. Violation of this requirement shall result in immediate termination of nuisance alligator hunter status. Violation of this Subparagraph is a Class Two violation as described in Title 56.

d. Alligator farmers receiving hide tags from the department are responsible for disposition of all issued tags and must:

i. complete an official alligator parts transaction form, furnished by or approved by the department for each alligator parts transaction. These forms shall be submitted to the department along with the annual report. Violation of this Clause is a Class Two violation as described in Title 56;

ii. complete an official lost tag form, furnished by the department, for any hide tags lost or stolen. These forms shall be submitted to the department within 15 days following the last day of the year that issued tags are valid. Lost or stolen tags will not be replaced. Violation of this Clause is a Class Two violation as described in Title 56;

iii. all unused hide tags must be returned to the department within 15 days following the last day of the year that issued tags are valid. Violation of this Clause is a Class Two violation as described in Title 56;

iv. each alligator farmer shall report annually, no later than December 1, on an official form provided by the department, all activities that have occurred on the farm for the past year including but not limited to the number of live alligators as of that date, separated by sizes, the number of eggs collected and hatched, the purchase and sale of alligators, hides, and parts for the past year and the numbers of alligators lost. Failure to complete this form properly and completely will result in nonrenewal of the nongame quadruped breeder's license. Violation of this Clause is a Class Three violation as described in Title 56;

v. each licensed alligator farmer selling alligator parts to a person or a restaurant shall furnish that person with a bill of sale for each transaction. Violation of this Clause is a Class Two violation as described in Title 56;

vi. each alligator farmer collecting alligator eggs, hatching alligator eggs, selling alligators for processing, or selling alligator skins shall submit completed forms as provided by the department within 10 days following completion of the activity. Violation of this Clause is a Class Three violation as described in Title 56;

vii. the alligator shipping label fee or the alligator hide tag fee and the severance tax shall be collected by the department from the alligator farmer who is shipping alligators or raw alligator skins, or who intends to custom tan, or use for taxidermy, the alligators or raw skins.

e.i. Fur buyers, fur dealers, alligator farmers and alligator hunters engaged in the business of buying and/or selling whole alligators or alligator hides must keep within the state a complete record on forms provided by or approved by the department, all purchases and sales of whole alligators or alligator hides as described in Title 56; and

ii. every fur buyer, fur dealer, alligator farmer or alligator hunter having undressed alligator hides in his possession shall file with the department within 60 days of purchase or within 60 days of tagging or prior to shipping out of state or prior to tanning skins in Louisiana, whichever occurs first, a complete report, on forms provided by or approved by the department, a detailed description of alligator hides to be shipped or tanned. At the time of shipment or prior to tanning, department personnel will inspect hides and replace any broken or reattached tags. department personnel will issue the appropriate number of yellow shipping tags, one for each shipment. At that time, department personnel will affix a seal or locking device to each container and if container is reopened by anyone other than department personnel or Federal personnel this action will be considered illegal. In conjunction with the inspection and prior to department issuance of shipping tag(s) and seal(s) or locking device(s), department personnel must collect:

(a). all completed buyer/dealer records for skins in each shipment;

(b). official shipping manifest including total length in inches (or feet and inches) referenced to CITES tag number of each wild skin in shipment and including total belly width in centimeters (measured at the fifth scute)

referenced to CITES tag number of each farm raised alligator skin in shipment. A fully executed (filled out) shipping manifest containing all information required in the buyer/dealer record may be substituted with department approval for the buyer/dealer record requirement on farm raised alligator skins;

(c). stub portion of yellow shipping tag completely filled-out;

(d). severance tax and alligator hide tag fees owed by alligator hunter, alligator farmer or fur dealer;

iii. if any of the above requirements are not satisfied, the shipment will not be authorized. Violation of this Subparagraph is a Class Three violation as described in Title 56.

f. Fur dealers engaged in the business of buying and selling alligator hides must maintain complete records of alligator hides purchased inside and outside the state as described in Title 56. Fur dealers in the business of tanning alligator hides must provide a monthly report, on forms provided by or approved by the department, of all alligator hides being held in inventory. Failure to maintain complete records and to pay the required severance tax and alligator hide tag fees subjects any dealer to the full penalties provided and the immediate revocation of his license by the department. No license shall be issued to a dealer who has not paid the tax and alligator hide tag fees for the preceding year. Violation of this Subparagraph is a Class Three violation as described in Title 56.

g. Alligator parts dealers acquiring alligator parts, shall complete an official alligator parts purchase form at the time of each purchase. Alligator parts dealers selling alligator parts, shall complete an official alligator parts sale form at the time of each sale. These forms shall be furnished by or approved by the department and shall be submitted to the department annually, no later than June 30, and:

i. alligator parts dealers shall furnish a bill of sale to anyone purchasing alligator parts;

ii. the records of transactions involving alligator parts shall be available for inspection by the department and shall be maintained complete for a period of one year following any transaction;

iii. violation of this Subparagraph is a Class Two violation as described in Title 56.

h. Any alligator parts retailer purchasing finished alligator parts shall maintain a bill of sale for each purchase for a period of six months after such purchase and these records shall be available for inspection by the department. Violation of this Subparagraph is a Class Two violation as described in Title 56.

12. Alligator Meat

a. Alligator meat from lawfully taken alligators can only be sold according to state and federal laws, Louisiana Department of Health and Hospitals regulations and Louisiana Wildlife and Fisheries Commission regulations. Violation of this Subparagraph is a Class Three violation as described in Title 56.

b. Alligator meat processed in the state of Louisiana and sold for human consumption must be processed in a licensed facility approved by the Louisiana Department of Health and Hospitals and the facility must display a valid permit issued by that agency. Violation of this Subparagraph is a Class Two violation as described in Title 56.

c. All processed alligator meat for sale must be packaged in suitable containers which identifies the contents as alligator meat, marked with a valid department license number and comply with all state and federal packaging and labeling requirements. Violation of this Subparagraph is a Class Two violation as described in Title 56.

d. All alligator meat shipped into the state and being offered for sale must meet all of Louisiana's health, processing, packaging and labeling requirements. Violation of this Subparagraph is a Class Two violation as described in Title 56.

13. Disposal of Alligators by the Department

a. The department may sell alligators, alligator eggs or parts of alligators taken for any purpose deemed necessary for proper management of the species pursuant to Title 56.

b. The department may dispose of alligators, alligator eggs, or parts of alligators by donation or lending to a scientific institution or other institutions that the department deems have need for such alligators, however these institutions cannot sell or barter these animals which must be returned to the department at the conclusion of the program or need.

c. Confiscated alligator hides and parts may be destroyed by the department pending the outcome of the criminal trial.

d. Confiscated alligator eggs or live alligators may be sold or may be cared for by the department and released in suitable alligator habitat when and where they can survive when appropriate. All costs incurred by the department in the maintenance of these eggs and animals in captivity shall be the responsibility of the offender and restitution shall be made to the department. The department may consign confiscated alligators to a licensed farm for raising purposes and may compensate the farmer for his expenses by transferring ownership to him of a percentage of the confiscated alligators; not to exceed 50 percent.

14. Alligator Egg Collection

a. Alligator egg collection permits are a three party permit between the department, the permittee and a landowner/ manager who owns or leases alligator nesting habitat determined by department biologists to be capable of producing alligator eggs. The numbers of eggs to be collected will be based upon biological management criteria and will be determined annually by technical staff of the department. The department only estimates the numbers of eggs available and assumes no responsibility or offers no guarantee that those numbers of eggs will be available. Alligator egg collection permits may be obtained upon application to the department on forms provided by the department. The annual deadline for submitting applications for alligator egg collection permits is June 1. This program is experimental and may be changed at any time based on biological data to insure for proper management of the wild alligator population.

b. Alligator egg collection permits may be issued by the department provided:

i. permittee is a properly licensed alligator farmer and meets all applicable requirements in Subsection A.15 of this Section (Alligator Farm Facility Requirements);

ii. all land documentation required on the alligator egg collection permit has been presented to the department;

iii. department biologists determine the properties described on the permit application are indeed alligator nesting habitat and can sustain alligator egg collections;

iv. applicant has obtained all legal and necessary signatures from landowners/land managers.

c. It is unlawful for an alligator farmer or a permitted designated collection agent to collect eggs from properties other than those described in the alligator egg collection permit. Violation of this Subparagraph is a Class Four violation as described in Title 56.

d. An alligator farmer or designated collection agent in the act of collecting or possessing alligator eggs must possess on his or her person a copy of the fully executed alligator egg collection permit. The designated collection agent must also possess a valid designated collection agent permit. Violation of this Subparagraph is a Class Three violation as described in Title 56.

e. Collection of wild alligator eggs can only be made after contacting the appropriate regional supervisor of the Enforcement Division no less than 24 hours prior to each collection trip. Violation of this Subparagraph is a Class Three violation as described in Title 56.

f. Alligator eggs can only be collected from the wild from official sunrise to official sunset and only during the established alligator egg collection season and shall not exceed the number on his Alligator Egg Collection Permit. Violation of this Subparagraph is a Class Four violation as described in Title 56.

g. Alligator eggs collected from the wild must be collected and transported in a manner which insures the greatest survival of viable eggs as determined by department biologists. Violation of this Subparagraph is a Class Three violation as described in Title 56.

h. Failure to hatch at least 70 percent of viable alligator eggs collected from the wild shall be considered a waste of Louisiana's natural resources. All alligator egg collection permits shall be revoked and no new permits issued should an alligator farmer be found to waste the resources of this state for two consecutive years.

i. Alligator egg collection permits shall be revoked and no new permits issued to alligator farmers who fail to average a minimum hatchling survival rate of 85 percent for two consecutive years.

j. The alligator egg collection permittee and the landowner are responsible for the return of the percentage of live alligators to the wild described on the alligator egg collection permit. This requirement is nontransferable. Minimum return rates will be based upon the state average hatching success which is 78 percent. In no case shall the return rate be less than 12 percent at 48 inches total length. Each alligator shall be returned to the original egg collection area within a maximum time of two years from date of hatching. Each alligator shall be a minimum of 36 inches and a maximum of 60 inches (no alligator over 60 inches total length will be accepted for release) in total length and the returned sex ratio should contain at least 50 percent females. The alligator egg collection permittee/landowner are responsible for and must compensate in kind for alligator mortality which occurs for department-authorized return to the wild alligators while being processed, stored, or transported. The department shall be responsible for supervising the required return of these alligators. A

department transfer authorization permit is not required for return to the wild alligators which are delivered to the farm of origin no more than 48 hours prior to being processed for wild release. Releases back to the wild will only occur between March 15 and August 25 of each calendar year provided that environmental conditions as determined by the department are favorable for survival of the released alligators. Any farmer who owes 1000 or more alligators at 48 inches must release at least 1/4 of the total owed for that year by April 30; at least another quarter by June 15, at least another quarter by July 31; and the remainder by August 25. A farmer may do more than the required one-fourth of his releases earlier if available unscheduled days allow. Should an alligator egg collection permittee be unable to release the required number of alligators to the wild from his own stock, he shall be required to purchase additional alligators from another farmer to meet compliance with the alligator egg collection permit and these regulations, as supervised by the department. Department-sanctioned participants in ongoing studies involving survivability and return rates are exempt from these requirements during the period of the study. Violation of this Subparagraph is a Class Four violation as described in Title 56.

k. The percentage of alligators to be returned to the wild shall be selected from the healthiest of all alligators of that year class. Abnormal or deformed alligators are not acceptable for release into the wild. It is unlawful for alligators that are to be returned to the wild to be transported out of state. Violation of this Subparagraph is a Class Four violation as described in Title 56.

15. Alligator Farm Facility Requirements

a. All first time applicants for a nongame quadruped breeder's or exhibitor's license who will house alligators on their premises shall show compliance of the following minimum facilities as applicable to their particular operation during a required facility examination by department personnel prior to license issuance:

i. secured premises with adequate barriers to prevent escape of enclosed alligators and entry by alligators from outside the farm and to deter theft of alligators;

ii. source of clean, fresh water which shall be adequate to ensure for proper care of all alligator stock and facilities. This requirement shall be determined by department personnel;

iii. provisions for both dry area and pooled water within the secured area adequate for the numbers of alligators to be housed on the premises. This requirement will be determined by department personnel;

iv. provision for winter protection, either through adequate denning space or an enclosed, controlled-temperature environment of a design acceptable to the department;

v. all controlled-temperature alligator sheds (environmental chambers) shall be of a design acceptable to the department. Each shed shall maintain a minimum water and air temperature of 80° Fahrenheit. Minimum space requirements for alligators housed in the shed shall be:

(a). one square foot of space shall be required for each alligator less than 24 inches in length;

(b). three square feet of space shall be required for each alligator measuring 25 inches to 48 inches in length;

(c). one additional square foot of space shall be required for each additional 6 inches of alligator length for alligators above 4 feet in length;

vi. all alligator egg incubators shall be of a design acceptable to the department. Each incubator shall maintain a water and air temperature of 85° to 91° Fahrenheit during the egg incubation;

vii. applicant must be in compliance with all laws and regulations pertaining to zoning, construction, health and environmental standards and must possess any and all applicable permits and licenses;

viii. all alligator facilities should be constructed in a suitable location so as to minimize contact with people.

b. Following initial issuance of applicable license, all applicable facility requirements shall be adhered to and department personnel have the authority to inspect any and all of the facilities at any time. Failure to adhere to the requirements shall be a violation of these rules and violators will be given 60 days to correct the problem. Failure to comply shall result in confiscation of all animals and/or closure of all facilities. Violation of this Subparagraph is a Class Three violation as described in Title 56.

c. All alligator farmers possessing alligator eggs outside an alligator nest should house these eggs in an incubator providing constant temperature and humidity conditions. All incubators used to incubate alligator eggs shall be of a design to allow for maximum temperature control and conform to department requirements to allow for the maximum hatching success. Violation of this Subparagraph is a Class Three violation as described in Title 56.

d. All alligator farmers possessing alligator hatchlings shall house hatchlings in controlled environmental chambers which maintain a minimum temperature of 80° Fahrenheit year-round and containing dry and wet areas of sufficient surface area to permit all alligators to partially submerge in water. All alligators 48" or less in length shall be housed in environmental chambers unless a special permit is issued by the department to move them to outside growth areas. Violation of this Subparagraph is a Class Three violation as described in Title 56.

e. Alligator farmers shall house alligators of different lengths into at least three groups, providing separation for all alligators less than 2 feet in length, 2 to 4 feet in length, and over 4 feet in length. Land and water areas sufficient for partial submersion or exit from water shall be provided for each group of alligators held. Violation of this Subparagraph is a Class Three violation as described in Title 56.

f. All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation. Violation of this Subparagraph is a Class Three violation as described in Title 56.

g. It shall be unlawful for alligator eggs or alligators to be moved from a licensed premises without permitting/approval of the department. Violation of this Subparagraph is a Class Three violation as described in Title 56.

h. Any alligator egg or alligator raised on an alligator farm shall be cared for under conditions that do not threaten the survival of such egg and alligator as determined by the biological staff of the Coastal and Nongame Resources Division. In making such determination, Coastal and Nongame Resources Division biologists shall take into consideration sanitary conditions, temperature control, feeding, overcrowding and other conditions which effect the survival of alligator eggs and alligators. If the biological staff of the Coastal and Nongame Resources Division determines that the survival of any alligator egg or alligator is threatened due to the conditions on an alligator farm, the department shall notify the alligator farmer and shall provide the farmer with 60 days to take corrective action. If the farmer fails to take corrective action within 60 days, the department shall have the authority to confiscate any alligator egg or alligator which remains under conditions that threaten the survival of such alligator egg or alligator and to dispose of such alligator egg or alligator as the department deems necessary. Violation of this Subparagraph is a Class Four violation as described in Title 56.

16. Exceptions

a. The department or an authorized representative of the department may take by any means and possess alligators, alligator eggs, or parts of alligators while in the performance of official duties.

b. These regulations shall not prohibit a person from killing an alligator in immediate defense of his or her life or the lives of others. Alligators killed under this provision must be reported to the department within 24 hours.

17. Penalty for Violation

a. In order to facilitate greater control over alligator trafficking, the Louisiana Department of Wildlife and Fisheries finds that public welfare imperatively requires emergency action when the provisions of these regulations are violated.

b. In addition to all penalties set forth herein, violators may be subject to criminal prosecution under provisions of the Louisiana Revised Statutes, particularly Titles 14 and 56 and under Federal law.

c. In addition to all other penalties provided by these rules and by statute, violation of any part of these regulations may result in the suspension and/or revocation of any or all alligator licenses/permits held by the violator and, as further penalty, for serious, repeat, or multiple violations, the department shall have the right to deny a violator any and all licenses/permits relating to alligators for a period not to exceed three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263 and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:1996 (September 2002), LR 30:2338 (October 2004), LR 30:2878 (December 2004), LR 31:2267 (September 2005), LR 33:677 (April 2007), LR 35:690 (April 2009).

Robert J. Barham
Secretary

0904#014

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Charter Landings Report
(LAC 76:I.319, 321 and VII.205)

The Wildlife and Fisheries Commission does hereby promulgate rules and regulations relative to the Charter Landings Report. Authority to establish such rules and regulations is vested in the Wildlife and Fisheries Commission by R.S. 56:301.4, R.S. 56:301.5, and R.S. 56:302.9.

Title 76

WILDLIFE AND FISHERIES

Part I. Wildlife and Fisheries Commission and Agencies Thereunder

Chapter 3. Special Powers and Duties

Subchapter F. Confidential Fishery Data

§319. Confidentiality of Commercial and For-Hire Industry Landing Data

A. Confidentiality. All data collected or otherwise obtained by personnel or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission in the course of their duties and other landings data collected by personnel or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission are confidential, and are not to be divulged, except in aggregate form, to any person except employees or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission or the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA/NMFS) whose duties require this information, except as permitted by law or court order. Aggregate form, with respect to data, shall mean data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person. Neither employees nor contractors of the Louisiana Department of Wildlife and Fisheries nor members of the Wildlife and Fisheries Commission will voluntarily release confidential information to another person, firm, or state or federal agencies, except NOAA/NMFS as stated above, and to the extent possible, will oppose other agency and congressional subpoenas to obtain confidential information.

B. Neither the Louisiana Department of Wildlife and Fisheries nor its contractors nor members of the Wildlife and Fisheries Commission will disclose confidential statistics under court order without specific approval by the State Attorney General's Office. Employees or contractors of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission who have access to confidential statistics shall be subject to the provisions and penalties for unauthorized disclosure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:301.4 and R.S. 56:306.6.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:38 (January 1990), amended LR 35:702 (April 2009).

§321. Records; Confidentiality

A. All fishery dependent data (that is, only data collected from individuals or firms) collected or otherwise obtained by personnel or instrumentalities of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission in the course of their duties are confidential and are not to be divulged, except in aggregate form, to any person except employees or instrumentalities of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission or the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA/NMFS), or Legislative Committees and their staffs, whose duties require this information, except as authorized by law or court order. For the purposes of this rule fishery dependent data shall be data collected under authority of Part VI of Title 56 of the Revised Statutes except the names, addresses, and license numbers of licensed fishermen. Aggregate form, with respect to data, shall mean data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person. Neither employees nor instrumentalities of the Louisiana Department of Wildlife and Fisheries nor members of the Wildlife and Fisheries Commission shall release confidential information to another person, firm, or state or federal agencies, except NOAA/NMFS as stated above or state agencies authorized through written agreements with the Department of Wildlife and Fisheries that have comparable confidentiality provisions, and to the extent possible, will oppose other agency and congressional subpoenas to obtain confidential information. Neither the Louisiana Department of Wildlife and Fisheries nor its instrumentalities nor members of the Wildlife and Fisheries Commission, nor Legislative Committees and their staffs, will disclose confidential statistics under court order without specific approval by the State Attorney General's Office. These rules and regulations provide for compliance with all procedures set forth by the United States Department of Commerce, or its agencies or instrumentalities, for the confidentiality of fishing statistics collected from individuals or firms by that department, its agencies or instrumentalities. Employees or instrumentalities of the Louisiana Department of Wildlife and Fisheries or members of the Wildlife and Fisheries Commission who have access to confidential statistics shall be subject to the provisions and penalties for unauthorized disclosure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:301.4 and R.S. 56:302.9.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:82 (January 1992), amended LR 35:702 (April 2009).

Part VII. Fish and Other Aquatic Life

Chapter 2. General Provisions

§205. Charter Boat Fishing Guide License Landings Report

A. Participation in the Charter Boat Fishing Guide License landings report is voluntary. Those persons who hold a charter fishing guide license may choose to participate and all information collected shall be held confidential under R.S. 56:301.4 and LAC 76:I.319 and 321.

B. The charter boat fishing guide license report form shall be a two-part numbered form or electronic reporting

system provided by the department at the request of the license holder. The charter boat fishing guide license report form may be completed at the end of each "charter boat fishing trip". For the purpose of this rule a "charter boat fishing trip" is defined as the time when a vessel leaves a Louisiana based access site to the time the vessel returns to the Louisiana based access site, captained by a Louisiana licensed resident or non-resident charter boat license holder, carrying passengers for a fee, for the express purpose of capture, release or harvest of finfish in Louisiana state waters or adjacent federal waters. The charter boat license holder may fill out the report form in its entirety containing all of the information requested in Subsection C of this Section. In addition, those vessels operating under a charter boat mothership license should complete the charter boat landings report for each charter boat fishing trip a licensed charter boat skiff tied to that mothership makes. The "charter guide license copy" of the report should be maintained on file at the charter guide license holder place of business. The "department copy" portion of the charter guide license report form should be returned to the department by the charter guide license holder by the tenth of each month to include all charter boat fishing trips during the previous month. Along with the reports for each month, the charter guide license holder should submit a "monthly submission sheet" provided by the department that confirms that the charter boat fishing trips submitted represent all or a portion of the charter boat fishing trips by that charter guide license holder for that particular month. The charter guide license holder should mail completed receipt forms to a pre-determined address designated by the department. Charter guide license holders may request charter boat fishing guide license report forms or the electronic reporting system from the department by calling a phone number to be publicized by the department.

C. The charter guide license holder may record the following information on the charter boat fishing guide license report form at the time of the completion of a charter boat fishing trip:

1. charter guide name;
2. charter guide license number;
3. vessel name and Louisiana or Coast Guard documentation number;
4. charter boat fishing trip start and end time and start and end year, month and day;
5. public or private access type;
6. primary area fished and depth fished;
7. Louisiana artificial reef fished;
8. total number of hours fished;
9. all fishing methods utilized;
10. hours actively fishing per fishing method;
11. total number of paying passengers who fished by resident and non-resident categories;
12. permit type and permit issuer for those species requiring a state or federal permit to harvest;
13. licensed charter guide captain signature certifying the information is true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:302.9(H), R.S. 56:302.9(I).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 35:702 (April 2009).

Robert J. Barham
Secretary

0904#013

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Control of Nuisance Wild Quadrupeds (LAC 76:V.125)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby amend the rules for control of nuisance wild quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§125. Control of Nuisance Wild Quadrupeds

A. This rule applies only to the control of the wild quadrupeds listed below and only when they are conclusively proven to be creating a nuisance or causing damage to property. The burden of establishing that the animal in question is causing the property damage shall rest with the property owner.

B. The following wild quadrupeds may be taken year-round without permit by the property owner or his designee, with written landowner permission, but only by trapping or shooting during legal daylight hours:

1. coyote;
2. armadillo;
3. nutria;
4. beaver;
5. skunks; and
6. opossums.

C. Squirrels, rabbits, foxes, bobcats, mink, otter, muskrat, raccoons and any of the other species listed above may be trapped alive and relocated to suitable habitat without permit provided the following conditions are met.

1. Written permission is obtained from the property owner where the animals are to be released and such written permission is carried in possession while transport and release activities are taking place.

2. Animals are treated in a responsible and humane manner and released within 12 hours of capture.

D. Traps shall be set in such a manner that provides the trapped animal protection from harassment from dogs and other animals and direct sun exposure.

E. Nuisance animals listed above may be so controlled by the property owner or his designee with written landowner permission, to prevent further damage.

F. Property owners must comply with all additional local laws and/or municipal ordinances governing the shooting or trapping of wildlife or discharge of firearms.

G. No animal taken under this provision or parts thereof shall be sold. A valid trapping license is required to sell or pelt nuisance furbearers during the open trapping season.

H. No species taken under the provisions of this rule shall be kept in possession for a period of time exceeding 12 hours.

I. This Rule has no application to any species of bird as birds are the subject of other state and federal laws, rules and regulations.

J. Game animals, other than squirrels and rabbits, may only be taken by hunting during the open season under the conditions set forth under Title 56 of the Louisiana Revised Statutes and the rules and regulations of the Department of Wildlife and Fisheries.

K. A permit may be issued to landowners or their designees to take white-tailed deer during the closed season when deer are causing substantial damage to commercial agricultural crops or orchards. Crops or orchards of less than 5 acres will not be considered for permits unless alternative exclusionary methods, including electric fencing, have been attempted and proven unsuccessful. Loss of 25 percent or more of the expected production or value of a crop must be documented by a Louisiana Department of Agriculture and Forestry crop specialist or Louisiana State University Cooperative Extension Service agent. Emergency deer removal permits may be issued by Department of Wildlife and Fisheries Wildlife Division with approval by the Deer Program Manager and Enforcement Division. Landowners or their designees may take only the number of deer recommended by a Department of Wildlife and Fisheries biologist and specified on the permit. Only antlerless or unbranched antlered deer are legal for removal. All deer taken under this permit must be tagged in a manner specified on the permit before being moved from the site of the kill. Deer may only be taken during daylight hours and all deer meat will be salvaged and donated to a recipient or charitable organization approved by the Department of Wildlife and Fisheries. Biological samples may be requested by Department of Wildlife and Fisheries biologists for research and health monitoring purposes.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, 56:6(10), and (15), R.S. 56:112, et seq.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:2570 (December 2002), repromulgated LR 29:51 (January 2003), amended LR 35:703 (April 2009).

Robert J. Barham
Secretary

0904#012

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Numbering of United States Coast Guard Documented Motorboats (LAC 76:XI.307)

The Wildlife and Fisheries Commission does hereby enact rules governing the physical placement of numbers and

decals on United States Coast Guard documented vessels registered with the Department of Wildlife and Fisheries.

Title 76

WILDLIFE AND FISHERIES

Part XI. Boating

Chapter 3. Boating Safety

§307. Numbering of United States Coast Guard Documented Motorboats

A. The following regulations shall dictate the location, placement and special requirements for certificate of numbers and decals issued to United States Coast Guard documented motorboats that are registered with the Department of Wildlife and Fisheries as required by R.S. 34:851.19.

B. United States Coast Guard documented motorboats that are registered with the Department of Wildlife and Fisheries shall not be required to paint or attach the certificate of number to each side of the bow of the motorboat, but shall maintain proper marking of the motorboat as required by United States Coast Guard regulations for such motorboats. Persons operating such motorboats shall be required to have the actual certificate of numbers issued by the department immediately available for inspection at all times when such motorboat is in operation.

C. Operators of United States Coast Guard documented motorboats required to be registered with the Department of Wildlife and Fisheries shall display valid decals which are issued along with the certificate of number to the motorboat, and have such decals permanently attached to the motorboat. Decals shall be placed in a location clearly visible on each side of the motorboat so as to be easily accessible and available for inspection.

D. Violation of this Section is a class one violation as provided in R.S. 56:31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:851.20 and R.S. 34:851.27

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 35:704 (April 2009).

Robert J. Barham
Secretary

0904#011

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Sharks and Sawfishes—Harvest Regulations (LAC 76:VII.357)

The Wildlife and Fisheries Commission does hereby amend a Rule (LAC 76:VII.357) modifying rules for the commercial harvest of shark, which are part of the existing Rule for daily take, possession, and size limits for shark set by the Commission. Authority of adoption of this Rule is included in R.S. 56:6(10), R.S. 56:6(25)(a), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 56:325.2(A).

Title 76
WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§357. Sharks and Sawfishes—Harvest Regulations

A. The following rules and regulations are established for the taking and possession of sharks (including sawfishes) (Class Elasmobranchiomorpha: Orders Hexanchiformes, Lamniformes, Squaliformes, and Rajiformes) from within or without Louisiana waters. The provisions of this Section shall not apply to shrimp or menhaden harvest, and nothing contained herein is intended or shall be construed to repeal, amend, or otherwise modify the provisions of law applicable to shrimp or menhaden fishing, except for provisions:

1. outlawing finning of shark;
2. requiring a commercial state shark permit for sale, barter, trade, or exchange;
3. limiting sale, barter, trade, or exchange of sharks during closed seasons;
4. limiting shark retained by non-permit holders to be only as a mixed part of the total harvest, and only retained, held, or sold, purchased, bartered, traded, or exchanged as such; and
5. outlawing transfer of sharks between vessels at sea.

B. For management purposes, sharks are divided into the following categories:

1. small coastal sharks—bonnethead shark, Atlantic sharpnose shark, blacknose shark, finetooth shark;
2. large coastal sharks—great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, tiger shark;
3. pelagic sharks—porbeagle shark, shortfin mako, blue shark, oceanic whitetip shark, thresher shark;
4. prohibited species—basking shark, white shark, bigeye sand tiger, sand tiger, whale shark, smalltooth sawfish, largetooth sawfish, Atlantic angel shark, Caribbean sharpnose shark, smalltail shark, bignose shark, Caribbean reef shark, dusky shark, Galapagos shark, narrowtooth shark, night shark, bigeye sixgill shark, bigeye thresher shark, longfin mako, sevengill shark, sixgill shark.

C. In addition to all other licenses and permits required by law, a valid original commercial state shark permit shall be annually required for persons commercially taking shark from Louisiana waters and for persons selling, exchanging, or bartering sharks as required by law; the valid original permit shall be in immediate possession of the permittee while engaged in fishing for, possessing, selling, bartering, trading, or exchanging shark.

D. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any sharks in excess of any possession limit for which a state or federal commercial permit was issued.

E.1. All persons who do not possess a commercial state shark permit issued by the Department of Wildlife and Fisheries, and, if applicable, a federal commercial directed or incidental limited shark permit or federal shark research permit issued by the National Marine Fisheries Service, are limited to a recreational possession limit. All persons who do not possess a Louisiana commercial state shark permit and, if applicable, a federal commercial directed or incidental limited shark permit or federal shark research permit issued

by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic sharks, shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any sharks, or possess any sharks in excess of a recreational possession limit. Sharks taken incidental to menhaden fishing, that are retained on the vessel as part of the harvest, may be retained and sold only as a mixed part of the total harvest, and shall not be retained, held, or sold, purchased, bartered, traded, or exchanged separately. Sharks retained as a result of menhaden fishing shall not exceed legal bycatch allowances for menhaden fishing as provided for in R.S. 56:324.

2. Legally licensed Louisiana wholesale/retail seafood dealers, retail seafood dealers, restaurants, and retail grocers are not required to hold a commercial state shark permit in order to purchase, possess, exchange, barter and sell any quantities of sharks, so long as they maintain records as required by R.S. 56:306.5 and R.S. 56:306.6.

F. Sharks taken under a recreational bag limit shall not be sold, purchased, exchanged, traded, bartered, or attempted to be sold, purchased, exchanged, traded, or bartered. A person subject to a bag limit shall not possess at any time, regardless of the number of trips or the duration of a trip, any shark in excess of the recreational bag limits or less than minimum size limits as follows.

1. All sharks taken under a recreational bag limit within or without Louisiana waters must be at least 54 inches fork length, except that the minimum size limit does not apply for Atlantic sharpnose or bonnethead sharks. No sandbar or silky shark may be retained under a recreational bag limit.

2. Owners/operators of vessels other than those taking sharks in compliance with a state or federal commercial permit are restricted to no more than one shark from either the large coastal, small coastal or pelagic group per vessel per trip within or without Louisiana waters, subject to the size limits described in LAC 76:VII.357.F.1, and, in addition, no person shall possess more than one Atlantic sharpnose shark and one bonnethead shark per person per trip within or without Louisiana waters, regardless of the length of a trip. No sandbar or silky shark may be retained by persons fishing under these limits.

3. All owners/operators of vessels recreationally fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) in or from the EEZ must obtain and possess a Federal Atlantic Highly Migratory Species Angling permit.

G. Those persons possessing a federal commercial directed or incidental limited access shark permit or federal shark research permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks are limited to daily take, trip and possession limits as specified in that federal permit. Regardless of where fishing, a person aboard a vessel for which a federal shark permit has been issued shall not retain, possess, barter, trade, or exchange shark of any species group for which the commercial quota has been reached and the season closed in federal waters.

H.1. A vessel that has been issued or possesses a federal commercial directed or incidental limited access shark permit or federal shark research permit issued by the National Marine Fisheries Service under the Federal Fishery

Management Plan for Atlantic Sharks shall not possess on any trip, or land from any trip, or sell, barter, trade, or exchange large coastal species in excess of the designated trip limits, as established under the Atlantic Highly Migratory Species Plan and published in the *Federal Register*, regardless of where taken. Vessels that have been issued or that possess a federal commercial directed or incidental limited access shark permit or federal shark research permit may only possess, sell, barter, trade, or exchange one limit per vessel per day, where that limit is identified for that permit by NMFS. No person shall purchase, barter, trade, or exchange shark in excess of the designated trip limits or from any person who does not possess a commercial state shark permit or federal commercial directed or incidental limited access permit or federal shark research permit, if applicable.

2. Persons possessing a commercial state shark permit but no federal shark permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess of 33 sharks per vessel from the large coastal species group, taken from Louisiana state waters. Persons possessing a commercial state shark permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid federal shark research permit under 50CFR635.32(1).

3. Wholesale/retail seafood dealers who receive, purchase, trade for, or barter for Atlantic sharks, taken from the EEZ, from a fishing vessel must possess a valid federal dealer permit.

I. A person aboard a vessel for which a federal commercial directed or incidental limited access shark permit or federal shark research permit has been issued, or persons aboard a vessel fishing for or possessing shark in the EEZ shall comply with all applicable federal regulations.

J. Fins

1. The practice of "finning," that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited within and without Louisiana waters.

2. All sharks possessed by a recreational fisherman shall be maintained with head and fins intact and shall not be skinned until set or put on shore.

3. Dealers purchasing sharks from state or federal waters must report the landings by species, and must specify the total shark fin numbers, values and weights separately from the weights, values and numbers of the shark carcasses. If a harvester retains the fins after offloading from the fishing vessel, the harvester must also be licensed as a wholesale/retail dealer, and must complete and file a trip ticket that includes the numbers and weights of fins retained immediately after being offloaded from the fishing vessel. Later transactions of fins must have documentation referring to the original trip ticket number for those fins. Such numbers and weights must be recorded on dealer records in compliance with R.S. 56:306.5 and R.S. 56:306.6.

4. Shark fins shall not be possessed aboard a fishing vessel unless naturally attached to the original shark carcass by at least some portion of uncut skin.

5. All sharks possessed aboard a commercial fishing vessel shall have fins including the tail intact and naturally attached to the shark carcass by at least some portion of uncut skin.

6. It is illegal to replace sharks that are onboard a fishing vessel for retention with sharks of higher quality or size that are caught later in a particular trip.

K. Prohibited Species

1. No person shall take, possess, purchase, sell, barter, exchange or attempt to possess, purchase, sell, barter, or exchange any of the following species or parts thereof:

- a. basking shark—*Cetorhinus maximus*;
- b. white shark—*Carcharodon carcharias*;
- c. bigeye sand tiger—*Odontaspis noronhai*;
- d. sand tiger—*Odontaspis taurus*;
- e. whale shark—*Rhincodon typus*;
- f. smalltooth sawfish—*Pristis pectinata*;
- g. largetooth sawfish—*Pristis pristis*;
- h. Atlantic angel shark—*Squatina dumerili*;
- i. Caribbean sharpnose shark—*Rhizoprionodon porosus*;
- j. smalltail shark—*Carcharhinus porosus*;
- k. bignose shark—*Carcharhinus altimus*;
- l. Caribbean reef shark—*Carcharhinus perezii*;
- m. dusky shark—*Carcharhinus obscurus*;
- n. Galapagos shark—*Carcharhinus galapagensis*;
- o. narrowtooth shark—*Carcharhinus brachyurus*;
- p. night shark—*Carcharhinus signatus*;
- q. bigeye sixgill shark—*Hexanchus vitulus*;
- r. bigeye thresher shark—*Alopias superciliosus*;
- s. longfin mako shark—*Isurus paucus*;
- t. sevengill shark—*Heptranchias perlo*;
- u. sixgill shark—*Hexanchus griseus*.

2. Notwithstanding other provisions of this Part, a person may fish for, but not retain, white sharks (*Carcharodon carcharias*) with rod and reel only under a catch and release program, provided the person releases and returns such fish to the sea immediately with a minimum of injury.

3. Notwithstanding other provisions of this Part, smalltooth sawfish or largetooth sawfish may be possessed as authorized by a special scientific and educational collecting permit issued by the department under R.S. 56:318, including whatever conditions that the department may deem necessary to ensure the maintenance and protection of the species. Nothing herein shall prohibit the possession of smalltooth sawfish or largetooth sawfish, or parts thereof, that were possessed prior to the effective date of this rule.

L. No person aboard any vessel shall transfer or cause the transfer of sharks between vessels on state or federal waters. Standard menhaden harvesting activities do not constitute transfer of sharks between vessels at sea.

M. Seasonal Closures

1. All Louisiana state waters out to the seaward boundary of the Louisiana territorial sea shall be closed to the recreational and commercial harvest of all sharks between April 1 and June 30 of each year. A holder of a

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

White Lake Wetlands Conservation Area Conservation
Management Plan (LAC 76:III.335)

The Wildlife and Fisheries Commission does hereby amend the rules and regulations for the White Lake Wetlands Conservation Area.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

**Chapter 3. Particular Game and Fish Preserves,
Wildlife Management Areas, Refuges and
Conservation Areas**

**§335. White Lake Wetlands Conservation Area
Conservation Management Plan**

A. The following rules and regulations concerning the management, protection and harvest of wildlife have been officially approved and adopted by the Louisiana Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Sections 109 and 799.5 of Title 56. Failure to comply with these regulations will subject the individual to citation and/or expulsion from the conservation area.

B. Citizens are cautioned that by entering the White Lake Wetlands Conservation Area (WCA) managed by LDWF, they are subject to inspections of themselves and/or their vehicles for game, fish and/or license checks, inspections, and searches.

C. The White Lake WCA seasons may be altered or closed anytime by the department secretary in emergency situations (flood, fire, or other critical circumstances).

D. Portions of the White Lake WCA are leased for various purposes, including, but not limited to, hunting, agriculture, grazing, trapping, and other surface activities and subsurface activities, including oil and gas operations. Lessees, oil and gas operator's, and their employees, agents, invitees, licensees, will adhere to the terms and conditions outlined in their prospective leases and agreements. In addition lessees and all others entering onto the White Lake WCA will adhere to the following rules and regulations.

1. White Lake WCA is a Restricted Use Area meaning that all persons other than employees of the Department or Lessee's, oil and gas operators, their employees, agents, invitees, licensees, will not be allowed to access the White Lake WCA unless they are participating in a lottery activity, a non-consumptive activity, or some other Wildlife and Fisheries sponsored or coordinated event. To participate in lottery or non-consumptive activities, please review the information provided below for each activity.

E. Dumping garbage or trash on White Lake WCA is prohibited. Garbage and trash shall be properly disposed of in designated locations if provided.

federal commercial directed or incidental limited access shark permit or federal shark research permit may legally harvest sharks from federal waters beyond the Louisiana territorial sea and bring those sharks into Louisiana waters for sale within the provisions of that federal shark permit. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell sharks from the closed area. Effective with the closure, no person shall retain or possess any sharks in the closed area. Sharks taken incidental to shrimp or menhaden fishing in the closed area, that are retained on the vessel as part of the harvest, may be retained only as a mixed part of the total harvest, and shall not be retained, held, purchased, bartered, traded, exchanged, sold or attempted to be purchased, bartered, traded, exchanged or sold.

2. The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close any recreational or commercial fishery for sharks, within and without Louisiana's territorial waters, when the secretary is notified by the National Marine Fisheries Service that the seasonal quota for that species group and fishery has been met. The closure order shall close the fishery until the date projected for the reopening of that fishery in the adjacent federal waters. The secretary is also hereby authorized to modify any such closure order to maintain consistency with reopening dates in the adjacent federal waters, should the federal closure dates be modified.

N. The fishing year for shark shall begin on January 1, 1998 and every January 1 thereafter.

O. No person who, pursuant to state or federal law, is subject to the jurisdiction of this state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the *Code of Federal Regulations* as amended Title 50 and 15, for sharks and sawfishes while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange sharks and sawfishes within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the *Code of Federal Regulations* as amended Title 50 and 15 law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 56:325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004), LR 34:705 (April 2009).

Robert J. Barham
Secretary

0904#010

F. Disorderly conduct or hunting under the influence of alcoholic beverages, chemicals and other similar substances is prohibited.

G. Except for those rights granted under existing leases, damage to or removal of trees, shrubs, hard mast (acorn, pecans, etc.), wild plants, and non-game wildlife (including reptiles and amphibians) is prohibited without the prior approval from the White Lake WCA Manager or from the secretary.

H. Burning of the marsh is prohibited. Lessee may request special permission to do control burning, which must be approved by the White Lake WCA Manager or the Secretary.

I. Free ranging livestock prohibited.

J. Nature Trails. Trails shall be limited to pedestrians only. No vehicles, ATV's, horses, mules, bicycles, etc. allowed unless approved by the White Lake WCA Manager. Removal of vegetation (standing or down) or other natural material is prohibited.

K. Permits and Licenses

1. All persons shall be responsible for obtaining and possessing the proper license or licenses for the activities they will be engaged in when on the White Lake WCA. Proper identification and licenses must be readily available and presented to Wildlife and Fisheries personnel upon request. Licenses will not be available for purchase on site.

2. Special Note: A WMA permit will not be required to hunt on the White Lake WCA. In addition, persons using the WCA for any purpose other than hunting will not be required to possess a wild Louisiana stamp.

3. Permits will be issued to lottery fishermen and those individuals must carry their permit on their person while on the White Lake WCA. No permits will be issued to lottery hunters since those hunts are daily hunts and are coordinated and accompanied by Wildlife and Fisheries personnel. Self Clearing Permits are not necessary for any activities.

L. Firearms

1. Firearms having live ammunition in the chamber, magazine, cylinder or clip when attached to firearms are not allowed in or on vehicles, boats under power, motorcycles, ATVs, ATCs while on the WCA except by wildlife enforcement agents and employees or contract guides working for the department at White Lake.

2. Firearms may not be carried on any area before or after permitted hours except by authorized trappers, lessees, wildlife enforcement agents and employees or contract guides working for the department at White Lake.

3. Firearms and bows and arrows are not allowed on the WCA during closed seasons. Exceptions are made for authorized lessees and individuals participating in coordinated shooting activities on the White Lake Skeet Range and Sporting Clay Course, wildlife enforcement agents and employees or contract guides working for the department at White Lake.

4. Center-fire rifles and handguns larger than .22 caliber rim fire, shotgun slugs or shot larger than BB lead or F steel shot cannot be carried onto the WCA except by authorized trappers, lessees, wildlife enforcement agents and employees or contract guides working for the department at White Lake.

5. Target shooting and other forms of practice shooting are prohibited. Exceptions are made for authorized lessees and individuals participating in coordinated shooting activities on the White Lake Skeet Range and Sporting Clay Course.

M. Waterfowl hunting is prohibited after noon on all portions of the White Lake WCA, including those areas which are leased for hunting purposes.

N. Commercial Activities. Commercial activities are prohibited without prior approval from White Lake WCA Manager and the secretary or unless otherwise specified.

O. Camping. Camping on the White Lake WCA, including trailers, houseboats, recreational vehicles and tents, is prohibited unless otherwise approved by the White Lake WCA Manager and the secretary or unless otherwise specified.

P. Consumptive Activities. The general framework for public use of consumptive resources of the White Lake Wetlands Conservation Area Management Plan is as follows:

Activities	Season	Cost
Alligators		
Wild Alligator Harvest	LDWF Season	40% of public bid
Alligator Egg Collection	June & July	Public bid
Waterfowl		
Teal Lottery Hunts	LDWF Season	\$250 per hunt with a maximum of 2 persons per blind
Youth/Physically Challenged	First Weekend	No cost
Hunts		
Marsh Lottery Hunts	LDWF Season	\$350 per hunt with a maximum of 2 persons per blind
Rice Lottery Hunts	LDWF Season	\$225 per hunt with a maximum of 3 persons per blind
Group Hunts	LDWF Season	\$30,000 per group
Fishing	March 15- August 15	\$40 per permit

1. The number/quantity of alligators, eggs, hunters, groups and permits for the above activities shall be established annually based upon biological and technical data presented by the department to the board.

2. Commission members, and their immediate families, are prohibited from participating in any consumptive activities on the White Lake Wetlands Conservation Area, including lottery and group hunts and lottery fishing.

3. Currently all public hunting and fishing activities are done through a lottery system. Except for lessee's and their invited guest, no person may enter onto the White Lake WCA for the purpose of hunting or fishing unless they have applied and been selected for one of the lotteries offered. Lottery activities include, but may not be limited to, the following: Fishing Lottery, Teal Hunting Lottery, Waterfowl Marsh Hunting Lottery, Waterfowl Rice Field Hunting Lottery, Waterfowl Youth Hunting Lottery, Waterfowl Group Hunting Lottery. Details on these Lottery activities can be found seasonally, on the LDWF website www.wlf.louisiana.gov. For more information contact the White Lake WCA Manager at 337-479-1894.

4. In addition to the Rules already mentioned, the following special Rules apply for the below lottery activities. These special Rules are subject to change each year and will be attached to the lottery applications when advertised on the LDWF website.

a. Fishing Lottery

i. Fishing will be allowed in the Florence Canal and Oil Field Location Canals off of the Florence Canal only.

ii. There will be no fishing in any of the marsh areas or in the main Camp Canal or other areas that are marked "NO FISHING".

iii. All boats will be limited to a maximum of 40 horsepower motor.

iv. All "No Wake" signs must be obeyed.

v. Fishing must be done from boat only.

vi. Rod and reel sport fishing only (no archery fishing, trot lines, jug lines etc.).

vii. Holder of the permit must be present (permit not transferable).

viii. There will be no boat launching from the White Lake properties. (Permittee must utilize public boat launch.)

ix. Permit holder must have permit and boat decal.

x. Any violations of Louisiana boating or fishing regulations or any rule violations will result in immediate termination of permit.

xi. Permittee will not be allowed to enter onto the White Lake WCA until sunrise and must exit the property by sunset.

xii. No firearms allowed on premises.

b. Teal Lottery Hunts

i. The Louisiana Department of Wildlife and Fisheries has established a lottery waterfowl (teal) hunt on White Lake property that has the potential to provide excellent waterfowl hunting. Hunts will be restricted to persons selected by lottery and will be limited to 2 persons/unit. All hunters will hunt as a group with a guide. No splitting up will be allowed. The primary purpose of these hunts is to provide a quality experience. Strict adherence to the following rules and regulations will be required to ensure a safe and enjoyable hunt.

(a). Safety is first and foremost in everyone's mind. No loaded firearms except while hunting in the blind. However, a hunter shall be allowed to carry a loaded firearm outside the blind to dispatch and retrieve wounded waterfowl. Take every precaution to have a safe and enjoyable hunt.

(b). Selected participants must arrive at the designated site by 5 a.m. Anyone arriving after 5 a.m. will not be allowed to enter the area. Hunting will end no later than 9 a.m.

(c). Guides and hunt area (blind) will be assigned the morning of the hunt.

(d). Access will be provided to a designated parking area. Transportation from the parking area to the site will be provided.

(e). Each hunter shall have appropriate licenses (basic license, state duck stamp, federal duck stamp, and HIP certification) prior to arrival. No licenses will be available at the hunting site. Licenses will be checked at the same time

permits are reviewed. No one will be allowed in a hunting area without the proper lottery permit.

(f). Legal firearms, as specified in the hunting regulations pamphlet, except no 10 gauge shotguns will be allowed.

(g). Persons engaging in "sky busting" will be asked to leave.

(h). No dogs will be allowed.

(i). Hunters will be responsible for removing all litter from the area and surrounding areas.

(j). No alcoholic beverages will be permitted on the premises.

c. Marsh Waterfowl Lottery Hunt

i. The Louisiana Department of Wildlife and Fisheries has established a lottery waterfowl marsh hunt on White Lake property that has the potential to provide excellent waterfowl hunting. Hunts will be restricted to persons selected by lottery and will be limited to 2 persons/unit. All hunters will hunt as a group with a guide. No splitting up will be allowed. The primary purpose of these hunts is to provide a quality experience. Strict adherence to the following rules and regulations will be required to ensure a safe and enjoyable hunt.

(a). Safety is first and foremost in everyone's mind. No loaded firearms except while hunting in the blind. However, a hunter shall be allowed to carry a loaded firearm outside the blind to dispatch and retrieve wounded waterfowl. Take every precaution to have a safe and enjoyable hunt.

(b). Selected participants must arrive at the designated site by the time specified in your notification letter. Anyone arriving after that time will not be allowed to enter the area. Hunting will begin in the morning at legal shooting time and will end no later than 9 a.m.

(c). Guides and hunt area (blind) will be assigned the morning of the hunt.

(d). Access will be provided to a designated parking area. Access from the parking area to the site will be provided.

(e). Each hunter shall have appropriate licenses (basic license, state duck stamp, federal duck stamp, and HIP certification) prior to arrival. No licenses will be available at the hunting site. Licenses will be checked at the same time permits are reviewed. No one will be allowed in a hunting area without the proper lottery permit.

(f). Legal firearms, as specified in the hunting regulations pamphlet, except no 10 gauge shotguns will be allowed.

(g). Persons engaging in "sky busting" will be asked to leave.

(h). No dogs will be allowed.

(i). Hunters will be required to report their total kill in writing at the end of the hunt.

(j). Hunters will also be responsible for removing all litter from the area and surrounding areas.

(k). No alcoholic beverages will be permitted on the premises.

d. Rice Field Waterfowl Lottery Hunt

i. The Louisiana Department of Wildlife and Fisheries has established a lottery waterfowl (rice field) hunt on White Lake property that has the potential to provide

excellent waterfowl hunting. Hunts will be restricted to persons selected by a lottery and will be limited to 3 persons/unit. Blinds and decoys are provided; however, no guides will be provided for the rice field hunts. No splitting up will be allowed. The primary purpose of these hunts is to provide a quality experience. Strict adherence to the following rules and regulations will be required to ensure a safe and enjoyable hunt.

(a). Safety is first and foremost in everyone's mind. No loaded firearms except while hunting in the blind. However, a hunter shall be allowed to carry a loaded firearm outside the blind to dispatch and retrieve wounded waterfowl. Take every precaution to have a safe and enjoyable hunt.

(b). Selected participants must arrive at the designated site by the time specified in the notification letter. Anyone arriving after that time will not be allowed to enter the area. Hunting will begin in the morning at legal shooting time and will end no later than 9:30 a.m.

(c). Hunters will be required to stay in blind during hunt except to retrieve birds.

(d). Access will be provided to a designated parking area. Transportation to and from the parking area to the blinds will be provided. Selected participants may be required to walk a minimum of 200 yards across a flooded rice field carrying their gear.

(e). Each hunter shall have appropriate licenses (basic license, state duck stamp, federal duck stamp, and HIP certification) prior to arrival. No licenses will be available at the hunting site. Licenses will be checked at the same time permits are reviewed. No one will be allowed in a hunting area without the proper lottery permit.

(f). Legal firearms, as specified in the hunting regulations pamphlet, except no 10 gauge shotguns will be allowed.

(g). Persons engaging in "sky busting" will be asked to leave.

(h). Retrieving dogs will be allowed but only one dog per blind.

(i). Hunters will be required to report their total kill in writing at the end of the hunt.

(j). Hunters will be responsible for removing all litter from the area and surrounding areas.

(k). No alcoholic beverages will be permitted on the premises.

e. Youth Waterfowl Hunt Lottery

i. The Louisiana Department of Wildlife and Fisheries has established a guided lottery youth waterfowl hunt on White Lake property that has the potential to provide excellent waterfowl hunting. Hunts will be restricted to persons selected by a lottery with one person being selected from each of 7 geographical regions of the state and one person being selected from the state at large. The hunt will be limited to 2 persons/unit (a youth under the age of 16 and a parent or guardian). All hunters will hunt with a guide. The primary purpose of these hunts is to provide a quality experience for young waterfowl hunters. Strict adherence to the following rules and regulations will be required to ensure a safe and enjoyable hunt.

(a). Safety is first and foremost in everyone's mind. No loaded firearms except while hunting in the blind. However, a hunter shall be allowed to carry a loaded firearm

outside the blind to dispatch and retrieve wounded waterfowl. Take every precaution to have a safe and enjoyable hunt.

(b). Selected participants must arrive at the designated site outlined on your notification letter by 5:15 a.m. Anyone arriving after 5:15 a.m. will not be allowed to enter the area. Hunting will end no later than 9 a.m.

(c). Guide and blind assignments will be made the morning of the hunt.

(d). Access will be provided to a designated parking area. Transportation from the parking area to the site will be provided.

(e). Legal firearms, as specified in the hunting regulations pamphlet, except no 10 gauge shotguns will be allowed.

(f). Persons engaging in "sky busting" will be asked to leave.

(g). No retrievers/dogs will be allowed.

(h). Hunters will be responsible for removing all litter from the area.

(i). Only hunters under the age of 16 will be allowed to possess and shoot a firearm.

(j). Hunters should be familiar with the firearm they will be shooting and be capable of handling it in a safe manner.

Q. Other Hunting Activities. There are currently no other public hunting opportunities available on the White Lake WCA. This includes deer hunting and all other game birds and animals.

R. Non-Consumptive Activities—Schedule of Costs for Public Use of Facilities for Non-Consumptive Activities.

1. Daily Use

a. \$300—includes one day use of lodge for meetings with nothing provided (for up to 15 people, weekdays only).

b. \$300 + \$10/person—includes one day use of lodge for meetings with coffee, cold drinks and bottled water provided.

c. \$300 + \$20/person—includes one day use of lodge for meetings with coffee, cold drinks, bottled water and lunch provided. The lunch provided will consist of a sandwich tray and chips or something similar. It will not include a hot lunch.

d. Exemptions from Cost. When a state, federal or local agency or university conducts research or educational activities in cooperation with the department, or conducts activities of benefit to White Lake or the department, the above costs shall be exempt. Costs for food and drink (\$10 per person for drinks, \$20 per person per meal) may be assessed.

2. Overnight Use

a. \$400 + \$25/person/night—includes overnight stay at lodge with nothing provided except linens. (For up to 12 people, weekdays only).

b. \$400 + \$35/person/night—includes overnight stay at lodge with coffee, cold drinks, bottled water and linens provided.

c. \$900 + \$35/person/night—includes overnight stay at lodge with coffee, cold drinks, bottled water, meals (breakfast, lunch and supper) and linens provided.

d. Exemptions from Cost. When a state, federal or local agency or university conducts research or educational

activities in cooperation with the department, or conducts activities of benefit to White Lake or the department, the above costs shall be exempt. Costs for food and drink (\$10 per person for drinks, \$20 per person per meal) may be assessed.

e. Exemptions from all costs apply to all persons invited by the department to department sponsored events related to education, conservation or fish or wildlife related issues.

3. Skeet Range

a. \$10/person/25 clay pigeons.

b. \$15/person/25 clay pigeons, 25 shotgun shells provided.

c. Exemptions from all costs apply to all persons invited by the department to department sponsored events related to education, conservation or fish or wildlife related issues.

4. Boat Tour

a. \$10/person/ride—limited to authorized function attendees.

b. Exemptions from Cost. When a state, federal or local agency or university conducts research or educational activities in cooperation with the department, or conducts activities of benefit to White Lake or the department, the above costs shall be exempt. Costs for food and drink (\$10 per person for drinks, \$20 per person per meal) may be assessed.

5. Use of facilities is subject to availability as well as staff availability and other scheduled events on the area. The facilities shall not be made available for political fundraisers.

6. The department shall determine appropriate insurance or indemnity requirements for use of the facilities.

7. The Louisiana Department of Wildlife and Fisheries establishes dates each year for the use of White Lake WCA facilities, located within the WCA in Vermilion Parish, for non-consumptive group activities including nature photography, bird watching, educational field trips, and business retreats. These dates and more information about the facilities available and associated costs will be posted on the LDWF website on or around the first of each year. The website address is www.wlf.louisiana.gov. On the home

page click on the hunting tab located near the top of the page and then click on White Lake WCA for information.

8. The primary purpose of non-consumptive access to White Lake WCA is to provide a quality experience within a unique environment preserved as fish and wildlife habitat.

9. In addition to the Rules already mentioned, the following special Rules apply to the non-consumptive activities. These special Rules are subject to change each year and may be revised on the website posting. Strict adherence to all rules and regulations will be required to ensure a safe and enjoyable experience.

a. Safety is a primary consideration. All visitors must adhere to posted safety rules and directions provided by site staff while on the property.

b. Access will be provided to a designated parking area.

c. Boat transportation to and from the site will be provided as part of the day use and overnight use access. Group participants must arrive at the White Lake WCA boat dock at the designated departure time (9 a.m. for day use; and no later than 4 p.m. for overnight use). The site boat dock is located at the southernmost end of Highway 91, south of Gueydan.

d. Boat guides for boat tours and biologists for lecture sessions must be requested in advance of the group's arrival on site.

e. No firearms may be brought on to the WCA unless authorized by LDWF.

f. Visitors must adhere to no littering rules on site.

g. All group use dates must be requested at least two weeks in advance.

h. A deposit of \$100 is required to reserve a date on the non-consumptive schedule.

AUTHORITY NOTE: Promulgated in accordance with Act 613 of the 2004 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:538 (March 2007), amended LR 33:1882 (September 2007), LR 35:707 (April 2009).

Robert J. Barham
Secretary

0904#015

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Board of Animal Health

Reporting of Trichomoniasis
(LAC 7:XXI.101, 121, and 339)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statutes, R.S. 3:2093, 3:2095, and 3:2097, the Louisiana Board of Animal Health proposes to amend and adopt the attached regulations for the reporting of trichomoniasis in cattle, restrictions on the entry of bulls into Louisiana, the testing of bulls for trichomoniasis and the movement of bulls testing positive for trichomoniasis.

Trichomoniasis is a venereal disease of cattle caused by *Tritrichomonas foetus*, a protozoal parasite. Trichomoniasis causes early embryonic death of the fetus, usually in the first 30 to 90 days of pregnancy, but may cause late term abortion. The parasite is carried by bulls and is passed to cows during breeding. The parasite is almost impossible to detect in cows and is difficult to detect in bulls. The parasite may be transmitted from the cow to her calf during birthing.

Infected herds have had up to a 55 percent decrease in the number of calves being born. The financial losses caused by trichomoniasis are substantial. The Louisiana cattle industry has approximately 420,000 breeding age cows and 25,600 bulls. Based on this number of cows the calving rate is approximately 85 percent, for a total of 544,000 calves a year. A breeding cow will sell, on average, for approximately \$1,200 and a breeding bull will sell, on average for approximately \$2,000. A calf will sell, on average, for \$500. A cow or bull sold for slaughter will bring, on average, \$500. If Louisiana's cattle become infected statewide with trichomoniasis it is conservatively estimated that 50 percent of the cows and bulls will be infected and that the calving rate will decrease to a 50 percent birthing rate. Based on this estimate the Louisiana cattle industry would lose \$112,000,000 from unborn calves, \$22,400,000 from the sale of infected breeding cows for slaughter rather than as a breeder, and \$19,200,000 from the sale of infected bulls for slaughter, rather than as a breeding bull. The cost for replacing the infected cows and bulls with cows and bulls capable of breeding immediately would be \$38,400,000 for replacement cows and \$25,600,000 for replacement bulls. The cost for testing bulls is a minimum of \$100. The vaccine for cows is approximately \$10 for the vaccination and \$5 for each yearly booster. Thus the cost of testing all bulls in the state would be \$2,560,000. The vaccination for cows would cost \$6,400,000 initially and \$3,200,000 yearly thereafter based on 640,000 breeding cows per year. As an example, the owners of a Louisiana herd of 3000 cattle infected with trichomoniasis has suffered over \$1,000,000 in one year in financial losses from the cost of testing, destruction of infected bulls and cows, replacement animals, and reductions in the calf crop. The threat posed by trichomoniasis is real and immediate and creates an

imminent peril to the public welfare of the citizens of this state, the viability of Louisiana's cattle industry and to the health and safety of the cattle in this state.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 1. General Provisions

§101. Definitions

* * *

APHIS—the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

* * *

Bull—an uncastrated male of domestic cattle.

1. *Breeding Bull*—a bull less than 24 months of age in which there is no presence of both permanent central incisor teeth in wear if the bull has been commingled with breeding females; a bull less than 24 months of age in which there is the presence of both permanent central incisor teeth in wear; and a bull that is 24 months of age or older.

2. *Virgin Bull*—a bull less than 24 months of age in which both permanent central incisor teeth in wear are not present and that has never been commingled with breeding females.

* * *

Commissioner—the commissioner of agriculture and forestry.

* * *

Department—the department of agriculture and forestry

* * *

Slaughter Permit—an official document issued by an authorized agent of the department, a representative of APHIS veterinary services, or an accredited veterinarian that is required to accompany any animal that is a reactor, or suspect or exposed to a disease, and the animal is required to be taken to slaughter. The slaughter permit shall list the tag number of all reactors, the official ear tag number of all suspect or exposed animals, the owner's name and address, the origin and destination locations, number of animals covered, and the purpose of the movement. If a change in destination becomes necessary, a new permit shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

* * *

Trichomoniasis—a venereal disease of cattle caused by *Tritrichomonas foetus*, a protozoal parasite

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:230 (March 1985), amended LR 11:615 (June 1985), LR 12:289 (May 1986), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 12:498 (August 1986), LR 14:217 (April 1988), LR 15:811 (October 1989), LR 16:391 (May 1990), LR 17:29 (January 1991), LR 18:840 (August 1992), LR 23:949 (August 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1677 (September 1998), LR 28:1170 (June 2002), amended by the Department of Agriculture and

Forestry, Board of Animal Health, LR 34:2336 (November 2008), LR 35:

§121. Requiring the Reporting of Contagious Diseases

A. All veterinarians practicing veterinary medicine in this state shall report any of the diseases listed in this Section to the state veterinarian within 24 hours after making a diagnosis or tentative diagnosis of any such disease. The report may be made by telephone, fax, or electronic mail. The reportable diseases are: classical swine fever (hog cholera), anthrax, vesicular conditions, all equine encephalomyelitis conditions, transmissible spongiform encephalopathies (including chronic wasting disease, scrapie, bovine spongiform encephalopathy), pseudorabies (Aujeszky's Disease), tuberculosis, Brucellosis, rabies, strangles (*Streptococcus equi equi*), equine herpes virus 1, equine viral arteritis, spring viremia of carp, viral hemorrhagic septicemia, Newcastle disease and other paramyxovirus infections, avian influenza (highly pathogenic), ornithosis (chlamydiosis, psittacosis), Salmonellas (pullorum disease or fowl typhoid), infectious laryngotracheitis (other than vaccine induced), trichomoniasis, any disease classified by USDA as a foreign animal disease, or any other disease condition which may seriously threaten the any animal population of this state.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2094 and R.S. 3:2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:234 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:813 (October 1989), LR 16:391 (May 1990), LR 23:197 (February 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 28:1170 (June 2002), LR 29:1460 (August 2003), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 34:2337 (November 2008), LR 35:

§339. Trichomoniasis Testing and Movement Requirements for Cattle

A. No bull that has tested positive for trichomoniasis shall be brought into this state for any purpose whatsoever.

B. No bull may be brought into this state without being accompanied by a negative test for trichomoniasis except for the following animals:

1. exhibition and rodeo bulls that are temporarily in the state only for the purpose of the event and will be leaving the state after the event;
2. bulls consigned to go directly to slaughter; and
3. virgin bulls.

C. A bull that is brought into this state without being accompanied by a negative test for trichomoniasis shall not be comingled with any cow unless the bull is tested and found to be negative for trichomoniasis prior to comingling.

D. All bulls, except exhibition and rodeo bulls, brought into this state shall be identified by one or more of the following means prior to importation:

1. Brucellosis ear tag;
2. official 840 radio frequency identification device (RFID);
3. official 840 flap or bangle tag;
4. official individual animal breed registry brand;
5. official individual animal breed registry tattoo; or
6. an official state of origin Trichomoniasis tag.

E. Virgin bulls, other than exhibition and rodeo bulls, brought into this state shall, in addition to any other required documentation, be accompanied by a certification of virgin status signed by the owner of the bull, or the owner's representative or a duly authorized veterinarian. The certification shall include the bull's individual identification. If the owner seeking to import the virgin bull into this state acquired the bull from a breeder or another owner then a certification of virgin status signed by the breeder and each prior owner of the bull, or their representative must also accompany the bull.

F. The requirements for testing bulls for trichomoniasis, whether in this state or to be imported into this state, are as follows.

1. All samples to be submitted for testing for Trichomoniasis shall be drawn by a certified accredited veterinarian.

2. The testing of samples shall be performed at an official laboratory or by a certified accredited veterinarian, qualified to test for Trichomoniasis.

3. Three separate official culture tests, each conducted not less than one week apart, or one Polymerase Chain Reaction test (PCR) shall be performed, no more than 30 days prior to entry of the bull into this state. Test samples shall not be pooled. A bull undergoing the three separate official culture tests must test negative on each such test to be considered free of trichomoniasis.

4. A positive result on any test shall immediately cause the bull to be classified as a trichomoniasis infected bull subject to the restrictions set out in these regulations.

5. A PCR test to confirm the presence of trichomoniasis may be requested in the event of a positive result on a test, but the request for the confirmatory test must be made within 5 days of notification of the positive test result.

a. If the confirming PCR test comes back negative then the bull is considered negative for trichomoniasis and may be moved as a negative bull.

b. If the confirming PCR test comes back positive then the bull shall be considered to be infected and subject to the restrictions set out in these regulations.

6. Bulls being tested for trichomoniasis shall be kept separate from female cattle at all times during the entire test period and from the completion of the test until importation into this state.

7. All test results for trichomoniasis, whether negative or positive, shall be reported to the state veterinarian within 24 hours after receipt of the results. When a positive test result is received the treating veterinarian shall consult with the state veterinarian on the first business day after receipt of the test results to determine a plan of action regarding the animal testing positive.

D. Bulls in Louisiana testing positive for trichomoniasis shall be subject to the following restrictions.

1. If a confirming PCR test is timely requested then the bull testing positive shall be segregated from all other cattle until the PCR test results are received.

2. A bull that has tested positive for trichomoniasis for which no confirming PCR test has been timely requested or which is confirmed by the PCR test to be infected with trichomoniasis shall be immediately isolated from and kept isolated from all other cattle, except for other known

infected bulls and shall not be moved except as provided in these regulations.

3. An infected bull shall be moved directly to slaughter, or sold directly for slaughter through a livestock market, within 30 days from receipt of the positive results of the original test or the results of the confirming PCR test, whichever is later.

a. Movement of an infected bull shall be under a VS 1-27 permit issued by the testing veterinarian or the state veterinarian or his representative.

b. The VS 1-27 permit shall accompany the bull upon movement of the animal.

4. If an infected bull has been in a herd with other breeding bulls then the other breeding bulls shall automatically be under quarantine until they have tested negative for trichomoniasis.

a. All of the other breeding bulls shall be immediately separated from, and kept separate from, all female cattle and from all virgin bulls or other breeding bulls that have tested negative for trichomoniasis.

b. Each breeding bull that has been in a herd with an infected bull shall be tested for trichomoniasis.

c. Two PCR tests conducted at least seven days apart or three separate official culture tests, each conducted not less than one week apart, shall be performed on each bull. Test samples shall not be pooled. Each test conducted on a bull must show a negative result before the tested bull can be declared to be free of Trichomoniasis.

d. A bull that has tested negative shall be immediately removed from all of the other bulls that have not been tested, or for which the test results have not been received and shall be free of the hold or do not remove order.

e. A positive result on any test shall immediately cause the tested bull to be classified as a Trichomoniasis infected bull subject to the restrictions set out in these regulations.

f. A PCR test to confirm the presence of Trichomoniasis may be requested in the event of a positive result on a culture test, but the request for the confirmatory test must be made within 5 days of notification of the positive test result.

i. If the confirming PCR test comes back negative then negative then the bull is considered negative for trichomoniasis and may be moved as a negative bull.

ii. If the confirming PCR test comes back positive then the bull shall be considered to be infected and subject to the restrictions set out in these regulations.

E. A virgin bull or breeding bull that has tested negative for trichomoniasis but which has been comingled with cows that come from a known trichomoniasis infected herd shall not be moved to a herd not known to be infected or comingled with cows from such a herd unless the bull has been tested for trichomoniasis and has negative test results.

F. A violation of these regulations shall subject the violator to the following actions:

1. imposition by the board of a maximum \$1,000 civil penalty for each violation, with each day being a separate violation, as provided by R.S. 3:2093 if the violation does not involve the bringing of infected bulls into this state or the transportation of infected bulls through or within this state;

2. imposition by the board of a maximum \$5,000 civil penalty for each violation, with each day being a separate violation, as provide by R.S. 3:2097, if the violation involves the bringing of infected bulls into this state or the transportation of infected bulls through or within this state;

3. criminal prosecution under R.S. 3:2097 if the violation involves the bringing of infected bulls into this state or the transportation of infected bulls through this state, or within this state without a VS-127; conviction of which subjects the violator to a fine of not less that \$5,000 but not more that \$25,000, or imprisonment, with or without hard labor, for not less than 1 year but not more than 10 years, or both;

4. criminal prosecution under R.S. 14:133 if the violation involves the filing of a false public record; conviction of which subjects the violator to a fine of not more than \$5,000, or imprisonment for not more than 5 years with or without hard labor, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, 3:2095, and 3:2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Board of Animal Health, LR 35:

Family Impact Statement

The impact of the proposed action regarding the rules and regulations set out in the Notice of Intent on family formation, stability, and autonomy has been considered. It is estimated that the proposed Rule will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Dr. Henry Moreau DVM, Louisiana State Veterinarian, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on May 26, 2009

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Reporting of Trichomoniasis

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

It is estimated that there will be no significant implementation costs or savings to any such unit.

The proposed action provides for the reporting of trichomoniasis in cattle, restrictions on the entry of bulls into Louisiana, the testing of bulls for trichomoniasis and the movement of bulls testing positive for trichomoniasis. The proposed action is intended to help limit the spread of trichomoniasis into this state and to prevent the loss of cattle and money caused by this disease.

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

It is estimated that there will be no significant effect on the revenue collections of any such unit. However, civil penalties of up to \$5,000 per violation and criminal penalties of up to \$25,000 could be imposed on persons violating these regulations. The civil penalties would be payable to the Department of Agriculture and Forestry and the criminal fines payable to the state courts.

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

The estimated cost to a person who seeks to bring a bull into Louisiana is \$100, payable to a private veterinarian, for testing each bull, if the bull has not been timely tested by the seller. There is no estimate of the number of bulls brought into this state in a given year.

The estimated economic cost of failing to implement these regulations to cattle owners or producers in Louisiana is over \$150,000,000. This amount includes \$112,000,000 that would be lost due to lower calf production, \$22,400,000 lost through the diminished value of infected cows, and \$19,200,000 lost from the diminished value of infected bulls. These amounts do not include the cost for replacement bulls and cows or the cost of vaccination, which is \$10 for the initial vaccination of a cow and \$5 for each yearly booster shot.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is estimated that there will be a significant effect on competition and employment. Louisiana cattle producers will be in a position to compete with cattle producers from other states by keeping cattle in this state free from Trichomoniasis. The control of Trichomoniasis will help maintain the number of cattle in this state, thereby providing continued employment for livestock producers, auction markets, cattle related businesses, and their employees. No preamble regarding these proposed regulations is available.

Craig Gannuch
Assistant Commissioner
0904#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Agriculture and Forestry
Structural Pest Control Commission**

**Definitions, Fees, Minimum Termite Treatment
Specifications and Treatments for Wood Destroying Beetles
(LAC 7:XXV.101,117, 119, 141 and 145)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the enabling statute, R.S. 3:3366, the Department of Agriculture and Forestry, Structural Pest Control Commission, proposes to amend regulations to define certain terms; to raise fees on wood destroying insect reports and contracts; provides minimum specifications for treatment for termite on new-construction; and to clarify treatment requirements for wood destroying beetles.

The structural pest control commission finds that the implementation of these amendments to rules and regulations are necessary to define and give clarity to terms used by the structural industry; to provide homeowners and pest control operators additional treatment options in new construction while still providing for minimum termite treatment specifications; to provide additional protection for

consumers by requiring a 5 year damage repair guaranty; to raise the fees for wood destroying insect reports and contracts to allow for continued oversight of the pest control industry; and to clarify that treatment for wood destroying beetles must be based on a finding of an active infestation prior to the recommendation or application of such a treatment.

Title 7

**AGRICULTURE AND ANIMALS
Part XXV. Structural Pest Control**

Chapter 1. Structural Pest Control Commission

§101. Definitions

A. The definitions in R.S. 3:3362 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part.

Act—the Structural Pest Control Law, which is currently Part VII of Chapter 20 of Title 3 of the Louisiana Revised Statutes of 1950.

* * *

Construction—the act of building a structure from the start of the first stage of physical work until completion which is when either the structure is ready to be inhabited, final inspection and approval by an appropriate building inspector, or completion of the final grade.

* * *

Pest Control Operator—any person conducting or performing structural pest control.

* * *

Termiticide Treatment—application of a termiticide.

1. *Pre-Construction Treatment*—a termiticide treatment for subterranean termites made with a commission approved termiticide prior to the stage of construction where a slab or concrete is poured or piers are being built or placed into position.

2. *New-Construction Treatment*—a termiticide treatment made with any commission approved termiticide(s) or baiting system that meets minimum specification requirements for that type of treatment and which is applied or installed during or after the stage of construction where a slab or concrete is poured or piers are being built or placed into position and up to 12 months after completion of construction.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:796 (May 2006), repromulgated LR 32:1015 (June 2006), amended LR 33:39 (January 2007), LR 35:204 (February 2009), LR 35:

§117. Obligations of the Licensee

A. - I.1.1. ...

m. total amount of product mixture applied;

I.1.n. - L. ...

M. The fee for each standard contract and wood-destroying insect report that has been issued is \$8. All such

fees are due and payable to the department at the time the reports required by §119.E are due.

N. - P. ...

Q. The pest control operator shall record the nature of the completion and the date of completion that construction of a structure is completed, as found in §101.B within the definition of *construction*, and maintain the date as part of the application records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), LR 29:1062 (July 2003), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 31:2761 (November 2005), LR 35:

§119. Contracts for Termite Control Work

A. The licensee shall enter into a written contract for termite work with the property owner employing him. The contract shall:

1. be in a form provided or approved by the commission;
2. guarantee performance for a period of not less than 1 year after the treatment is made;
3. guarantee treatment of the structure(s) in accordance with minimum specifications for termite control work set forth in §141 hereof;
4. provide for at least one inspection of all unobstructed or accessible areas outside of the structure(s) prior to expiration of the agreement;
5. include an inspection diagram;
6. provide for the treatment of all subterranean termites; and
7. include a damage repair warranty and be exclusive to the property owner for 5 years subject to the terms and conditions of the contract, if the contract is for pre construction or new construction termiticide treatment.

B. - E. ...

F. The licensee or permittee shall pay to the department the required fee for each standard contract issued when the required monthly report is filed with the department.

G. Termite treatment contracts that include termite monitoring stations shall include a contract addendum that provides the number of monitoring station(s) and the frequency of inspection(s). The contract addendum shall be approved by the commission prior to its use.

H. - H.5....

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and R.S. 3:3370.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 26:2437 (November 2000), LR 27:1179 (August 2001), LR 27:2084 (December 2001), LR 28:1171 (June 2002), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 30:1144 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 35:

§141. Minimum Specifications for Termite Control Work

A. - A.4.b. ...

B. Requirements for Trench and Treat

1. All trenches must be approximately 4 inches wide at the top angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at the rate and manner prescribed on the label and labeling. Rodding will be acceptable only when trenching will damage flowers and/or shrubs.

C. - C.7.d. ...

8. Ground Treatment

a. ...

b. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

9. - 10. ...

D. Treatment of Existing Slab-Type Construction

1. Ground Treatment

a. ...

b. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

2. - 3.c. ...

E. Pre-Treatment of Slabs

1. The licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form. Within 12 months after initial treatment, the outside perimeter of the foundation, will be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the initial pre-treated slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes must be no more than 18 inches (unless label requires closer distance) apart along the above stated areas.

2. If, during the treatment of any area which will be beneath a slab foundation, the operator must leave the site for any reason prior to the completion of the application, the operator must prominently display a poster, furnished by the

department, which states that the treatment of the area under the slab is not complete.

3. All pre-treatment of slabs must be called or faxed to the department's district office in which the pretreat occurs, a minimum of 1 hour prior to beginning the application of termiticides. The information provided shall include treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of each structure to be treated; and number of structures. All pest control operators must keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Pre-treatments in a parish shall be called into the corresponding district office.

a. - e. ...

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge.

E.3.g. - J.6...

7. Ground monitoring and bait stations, used as monitors, shall be inspected bi-monthly, not to exceed 65 days, from the date of installation or last inspection. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

8. When there is termite feeding on any bait and/or monitoring station(s) at the contracted structure; all above ground bait stations and ground monitoring and bait stations shall be inspected bi-monthly, not to exceed 65 days from the date of installation or last inspection and such inspections shall continue until there is no termite feeding on any bait and/or monitoring station, in any station, at the contracted structure for 90 days from the date of installation or last inspection; When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

J.9. - L.3. ...

M. Requirements for Borates treatments.

1. Treat according to the borate label.

2. A perimeter soil treatment shall be applied within 12 months after initial treatment, the outside perimeter of the foundation, shall be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes must be no more than 18

inches (unless label requires closer distance) apart along the above stated areas;

3. treat bath traps as per termiticide label and labeling or as follows:

a. if the soil in a trap does not reach the bottom of the slab, the trap must be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling;

b. a tar filled bath trap must also be drilled and treated as required by label and labeling;

c. if bath trap is solid concrete pour, it must be drilled and treated as close as practical to the bathtub plumbing;

4. if, during the treatment of any area, the operator must leave the site for any reason prior to the completion of the application, the operator must prominently display a poster at the treatment site, which states that the treatment of the area is not complete;

5. the treatments of structures required in this section shall be called or faxed to the department's district office in which the treatment occurs, a minimum of one hour prior to beginning the application of termiticides. The information provided shall include: treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of the each structure to be treated; and number of structures. Permittees or licensees shall keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Treatments in a parish shall be called into the corresponding district office:

a. Shreveport District—Caddo, Bossier, Webster, Claiborne, Bienville, Red River, and Desoto;

b. Monroe District—Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Jackson, Winn, Caldwell, Franklin, Tensas, Concordia, and Catahoula;

c. Alexandria District—Sabine, Natchitoches, Grant, LaSalle, Avoyelles, Rapides, and Vernon;

d. Crowley District—Beauregard, Allen, Acadia, Jefferson Davis, Cameron, Calcasieu;

e. Opelousas District—Evangeline, St. Landry, St. Martin, Iberia, St. Mary, Vermillion, and Lafayette;

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge;

g. New Orleans District—St. John the Baptist, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines;

6. all borate treatments shall be contracted and reported as provided by R.S. 3:3370 and §119.E of this Part and the fee for each such contract shall be paid in accordance with §119(F) of this Part;

7. records of contracts, graphs, monitoring (if required), and applications shall be kept as required by §117.I;

8. all retreatments shall be as required by §141.L of this Part;

9. the permittee or licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:235 (February 1999), LR 25:1620 (September 1999), LR 26:2437 (November 2000), LR 27:1180 (August 2001), LR 29:1063 (July 2003), LR 30:1145 (June 2004), repromulgated LR 30:1614 (August 2004), amended LR 35:207 (February 2009), LR 35:

§145. Wood-Destroying Beetles

A. An active infestation of wood destroying beetles, as described below, shall be found by the pest control operator prior to recommending entering into a contract, applying a treatment, or performing a service to control or eradicate the infestation.

1. Powder Post Beetle (Anobiidae and Lyctidae)

a. Power post beetle frass must be exuding or streaming from the holes on the outside of the wood or live larvae or pupae are found in the wood members.

2. Old House Borer (Hylotrupes bajulus)

a. The presence of live larvae or pupae, adult beetles or oblong exit holes with frass in pine or other softwoods will be evidence of active infestation of the old house borer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:332 (April 1985), amended LR 35:

Family Impact Statement

The impact of the proposed action regarding the rules and regulations set out in the Notice of Intent on family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Larry LeJeune, Director of Pesticides and Environmental Programs, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on May 22, 2009. A public hearing will be held on these proposed amendments on May 27, 2009 at 9 a.m. at the address listed above.

No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Definitions, Fees, Minimum Termite Treatment Specifications and Treatments for Wood Destroying Beetles

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

There is estimated to be no costs or savings to local governmental units.

The proposed action define and clarify terms used by the structural industry; provide homeowners and pest control operators additional treatment options in new construction while still providing for minimum termite treatment specifications; provide additional protection for consumers by requiring a 5 year damage repair guaranty; to raise the fees for wood destroying insect reports and contracts from \$6 to \$8 to allow for continued oversight of the pest control industry and to protect home and property owners and other users of pest control products and services; and clarifies that treatment for wood destroying beetles must be based on a finding of an active infestation prior to the recommendation or application of such a treatment.

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

The effect on the revenue collection of the Department is estimated to be \$133,000 for the 09-10 fiscal year and \$160,000 for each subsequent fiscal year. The proposed rule changes increase the wood destroying insect reports and contracts from \$6 to \$8. The department is projecting 80,000 reports and contracts being issued annually. Due to the effective date being August 2009, the current year estimate is lower than subsequent fiscal years. There is estimated to be no effect on the revenue of local governmental units.

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

The proposed rule changes will affect structural pest control operators due to the increase of the fee for wood destroying insect reports and termite contracts by \$2 from \$6 to \$8. The approximately \$160,000 aggregate cost to structural pest control operators will likely be spread over the approximately 600 pest control operators in the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is estimated to be no effect on competition and employment.

Craig Gannuch
Assistant Commissioner
0904#070

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Civil Service Board of Ethics

Financial Disclosure (LAC 52:I.1320)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to make amendments to the Rules for the Board of Ethics to bring the rules into compliance with current statutory provisions and Act 1 of the 2008 First Special Legislative Session and Act 472 of the 2008 Regular Legislative Session.

INSTRUCTIONS (continued):

- Any board or commission that governs a political subdivision created by a single municipal governing authority of a municipality with a population of 25,000 or less, or any subdistrict of such a political subdivision.
- A board of directors of a private nonprofit corporation that is not created by law.

- “**Business**” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.

- “**Income**” for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.

- “**Income**” for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.

- “**Public office**” means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.

- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming operations are licensed.

PERSONAL FINANCIAL DISCLOSURE
"TIER 2.1"
LSA-R.S. 42:1124.2.1

ORIGINAL REPORT

AMENDED REPORT

This Report Covers Calendar Year _____

Name of Board or Commission _____

Full Name of Filer: _____

Full Name of Spouse: _____

Mailing Address:

Street	Apt. #
City	State
	Zip Code

Spouse's Occupation: _____

Spouse's Principal Business Address, if any:

Street	Suite #
City	State
	Zip Code

- (A) I certify that I have filed my federal income tax return for the previous year.
 - (B) I certify that I have filed my state income tax return for the previous year.
 - or
 - (A) I certify that I have filed for an extension of my federal income tax return for the previous year.
 - (B) I certify that I have filed for an extension of my state income tax return for the previous year.
-

- I do hereby certify that neither I nor any member of my immediate family has a personal or financial interest in any entity, contract, or business, or a personal or financial relationship, that in any way poses a conflict of interest, which would affect the impartial performance of my duties. OR
- I have attached a statement describing each conflict and action I am taking to resolve or avoid this conflict.

[CERTIFICATION OF ACCURACY ON FOLLOWING PAGE]

Page 1 of ____

CERTIFICATION OF ACCURACY

I do hereby certify that the information contained in this personal financial disclosure form is true and correct to the best of my knowledge and belief.

Signature of Filer

Page 2 of ____

**SCHEDULE A
EMPLOYMENT INFORMATION**

Please disclose the name of the employer, job title, a brief description of the job description for each full-time or part-time employment position held by the individual or spouse.

Filer Spouse Full-time Part-time
Employer Name _____ Job Title _____
Job Description _____

Filer Spouse Full-time Part-time
Employer Name _____ Job Title _____
Job Description _____

Filer Spouse Full-time Part-time
Employer Name _____ Job Title _____
Job Description _____

Filer Spouse Full-time Part-time
Employer Name _____ Job Title _____
Job Description _____

Filer Spouse Full-time Part-time
Employer Name _____ Job Title _____
Job Description _____

Filer Spouse Full-time Part-time
Employer Name _____ Job Title _____
Job Description _____

SCHEDULE B
INCOME FROM THE STATE, POLITICAL SUBDIVISIONS,
AND/OR GAMING INTERESTS

The name, address, type, and amount of each source of income received by you or your spouse, or by any business in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business, which is received from any of the following:

- the state or any political subdivision as defined in Article VI of the Constitution of Louisiana;
- services performed for or in connection with a gaming interest as defined in R.S. 18:1505.2L(3)(a).

Note: For this page ONLY, the "amount of income" must be reported as an exact dollar figure.

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____

Street		Suite #

City	State	Zip Code

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____

Street		Suite #

City	State	Zip Code

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____

Street		Suite #

City	State	Zip Code

SCHEDULE C
POSITIONS - BUSINESS

The name, address, brief description, nature of association, and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, AND in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business. **Note: For this page ONLY, the "amount of interest" must be reported as a percentage figure.**

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Page ____ of ____

SCHEDULE D
POSITIONS - NONPROFIT

The name, address, brief description of, and nature of association with a nonprofit organization in which you or your spouse is a director or officer.

Filer Spouse

Name of Organization _____

Nature of Association _____

Address _____

Street

Suite #

City

State

Zip Code

Organization Description _____

Filer Spouse

Name of Organization _____

Nature of Association _____

Address _____

Street

Suite #

City

State

Zip Code

Organization Description _____

Filer Spouse

Name of Organization _____

Nature of Association _____

Address _____

Street

Suite #

City

State

Zip Code

Organization Description _____

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

The proposed forms will have no anticipated effect on revenue collections of the state or local governmental units.

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

The proposed action will affect certain members of boards and commissions with respect to disclosure statements filed with the Board of Ethics. However, it will have no effect on the cost to those individuals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed forms will not have an effect on competition and employment.

Kathleen M. Allen
Deputy General Counsel
0904#101

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Economic Development
Office of Business Development
Office of Entertainment Industry Development**

**Musical and Theatrical Production Income Tax
Credit Program (LAC 61:I.1615-1627)**

The Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, pursuant to the authority of R.S. 47:6034 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Rule of the Louisiana Entertainment Industry Tax Credit Program. The purpose of the Rule is to establish program policies and procedures in the administration of the Musical and Theatrical Production Income Tax Credit Program, which includes a production and infrastructure portion.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

**Chapter 16. Louisiana Entertainment Industry Tax
Credit Programs**

**Subchapter C. Musical and Theatrical Production
Income Tax Credit Program**

§1615. Purpose

A. The purpose of this Chapter is to administer the Musical and Theatrical Production Income Tax Credit Program as established by R.S. 47:6034.

B. The purpose of this program is to encourage development of the state as a cultural center involving all the classic disciplines in the performing arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

§1617. General Description

A. The program offers five types of tax credits, which fall into two categories:

- 1. productions:

- a. production expenses for the producers of performances;

- b. transportation costs for performance related property;

- c. employment of Louisiana residents;

- d. employment of Louisiana college and vocational-technical students;

- 2. infrastructure projects:

- a. construction of new facilities, or repair or renovation of existing facilities, which are directly related to the production of performing arts performances.

- B. Tax credits are earned in the calendar year expended, to the extent the expenditures receive final certification from the department.

- C. Tax credits associated with a state-certified musical or theatrical production or a state-certified musical or theatrical facility infrastructure project shall never exceed the total base investment in that production or infrastructure project and transportation expenditures.

- D. Investor tax credits shall be transferable only once.

- E. No tax credits shall be granted under this program until the rules are approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

- F. Applicants may apply for more than one entertainment tax credit program administered by the department, provided that:

- 1. separate applications are submitted for each program;

- 2. expenditures shall only qualify for one specified program; and

- 3. multiple applications shall not result in any duplication of tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

§1619. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6034, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Base Investment—expenditures for the following for which a credit is granted in this Section, or investments made by a company or financier which are for such expenditures:

- a. production expenditures for a state-certified musical or theatrical production;

- b. expenditures in the state for the construction, repair, or renovation of a state-certified musical or theatrical facility infrastructure project.

Begin Construction—construction of an infrastructure project shall be deemed to begin when:

- a. in the case of construction a new building, either:

- i. materials to be used in the project, representing at least 5 percent of the preliminary budget, are placed on the project site; or

- ii. other work representing at least 5 percent of the preliminary budget and visible from a simple inspection

(such as landfill, soil reinforcement or pouring a foundation) is performed on the site; (Such other work does not include services in preparation for construction such as surveying, engineering, cutting or removal of trees, demolition of existing structures, clearing the land surface.)

b. in the case of repairs to or renovation of an existing structure:

i. materials to be used in the project, representing at least 10 percent of the preliminary budget, are placed at the project site; or

ii. written evidence of other work representing at least 10 percent of the preliminary budget, is submitted for approval to the department. Such other work may be conducted for research, planning and design purposes, such as environmental studies as may be required for historic renovation projects.

Commissioner—commissioner of the Division of Administration.

Department—Louisiana Department of Economic Development, or its successor, represented by its secretary or his designee.

Director—director of the Office of Entertainment Industry Development or his designee.

Division—Division of Administration, represented by its commissioner or his designee.

Dramatico-Musical Stage Production—shall include, but not be limited to, a musical comedy, oratorio, choral work, opera, play with music, revue or ballet.

Expended in the State—for purposes of R.S. 47:6034(B)(3), shall mean:

a. tangible or intangible property which is to be used within the state; and

b. services performed within the state.

Expenditure—actual payment of cash or cash equivalent for goods or services, as evidenced by an invoice, receipt, or other such document.

Governor—governor of the state of Louisiana.

Governor's Office—the governor or his designee.

Indirect Costs—costs of operation that are not directly associated with a specific production, such as clerical salaries and general administrative costs.

Office—Office of Entertainment Industry Development.

Payroll—all salary, wages, and other compensation, including related benefits, for services performed in Louisiana.

Production Expenditures—development, production, or operating expenditures in this state for a state-certified production, as follows.

a. Eligible expenditures shall include, but not be limited to, expenditures outlined in R.S. 47:6034(B)(6)(a).

b. Ineligible expenditures shall include, but not be limited to, expenditures as outlined in R.S. 47:6034(B)(6)(b) and Clause i below.

i. The following specific expenses are not eligible to earn tax credits:

(a). the application fee;

(b). any costs related to the transfer of tax credits.

Louisiana Resident—

a. a natural person who:

i. is a Louisiana domiciliary;

ii. maintains a permanent place of abode within Louisiana and spends in the aggregate more than six months of each year in Louisiana; or

iii. pays taxes to Louisiana on the amount of money paid to such person for which a tax credit is sought;

b. a company:

i. in which a Louisiana resident, as defined in Subparagraph a above, has ownership or control;

ii. organized or authorized to do business in Louisiana;

iii. that lends the services of such Louisiana resident for a state-certified musical or theatrical production; and

iv. pays taxes to Louisiana on the amount of money paid to such person for such services.

Secretary—secretary of the Department of Economic Development, or his designee.

State-Certified Musical or Theatrical Infrastructure Project—a capital infrastructure project in the state directly related to the production or performance of musical or theatrical productions as defined in this Section, and movable and immovable property and equipment related thereto, or any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair, or renovation of such project, which are certified, verified, and approved as provided for in this Section.

State-Certified Musical or Theatrical Production—a concert, musical or theatrical production, or a series of productions occurring over the course of a 12-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before a paying audience within Louisiana, or which have their United States debut within Louisiana, and the production expenditures, expenditures for the payroll of residents, transportation expenditures, and expenditures for employing college and vocational-technical students related to such production or productions, that are certified, verified, and approved as provided for in this Section.

a. *Originate*—shall include, but not be limited to:

i. pre-Broadway try-outs;

ii. resident or regional productions;

iii. national touring companies producing their first public performance in Louisiana;

iv. concert tours producing their first public performance in Louisiana.

Student—a natural person enrolled full-time in a Louisiana higher education facility, such as a college, university, or a vocational-technical college.

Transferee—an individual or entity that receives a transfer of investor tax credits.

Transferor—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

§1621. Certification Procedures

A. Application

1. An application for a state-certified production or a state-certified infrastructure project shall be submitted to the department, including:

a. all information required by R.S. 47:6034(E)(2)(a);

b. an application fee of 0.2 percent of the estimated total tax credits, with a minimum fee of \$200, and a maximum fee of \$5,000; and

b. the applicant shall provide additional information upon request.

2. Each application shall identify only one production or infrastructure project.

B. Qualification

1. The department shall determine whether a production or infrastructure project qualifies, by meeting all requirements of R.S. 47:6034 and these regulations, and taking the following factors into consideration:

a. the contribution of the production or infrastructure project to establishing the state as a cultural center for the performing arts;

b. the impact of the production or infrastructure project on the employment of Louisiana residents;

c. the impact of the production or infrastructure project on the overall economy of the state;

d. in the case of productions, the potential for students to gain work experience in an arts related position;

e. in the case of infrastructure projects, the availability and kind of existing facilities in the proposed area.

C. Initial Certification

1. Upon finding the production or infrastructure project qualifies, the department shall issue an initial certification letter, subject to approval by the commissioner and the governor's office, which shall include:

a. classification as a state-certified production or state-certified infrastructure project;

b. a unique identifying number;

c. the total base investment;

d. the persons to whom tax credits are to be allocated and the estimated amount of tax credits allocated to each.

2. Duration of Effect

a. The applicant shall countersign the initial certification letter, acknowledging the conditions therein stated, and return an original to the department within 30 business days of receipt.

b. If a countersigned original is not returned to the department, within the allotted time frame, it shall be nullified unless reissued or confirmed by the department.

c. For productions, initial certification shall be effective for a period of twelve months prior to and twelve months after the date of initial certification.

i. Productions returning to the state after Broadway performances, shall be eligible for recertification, provided that the production returns to the state within 24 months of the date of original certification.

D. Final Certification and Audit Requirements

1. After review and upon a determination of qualification and initial certification, an applicant may obtain final certification as follows.

a. A cost report shall be submitted by the applicant, certified by an independent certified public accountant and complying with the minimum standards as required by R.S. 47:6034.

b. The cost report may be subject to additional audit at the applicants expense. The department shall select the auditor and determine the audit standards.

c. Additional information may be requested in order to make a determination of eligibility.

d. The department shall submit a proposed final certification letter to the governor's office and the division. If no request for review nor objections are received within five business days, they shall be deemed to consent and the final certification letter will be issued to the applicant.

e. Multiple requests for final certification may be submitted.

i. Each submission must be accompanied by an audited cost report indicating expenditures.

ii. Two submissions shall be certified at no additional fee by the department.

iii. Additional charges may apply for three or more certification requests.

E. Appeal Process

1. In the event that an application for certification is denied, the applicant may appeal as follows.

a. An applicant may appeal within 30 days from receipt of a denial. Receipt will be conclusively presumed from the sending of the denial by electronic mail to an address provided by the applicant or by a return receipt evidencing delivery by U.S. Postal Service or private carrier.

b. The appeal is made by delivery of a written objection with supporting documentation to the secretary, and in the case of infrastructure projects also the commissioner.

c. The secretary shall submit a proposed determination letter to the governor's office and the division. If no request for review or objections is received within five business days, they shall be deemed to consent and a final agency determination will be issued to the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

§1623. Additional Program Procedures—Production

A. Production Expenses for the Producers of Performances

1. Qualification of Tax Credits

a. The department shall determine which production expenditures qualify under these regulations and the terms of R.S. 47:6034.

b. Examples of qualifying expenditures are set forth in R.S. 47:6034(B)(6)(a).

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6034 until such statute is amended, modified or repealed.

3. Amount of Tax Credits

a. If the total base investment is more than \$100,000, but less than \$300,000, a tax credit of 10 percent applies.

b. If the total base investment is more than \$300,000, but less than \$1,000,000, a tax credit of 20 percent applies.

c. If the total base investment is more than \$1,000,000, a tax credit of 25 percent applies.

4. Earning of Tax Credits

a. Credits are earned when qualified expenditures receive final certification.

b. A state certified production may submit multiple requests for final certification.

c. Tax credits earned shall never exceed the total base investment.

B. Transportation Costs for Performance-Related Property

1. The department shall determine which transportation expenditures qualify under these regulations and the terms of R.S. 47:6034.

2. Transportation expenditures shall mean:

a. type of services covered shall include, but not be limited to:

- i. packaging;
- ii. crating;
- iii. transportation;

b. items covered, shall include but not be limited to:

- i. sets;
- ii. costumes; or
- iii. other tangible property whether such items are manufactured in or out of the state.

c. Transportation with a Louisiana nexus, with transportation either:

i. to the state, for use in a state certified production; or

ii. from the state, after use in a state certified production;

iii. provided that services are purchased through a company which has a significant business presence in Louisiana;

iv. significant business presence in the state shall mean a transportation company that:

(a). is registered to do business in the state;

(b). has one office in the state; and

(c). employs at least one full-time employee in the state.

3. An additional tax credit shall apply for qualified transportation expenditures that receive final certification, as follows:

a. 100 percent for qualified expenditures incurred until December 31, 2010;

b. 50 percent for qualified expenditures incurred between January 1, 2011 and December 31, 2011;

c. 25 percent for qualified expenditures incurred between January 1, 2012 and December 31, 2012;

d. no credits are available for transportation expenditures incurred after December 31, 2012.

C. Employment of State Residents

1. An additional 10 percent tax credit shall be available for payroll expenditures of state residents.

2. No more than \$1,000,000 per person shall be eligible for payroll tax credit.

3. This payroll tax credit may not be combined with the student tax credit component of R.S. 47:6034.

D. Employment of College and Vocational-Technical Students

1. An additional 0.10 percent tax credit shall be available for production expenditures of students in arts related positions, including but not limited to: actors, stage hands, management and marketing.

2. This tax credit may not be combined with the state resident tax credit component of R.S. 47:6034.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

§1625. Certification Procedures-Infrastructure

A. Qualification of the Infrastructure Project

1. Tax credits may be granted only for:

a. infrastructure projects directly related to the production or performance of musical or theatrical productions;

b. equipment, movable and immovable property related thereto; and

c. any other facility which supports and is a necessary component of such a facility.

2. The department and the division shall determine which projects are directly related to the production or performance of musical or theatrical productions, taking into consideration factors such as; the frequency of performances.

3. The department and the division shall determine whether a facility supports or is a necessary component of a state certified infrastructure project. Examples of qualifying facilities would be a parking garage, gift shop or costume storage.

4. The department and the division shall determine whether a multi-purpose infrastructure project qualifies under the terms of R.S. 47:6034.

a. Upon a determination of qualification as a multi-purpose infrastructure project, the applicant must provide contractual assurances that:

i. the facility will be used to produce or support musical or theatrical productions, for the useful life of the facility.

ii. the useful life of the facility shall be determined by the Department, the Division and the governor's office, and shall be set forth in the initial certification.

B. Duration of Tax Credit

1. Tax credits may be granted under R.S. 47:6034 until January 1, 2014.

C. Amount of Tax Credit

1. If the total base investment is more than \$100,000, but less than \$300,000, a tax credit of 10 percent applies.

2. If the total base investment is more than \$300,000, but less than \$1,000,000, a tax credit of 20 percent applies.

3. If the total base investment is more than \$1,000,000, a tax credit of 25 percent applies.

4. No more than \$10,000,000 may be granted per state certified infrastructure project.

5. No more than \$60,000,000 may be granted, per year, for all state certified infrastructure projects.

a. Tax credits shall be available on a first come, first served basis, based upon date of final certification and qualification of expenditures.

b. Fifty percent of the tax credits annually granted for infrastructure projects shall be reserved for projects located outside of Jefferson and Orleans parishes, provided that the availability of tax credits for infrastructure projects in Jefferson and Orleans parishes shall not be conditioned upon the granting of infrastructure tax credits for projects outside of those parishes.

D. Earning of Tax Credits

1. Construction of the infrastructure project shall begin within six months of the date of initial certification.

2. Credits are earned when qualified expenditures receive final certification.

3. An infrastructure project may submit multiple requests for final certification, however:

a. 25 percent of the total base investment must be expended before requesting the first certification of qualified expenditures;

b. 50 percent of the total base investment must be expended within two years of the date of initial certification;

c. in the case of multiple use facilities, no tax credits will be earned until the facility directly used in the theatrical or musical productions is complete.

4. Tax credits earned shall never exceed the total base investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

§1627. Application of the Tax Credit

A. Prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain final certification.

B. After receiving final certification, a person may transfer the credit as follows.

1. Only one transfer is allowed.

2. The credit, and/or refund of an overpayment, may be transferred by sending a written notice of such transfer to the Department of Revenue.

C. An owner of tax credits may claim tax credits against its Louisiana income tax liability by submitting its final certification, or written notice of transfer pursuant to this rule, evidencing the dollar amount of tax credits being claimed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:

Family Impact Statement

The proposed Rule 61:I.Chapter 16, Subchapter C. Louisiana Musical and Theatrical Production Income Tax Credit Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;

2. the authority and rights of parents regarding the education and supervision of their children;

3. the functioning of the family;

4. family earnings and family budget;

5. the behavior and personal responsibility of the children;

6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed Rule to Philip Mann through the close of business on May 27, 2009, at Post Office Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to pmann@la.gov or by fax to 225-342-5554. A meeting for the purpose of receiving the presentation of oral comments will be held on May 28, 2009, at 10 am at the Department of Economic Development, 1051 North Third St., Baton Rouge, LA 70802.

Sherri McConnell
Director

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

**RULE TITLE: Musical and Theatrical Production
Income Tax Credit Program**

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

The proposed rules will not directly increase state governmental expenditures. The Louisiana Legislature passed the Musical and Theatrical Production Income Tax Credit Program in 2007 and there is one full-time employee and one part-time employee assigned to the Program at the Department of Economic Development at an annual cost of approximately \$90,000. These employees are part of 13 staff and approximately \$1.4 million in funding assigned to entertainment industry activity at the Department of Economic Development in Fiscal Year 2008-09. The proposed rules will have no effect on local governmental expenditures.

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

This program will become effective upon promulgation of these rules. The fiscal note refers specifically to a set of projects and does not necessarily reflect any particular projects that will apply under this program. The test projects were estimated to generate tax credits of \$11.4 million in FY09, \$12.3 million in FY10, \$11.5 million in FY 11 and \$11.2 million in FY12 and FY13.

Due to the uncertainty of the projects that will apply for this program and the broad range of eligibility standards, it is impossible to estimate a meaningful program cost. The infrastructure tax credits are available through January 1, 2014, and are capped at \$10 million per project and \$60 million per year with half of the total being reserved for projects in the parishes of Jefferson and Orleans. Production credits are available indefinitely and are not capped.

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

To the extent that the program is utilized, the opportunity exists for increased employment and sales activities in many aspects of the industry, including entertainment, design, equipment, construction and transportation. The income and receipts of applicants will increase by the amount of benefits received under this program.

Entities applying for benefits will have to prepare applications, submit an application fee, prepare final reports, and provide an audit of expenditures made in relation to the project. The benefits received will far exceed the costs to the client.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Louisiana's Motion Picture Tax Credits have made the state a national leader in the film industry. It is the aim of these rules to stimulate a similar increase in the live performance and theatrical industry.

Sherri McConnell
Director
0904#057

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Board Tenure Hearings (LAC 28:I.725)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education (BESE) approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I, §725. Rules for Board Tenure Hearings. This proposed rule, previously adopted as internal operating procedures in December 2008, is now being formally promulgated as a part of the Louisiana Administrative Code. These rules would add a new section to the BESE Administrative Code, setting forth the procedural rules governing BESE's tenure hearings. Those hearings determine the outcome of charges brought against tenured employees of the BESE Special Schools. While BESE has followed certain practices in the past during its tenure hearings, those practices had not been reduced to writing until December 2008. At that time, BESE adopted a set of Internal Operating Procedures for its tenure hearings, to make those practices more transparent. After adopting those procedures internally, BESE Board has now taken official action as a board to promulgate its rules of procedure under the Administrative Procedures Act.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 7. Operations

§725. Rules for Board Tenure Hearings

A. The board shall hold its tenure hearings in accordance with the state statute entitled "Tenure for Certified Teachers in Special Schools" (R.S. 17:45), and with all state and federal law that may be applicable. One statute that may be applicable is the federal Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99).

B. Each tenure case comes into existence when the board receives a written request for a tenure hearing and written charges. At least 15 days in advance of the hearing, the board shall furnish the teacher with notice that it has received a request for a tenure hearing and with a copy of the written charges.

C. The board may provide that an impartial hearing officer of its selection assist it by scheduling and conducting

the tenure hearing. Such hearing officer has no vote on the charges or the disposition of the case overall.

D. All tenure hearings shall be held at Special Called Board Meetings.

E. The teacher shall have the right to appear before the board, with witnesses on his or her behalf and counsel of his or her own choosing, all of whom shall be heard by the board at the hearing. The teacher has the right to choose that the tenure hearing be public or private.

F. Subsequent to the board's receiving the request for hearing and the written charges, any submissions should be prepared on letter-sized paper, and signed by the attorney of record, if any. If a party has no attorney of record, the submissions should be signed by the person submitting them.

G. At the tenure hearing, the burden of proof of the facts is on the Department of Education, and the standard of proof is a preponderance of the evidence.

H. At the tenure hearing, the Department of Education shall present its case first. At the conclusion of the department's case, the teacher may present such case as the teacher deems appropriate. If the teacher does present evidence, at the conclusion of that presentation, the department has the right to present a case in rebuttal. Each side shall have the opportunity to offer closing arguments.

I. At the tenure hearing, six members of the board shall constitute a quorum.

J. During the tenure hearing, board members and the hearing officer may pose questions of any witness. Board members' questions shall each be submitted in writing to the hearing officer, who shall review them. Unless the hearing officer finds a board member's question not relevant, the hearing officer shall ask the question of the witness.

K. At the conclusion of the presentation of evidence and argument by the parties:

1. the board may vote to go into executive session to deliberate, unless the teacher requests that the board conduct any deliberations without an executive session;

2. if the board goes into executive session, no votes may be taken until it concludes its deliberations and returns to the hearing.

L. The board shall vote upon each charge separately, with a majority of the total membership of the board required to decide each charge. The board shall also vote upon the ultimate disposition of the case, with a majority of the total membership required to decide that question.

M. Following the board's vote, or votes, on the separate charges, and its vote on the ultimate disposition of the case, the hearing officer shall compile a written report of the board's findings and its ultimate disposition of the case.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 3(A); R.S. 17:43, 17:45; 42:6.1.A.; and 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

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 via the U.S. mail until 4:30 p.m., June 9, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Board Tenure Hearings**

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

Adoption of these rules should impose no additional costs, other than BESE's cost of advertising in the State Register (\$164). These rules are simply the promulgated version of internal operating procedures previously adopted internally by BESE in December 2008. These promulgated rules do not impose any additional cost burdens upon other governmental units.

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

Adoption of these rules should be revenue neutral. They are simply procedural in nature, and do not generate any additional revenues for governmental units.

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

Adoption of these rules should be both cost and economic benefit neutral to affected persons and non-governmental groups. They are simply procedural in nature, and do not impose any additional costs, or generate any economic benefits, to affected persons or non-governmental units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These rules should be competition and employment neutral. They are simply procedural in nature, and do not impose any impact upon competition or employment.

Amy Westbrook, Ph.D.
Executive Director
0904#033

H.Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Graduation Index; Alternative Education; Pre-GED/Skills Option
(LAC 28:LXXXIII.613, and Chapter 35)

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 28, Part 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, Chapter 35 address the school district and BESE member concerns about alternative schools and students in accountability. These changes were submitted to BESE upon the recommendation of the Accountability Advisory Commission.

**Title 28
EDUCATION**

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

Chapter 6. Graduation Index

§613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

1. Students who do not dropout and do not earn a diploma, a GED, a Skills Certificate, or a Certificate of Achievement after four years of high school are defined as attendees.

Student Result	Points
Academic OR Career/Technical Endorsement	180
TOPS Opportunity Award	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

B. - C. ...

D. Students who complete/exit high school in more than four 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 fourth 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 eligible for incentive points shall not be considered dropouts for graduation cohort calculations.

b. Incentive points shall not be awarded to students who are not enrolled in the school where they completed their fourth year of high school except in cases where the only obstacle to a diploma is passing a GEE exam.

i. The diploma must be earned no later than the third administration of the summer retest following the fourth year of high school of the students' cohort. For example, a student who finishes the fourth year of high school in 2009 must complete the GEE requirements before or during the 2011 summer test administration.

ii. When related to awarding incentive points, the enrollment must be continuous and consist of at least 45 calendar days.

c. Incentive points shall not be routed from alternative programs.

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 the 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 for graduation cohort calculations.

F. ...

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 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:

Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability

§3501. Alternative Schools

A. For the purposes of school accountability, alternative schools are those schools established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom. They house one or more programs designed to address discipline, dropout prevention and recovery, the pre-GED/skills option program, credit recovery, etc. Schools are not considered alternative schools in accountability if created to provide programs for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

B. Beginning in 2008-09, each alternative school operated by an LEA shall receive annual accountability decisions provided the school has a statistically reliable aggregation of data—at least 40 testing units taken by students who are enrolled for a Full Academic Year.

C. Alternative schools with sufficient data shall receive School Performance Scores based on the assessment data of FAY students and any other data appropriate to the school's grade configuration.

D. Alternative schools with sufficient data shall also be evaluated in the Subgroup Component in the same manner as are regular schools.

E. School Performance Scores and subgroup evaluations for alternative school students shall consist of:

1. the assessment data of all eligible FAY student;

2. the attendance data of all enrollees (K-8 only);

3. the dropout data of all students who have been enrolled for a FAY prior to exiting;

4. graduation data of students who:

a. were enrolled at the alternative school for the FAY in their second year of high school;

b. entered the alternative school after their fourth year of high school and completed at a higher level. The alternative school earns the incentive points.

F. All eligible accountability data that is not included in the School Performance Score of the alternative school shall be routed to the sending school when the data collection and aggregation processes can produce accurate results except in the following instances.

1. Students transferring from outside the LEA must be enrolled at a non-alternative school for a FAY to be considered a sending school.

2. Accountability data shall not be routed across district lines except as described in Subsection H.

G. All eligible accountability data from an alternative school with insufficient data to be included in accountability shall be routed to the sending schools.

H. The Louisiana School for Math, Science, and the Arts shall be included in accountability according to its configuration, but its assessment data shall also be routed to the sending schools provided the sending schools have the same assessed grades as the routed data.

I. For routing purposes, a sending school is the school the student last attended.

J. In those cases where a particular grade-level assessment score must be routed from an alternative school to a sending school where the grade does not exist, scores shall be included as follows.

1. iLEAP results will be aggregated with the iLEAP grade closest in number or 1 grade-level lower.

2. LEAP/GEE results will be aggregated with the LEAP/GEE grade closest in number with consideration for subject area.

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 31:423 (February 2005), LR 34:868 (May 2008), LR 35:

§3503. Pre-GED/Skills Option Students

A. The assessment and exit data of a pre-GED/Skills Option student shall be routed to the sending school if the student is enrolled at a traditional (non-alternative) high school that would otherwise not be the student's home school.

B. GED/Skills Option students' iLEAP, LAA 1, and LAA 2 assessment results shall be included in accountability no more than three times.

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 33:2600 (December 2007), LR 34:868 (May 2008), LR 35:

§3505. Alternative Schools for Adjudicated Youth

A. Any child who is in the custody of the office of juvenile services, Department of Public Safety and Corrections, as a result of being an adjudicated delinquent or in need of supervision by a court and assigned by the office of juvenile services to a community-based program or facility, as provided for in R.S. 17:100.1, shall be provided educational services pursuant to R.S. 17:100.1.

1. For those LEAs providing educational services directly to students in these programs/facilities, the facility shall be considered a district alternative school for accountability purposes and all data shall be included in the district accountability results regardless of FAY.

2. Subject to the requirements of R.S. 17:100.1(B), any city or parish school board may contract for the provision of educational services for children described in Subparagraph b.

a. If an LEA does satisfy its educational obligations by contract, the program/facility shall receive its own SPS.

b. The data for these students shall not be included in the local school district's data for district accountability purposes.

c. The assessment, dropout/exit and attendance results for these students shall be included in a "R.S. 17:100.1 school district" for accountability purposes. The department shall have the discretion to create multiple "R.S. 17:100.1 school districts" so that the accountability data accurately reflects the operation of the various programs/facilities.

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 34:868 (May 2008), LR 35:

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to Nina A. Ford,

Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System—Graduation Index; Alternative Education; Pre-GED/Skills Option

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

Proposed changes in Bulletin 111, Section 613 provide detail of how the graduation index has been calculated since 2007.

Proposed changes in Bulletin 111, Chapter 35 address the school district and BESE member concerns about alternative schools and students in accountability. These changes were submitted to BESE upon the recommendation of the Accountability Advisory Commission.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

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

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 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
0904#034

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—Criminal Background Checks (LAC 28: CXV.501)

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*: §501, Criminal Background Checks. This revision revises the requirements for criminal background checks. The 10 year reporting limitation has been removed and now all criminal history information is being released. No additional criminal background checks are being required. The revision also requires a teacher or other school employee upon conviction or a plea of guilty to any criminal offense to report the fact to his employer within 48 hours of the conviction. The revision to §501 is required by Act 649 of the 2008 Louisiana Legislature.

**Title 28
EDUCATION**

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

Chapter 5. Personnel

§501. Criminal Background Checks

A. Each public LEA shall request in writing that the Louisiana Bureau of Criminal Identification and Information supply information to ascertain whether an applicant for employment as a teacher, substitute teacher, bus driver, substitute bus driver, or janitor, or as a temporary, part-time, or permanent employee of any kind, including any person employed to provide cafeteria, transportation, or janitorial or maintenance services by any person or entity that contracts with a school or school system to pervade such services, has been arrested for, convicted of, or pled *nolo contendere* to, any criminal offense.

1. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the LEA making the request.

2. It must include a statement signed by the person about whom the request is made which gives his or her permission for such information to be released and must include the person's fingerprints in a form acceptable to the bureau.

3. A person who has submitted his or her fingerprints to the bureau may be temporarily hired pending the report from the bureau as to any convictions of, or pleas of *nolo contendere* to, by the person to a crime listed in R.S. 15:5871.

B. No person who has been convicted of or has pled *nolo contendere* to a crime listed in R.S. 15:5871.1 shall be hired by a public elementary or secondary school as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or as a temporary, part-time, or permanent employee of any kind, including any person employed to provide cafeteria, transportation, or janitorial or maintenance services by any person or entity that contracts with a school or school system to pervade such services unless approved in writing by a district judge of the parish and the district attorney or, if employed on an emergency basis, unless approved in writing by the superintendent of the school system.

1. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

2. Not later than 30 days after its being placed on file by the school, the school principal shall submit a copy of the statement of approval to the State Superintendent of Education.

C. The LEA shall dismiss any permanent teacher or any other school employee having supervisory or disciplinary authority over school children, if such teacher or other employee is convicted of, or pled *nolo contendere* to, any crime listed in R.S. 15:587.1(c) except R.S. 14:74.

D. An LEA may reemploy a teacher or other school employee who has been convicted of, or pled *nolo contendere* to, a crime listed in R.S. 15:587.1(c), except R.S. 14:74, only upon written approval of the district judge of the parish and the district attorney or upon written documentation from the court in which the conviction occurred stating that the conviction has been reversed, set aside, or vacated.

1. Any such statement of approval of the judge and the district attorney and any such written documentation from the court shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

2. Not later than 30 days after its being placed on file by the school, the school principal shall submit a copy of any such statement of approval or written documentation from the court to the state superintendent of education.

E. A teacher or other school employee, upon final conviction or a plea of guilty or a plea of *nolo contendere* to any criminal offense, shall report the fact of the conviction or the plea of to his employer within 48 hours of the conviction or plea of guilty or *nolo contendere*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15; R.S. 15:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:431 (March 2007), LR 34:607 (April 2008), repromulgated LR 35:443 (March 2009), amended LR 35:

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 via the U.S. mail until 4:30 p.m., June 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

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

RULE TITLE: Criminal Background Checks

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 Section 501 in Bulletin 741: Louisiana Handbook for School Administrators revises the requirements for criminal background checks. The ten year reporting limitation has been removed and now all criminal history information is being released. No additional criminal background checks are being required. The revision also requires a teacher or other school employee upon conviction or a plea of guilty to any criminal

offense to report the fact to his employer within 48 hours of the conviction.

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
0904#040

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—General Powers of Local Educational Governing Authorities (LAC 28:CXV.303)

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*: §303, General Powers of Local Educational Governing Authorities. This revision changes the requirements regarding the number of hours of training local school board must have from six total to four annually. The revision also changes the topics to be covered, who may provide the training, who should report the attendance and who should be responsible for verifying that the instruction meets the necessary requirements. The revision to §303 is required by Act 380 of the 2008 Louisiana Legislature.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 3. Operation and Administration

§303. General Powers of Local Educational Governing Authorities

A. Each city and parish school board shall determine the number and location of schools to be opened, and the number and selection of teachers and other certified personnel from recommendations made by the local superintendent.

B. Each city, parish, and other local school board is authorized to adopt rules and regulations for its own governance that are consistent with law and with the regulations of BESE.

1. Each member of a city and parish school board shall receive a minimum of four hours of training and instruction annually in the school laws of this state, in the laws governing the school boards, and in educational trends, research, and policy. In an LEA that has one or more schools identified as an academically unacceptable school or a

school in need of academic assistance as defined by BESE, at least two of the required hours shall focus on the improvement of schools identified as failing schools as defined by BESE. The remaining hours shall focus on education policy issues, including but not limited to literacy and numeracy, leadership development, dropout prevention, career and technical education, redesigning high schools, early childhood education, school discipline, and harassment, intimidation, and bullying. Training shall also include instruction in Louisiana Open Meeting Laws and the Louisiana Public Bid Law.

2. The training may be received from a postsecondary education institution, the DOE, or the local school board central office staff, or the Louisiana School Board Association provided that the instruction and the method for demonstrating attendance are pre-approved by the Louisiana School Board Association.

3. Each school board member's attendance must be reported by the instructor to the Louisiana School Board Association. Each school board member who completes required instruction shall receive a certificate of completion and a copy of such certificate shall be entered into the minutes of the school board on which the member serves.

4. The superintendent of the school system on which the school board member serves shall be responsible for verifying that the instruction meets the necessary requirements.

C. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:53; R.S. 17:81; 17:81.2 17:81.4-8; R.S. 17:100.2; R.S. 17:104; R.S. 17:151.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1257 (June 2005), amended LR 35:

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? Yes.

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., June 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

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

**RULE TITLE: Bulletin 741—Louisiana Handbook for
School Administrators—General Powers of Local
Educational Governing Authorities**

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

The revision to Section 303 in Bulletin 741: Louisiana Handbook for School Administrators changes the requirements regarding the number of hours of training local school board members must have from six total to four annually. The revision also changes the topics to be covered, who may provide the training, who should report the attendance and who should be responsible for verifying that the instruction meets the necessary requirements. The implementation of the changes may require an increase in costs to state or local governmental units, but it is not possible to estimate the increase because it is not possible to determine the length of a school board member's service. The estimated cost of the training is \$150 per hour and may be provided by a postsecondary institution, the Department of Education, the local school board central staff or the Louisiana School Board Association. These entities may cover the increased costs by charging the school board member for the cost of the training.

**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 may be a cost to local school board members of \$150 per hour to pay for training and instruction in the school laws of the state, the laws governing school boards, and in education trends, research and policy

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

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0904#035

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—Professional Staff
Development, and Student Services
(LAC 28: CXV.513, 1103, 1117, 1121 and 1129)

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*: §513. Professional Staff Development, §1103. Compulsory Attendance, §1117. Child Welfare and Attendance, §1121. Immunizations, and §1129. Administration of Medication.

The proposed changes are the result of legislation passed during the 2008 Regular Legislative Session.

**Title 28
EDUCATION**

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

Chapter 5. Personnel

§513. Professional Staff Development

A. - D. ...

E. Teachers, school counselors, principals and certain other school administrators in public elementary and secondary schools shall receive two hours of annual in-service training in suicide prevention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.2; R.S. 17:3881 et seq., R.S. 17:437.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1267 (June 2005), amended LR 35:

Chapter 11. Student Services

§1103. Compulsory Attendance

A. - G.1. ...

H. Each LEA shall develop and implement a system whereby the principal of a school, or his designee, shall notify the parent or legal guardian in writing upon a student's third unexcused absence or unexcused occurrence of being tardy, and shall hold a conference with such student's parent or legal guardian. The student's parent or legal guardian shall sign a receipt for such notification.

I. Tardy shall include but not be limited to leaving or checking out of school unexcused prior to the regularly scheduled dismissal time at the end of the school day but shall not include reporting late to class when transferring from one class to another during the school day.

J. The only exception to the attendance regulation shall be the enumerated extenuating circumstances that are verified by the Supervisor of Child Welfare and Attendance. Students shall be temporarily excused from the attendance regulation for the following reasons:

1. extended personal physical or emotional illness. Each LEA shall adopt policies regarding the requirement of a certificate from a physician or nurse practitioner licensed in the state in substantiation of the absence;
2. extended hospital stay as verified by a physician or dentist;
3. extended recuperation from an accident as verified by a physician, dentist, or nurse practitioner;
4. extended contagious disease within a family as verified by a physician or dentist; or
5. observance of special and recognized holidays of the student's own faith.

K. For any other extenuating circumstances, the student's parents or legal guardian must make a formal appeal in accordance with the due process procedures established by the LEA.

L. The only other exception to the attendance regulations shall be absences that are verified by the principal or his/her designee as stated below:

1. prior school system approved travel for education;
2. death in the family (not to exceed one week); or
3. natural catastrophe and/or disaster.

M. Students who are verified as meeting extenuating circumstances, and therefore eligible to receive grades, shall

not receive those grades if they are unable to complete makeup work or pass the course.

N. Students participating in school-approved field trips or other instructional activities that necessitate their being away from school shall be considered to be present and shall be given the opportunity to make up work.

NOTE: Refer to §1117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221; R.S. 17:226; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:

§1117. Child Welfare and Attendance

A. - D. ...

E. A student shall be considered habitually absent or habitually tardy when either condition continues to exist after all reasonable efforts by any school personnel, truancy officer, or other law enforcement personnel have failed to correct the condition after the fifth unexcused absence or fifth unexcused occurrence of being tardy within any school semester. The parent or legal guardian of a student shall enforce the attendance of the student at the school to which the student is assigned.

NOTE: Refer to §1103.h.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:232, R. S. 17:235, R.S. 17:233

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1276 (June 2005), amended LR 34:608 (April 2008), LR 35:

§1121. Immunizations

A. Each person entering any school within the state for the first time, at the time of registration or entry, shall present satisfactory evidence of immunity to or immunization against vaccine-preventable diseases according to a schedule approved by the office of public health, Department of Health and Hospitals, or shall present evidence of an immunization program in progress. Beginning with the 2009-2010 school year and thereafter, each person entering the sixth grade in any school within the state shall present satisfactory evidence of immunity to or immunization against vaccine preventable diseases according to a schedule approved by the Office of Public Health, Department of Health and Hospitals, or shall present evidence of an immunization program in progress.

A.1. - C. ...

D. School principals shall be responsible for checking students' records to see that the provisions of this Section are enforced.

1. Chief Administrators of all public elementary and secondary schools, kindergartens, and pre-schools shall be responsible for checking students' records to see that the following provision is enforced: electronic transmission of immunization compliance reports when the public or private school has an existing student-specific electronic data system.

E. - G. ...

H. Each LEA that provides information relative to immunizations shall provide to the parent or legal guardian of each student in grades 6 through 12 information relative

to the risks associated with human papillomavirus and the availability, effectiveness and known contraindications of immunization against human papillomavirus. Information shall describe the link between human papillomavirus and cervical cancer, the means by which human papillomavirus is spread and where a person may be immunized. Such information shall include a form on which such student's parent or legal guardian may grant written permission for the student to receive such information directly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170; R.S. 17:170.3

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1277 (June 2005), amended LR 33:429 (March 2007), LR 35:

§1129. Administration of Medication

A. - F.2.e. ...

3. No employee other than a registered nurse, licensed medical physician, an appropriate licensed health professional, or hired and trained unlicensed nursing personnel or unlicensed assistive personnel as defined by the Louisiana State Board of Nursing shall be required to perform an outside tracheotomy suctioning procedure on any child in an education setting. However, nothing shall prohibit an employee who volunteers to perform such procedure and who complies with the training and demonstration requirement from being allowed to perform such procedure on a child in an educational setting.

G. - H.1.NOTE: ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1, R.S. 17:437.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1278 (June 2005), amended LR 35:

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? Yes.

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 via the U.S. mail until 4:30 p.m., June 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

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

**RULE TITLE: Bulletin 741—Louisiana Handbook for
School Administrators—Professional Staff
Development, and Student Services**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The following table provides a brief description of the proposed policy change and the estimated cost of each:

Policy Number/Title in Bulletin 741	Description of Policy Change	Estimated Cost
§513. Professional Development	Provides for two hours of annual in-service training for school personnel	None
§1103. Compulsory Attendance	Changes the definition of habitually tardy or absent from more than five unexcused occurrences within any month to more than five unexcused occurrences within school semester; establishes penalties for parent or legal guardian	None
§1117. Child Welfare and Attendance	Changes the definition of habitually tardy or absent from more than five unexcused occurrences within any month to more than five unexcused occurrences within school semester; establishes penalties for parent or legal guardian	None
§1121. Immunizations	Provides for electronic submission of immunization reports when school operates an existing student-specific electronic data system	None
§1121. Immunizations	Requires LEAs to provide information to students relative to human papillomavirus (HPV)	None
§1121. Immunizations	Requires each person entering sixth grade to present evidence of immunization against vaccine-preventable diseases	None
§1129. Administration of Medication	Removes certain procedures from the definition of noncomplex medical procedures	Approximately \$3,000,000

Cost Effects to Local Governmental Units

The proposed policy changes will result in no estimated savings to local governmental units. The change to policy §1129 Administration of Medication states that only trained medical professionals are allowed to perform an outside tracheotomy suctioning procedure on any child in an education setting. School districts will very likely incur an increase of expenditures related to salaries and benefits associated with hiring additional nurses as a result of this change. If each school district brings on an additional nurse, the collective cost is approximately \$3 million. (\$44,500 for each additional nurse). The majority of school districts cover costs of school nurses with Minimum Foundation Program Funds. The other policy changes will have no measurable implementation costs to local governmental units.

Cost Effects to the State

The policy changes will result in no estimated savings to the state. However, the state expects to incur an estimated cost of approximately \$164.00 for printing associated with the Louisiana Register.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed policy changes will have no effect on revenue collection of state and local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed policy changes will not provide economic benefits to directly affected persons or non-governmental groups.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The change to §1129.Administration of Medication may result in an increased demand for school nurses. The remainder of the proposed policy changes will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0904#042

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—Science Education (LAC 28: CXV.2304)

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*: §2304, Science Education. Section 2304 specifies that BESE, at the request of the local school district, shall allow and assist educators in promoting critical thinking skills and objective discussion of scientific theories. It allows teachers, after teaching the content in the Louisiana Comprehensive Curriculum and the approved textbook, to use supplemental textbooks and materials in science classes with the permission of the local school board except for materials prohibited by BESE. The addition of Section 2304 is required by Act 473 of the 2008 Louisiana Legislature.

Title 28

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

**Chapter 23. Curriculum and Instruction
§2304. Science Education**

- A. BESE shall, upon request of an LEA, allow and assist teachers and school administrators to create and foster an environment that promotes critical thinking skills, logical analysis, and open and objective discussion of concepts, laws, principles, and scientific theories.
- Such assistance shall include support and guidance for teachers regarding effective ways to understand, analyze, critique, and objectively review concepts, laws, principles, and scientific theories.
 - Any LEA may request such assistance by contacting the Division of Curriculum Standards of the DOE.
- B. Teachers shall teach the content presented in the Louisiana Comprehensive Curriculum or other curriculum developed by the LEA that is based on the Louisiana Science Content Standards and Grade-Level Expectations, and the standard textbook supplied by the LEA.
- The teacher may then use supplemental textbooks and other instructional materials as permitted by the LEA unless otherwise prohibited by BESE.
- C. Classroom instruction and materials shall not promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion

D. BESE shall determine which supplemental materials shall be prohibited from use in science classes in public schools according to the procedure below.

1. Any Louisiana citizen may challenge materials used by an LEA by submitting a complaint to the Division of Curriculum Standards of the DOE for consideration by BESE. The complaint should contain the reasons for the challenge and cite evidence to substantiate the challenge.

2. The DOE will notify the LEA using the supplementary material that the complaint has been filed.

3. The DOE will conduct a meeting allowing the complainant, the LEA, and any interested parties adequate time to present their arguments and information and to offer rebuttals.

4. The DOE will make a recommendation to BESE based on the following criteria.

a. The supplemental materials must be grade-level appropriate.

b. The information contained in the supplemental materials must be scientifically sound and supported by empirical evidence.

c. The materials shall not promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:285.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Science Education

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

The initial cost to the state for implementing this policy is \$2000. There may be additional costs to review material recommended for prohibition, but it is not possible to estimate this cost.

It is not possible to estimate the costs to schools or school districts. The cost will depend on the policy adopted by the local school district.

Section 2304 to Bulletin 741—*Louisiana Handbook for School Administrators* specifies that BESE, at the request of the local school district, shall allow and assist educators in promoting critical thinking skills and objective discussion of scientific theories. It allows teachers, after teaching the content in the Louisiana Comprehensive Curriculum and the approved textbook, to use supplemental textbooks and materials in science classes with the permission of the local school board except for materials prohibited by BESE.

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 and/or economic benefits to persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0904#043

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Alternate Teacher Preparation Programs (LAC 28:CXXXI.233 and 235)

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 746—Louisiana Standards for State Certification of School Personnel*: §233, The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements) and §235, The Master's Degree program Alternative Path to Certification (Minimum Requirements). This revised policy will align with the undergraduate General/Special Education Mild/Moderate: An Integrated to Merged Approach program grade level and certification structure. Currently, the alternate programs offer certification in Mild/Moderate 1-12. The move to the integrated/merged programs will result in better prepared special education and regular education teachers to meet the needs of all children.

Title 28
EDUCATION

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

Chapter 2. Louisiana Teacher Preparation Programs
Subchapter B. Alternate Teacher Preparation Programs
**§233. The Practitioner Teacher Program Alternative
Path to Certification (Minimum Requirements)**

A. State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program for certification in Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), or General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5, Grades 4-8 and Grades 6-12. The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

B. Admission to the Program. Program providers work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring semesters for candidates admitted in a summer preparation session and during the spring semester and successive fall semester for candidates admitted in a fall preparation session. For admission, candidates must:

1. possess a non-education baccalaureate degree from a regionally accredited university;
2. have 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a private provider program;
3. have 2.20 or higher grade point average (GPA) on a 4.00 scale to enter a college or university program;
4. pass the Praxis Pre-Professional Skills Tests (PPSTs) in reading, writing, and mathematics. Candidates who already possess a graduate degree will be exempted from this requirement;
5. pass the Praxis content specific examinations:
 - a. candidates for grades PK-3: pass Elementary Education: Content Knowledge (#0014);
 - b. candidates for grades 1-5 (regular education and mild/moderate): pass Elementary Education: Content Knowledge (#0014);
 - c. candidates for grades 4-8 (regular education and mild/moderate): pass the middle school subject-specific licensing examination(s) for the content area(s) to be certified;
 - d. candidates for grades 6-12 (regular education and mild/moderate): pass the secondary subject-specific examination(s) for the content area(s) to be certified. General-Special Education Mild/Moderate candidates seeking admission to an alternate program must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;
 - e. candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the subject-specific examination for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a

minimum of 31 semester hours of coursework specific to the content area for admission to the program. The provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

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

C. Teaching Preparation (Summer Preparation Session or Fall Preparation Session)

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

2. Grades PK-3 practitioner teachers will successfully complete courses or equivalent contact hours that focus on child development or psychology, family and community relationships, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships. (12 credit hours or equivalent 180 contact hours)

3. Grades 1-5, 4-8, and 6-12 practitioner teachers will successfully complete courses or equivalent contact hours that focus on child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships. (9 credit hours or equivalent 135 contact hours)

4. General-Special Education Mild/Moderate. An Integrated to Merged Approach for Grades 1-5 practitioner teachers will successfully complete courses or equivalent contact hours that focus on methodology, behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundation of reading, foundations of special education, and child psychology before starting their teaching internships. (12 credit hours or equivalent 180 contact hours)

5. General-Special Education Mild/Moderate. An Integrated to Merged Approach for Grades 4-8 practitioner teachers will successfully complete courses or equivalent contact hours that focus on methodology, behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, reading and literacy, foundations of special education, child and adolescent psychology before starting their internships. (12 credit hours or equivalent 180 contact hours)

6. General-Special Education Mild/Moderate. An integrated to Merged Approach for Grades 6-12 practitioner teachers will successfully complete courses or equivalent contact hours that focus on methodology, behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, reading and literacy, foundations of special education, adolescent psychology before starting their internships. (12 credit hours or equivalent 180 contact hours)

7. All-Level K-12 practitioner teachers will successfully complete courses or equivalent contact hours that focus on child and adolescent psychology, the diverse learner, classroom management and organization, assessment, instructional design, and instructional strategies across grade levels K-12 before starting their teaching internships. (9 credit hours or equivalent 135 contact hours)

D. Teaching Internship and First-Year Support (12 credit hours or equivalent 180 contact hours)

1. Practitioner teachers assume full-time teaching positions in districts. During the school year, candidates participate in two seminars (during the fall and during the spring or the spring and fall, depending on entry point) that address immediate needs of the Practitioner Teacher Program teachers, and receive one-on-one supervision through an internship provided by the program providers.

2. Practitioner teachers participating in the LaTAAP will receive support from school-based mentor teachers provided by the Louisiana Teacher Assistance and Assessment Program (LaTAAP) and principals. Practitioner teachers who are not participating in the LaTAAP or who have successfully completed the LaTAAP will be provided a mentor by the program provider.

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

4. For General-Special Education Mild/Moderate Grades 1-5, Grades 4-8 and Grades 6-12 seminars will cover instructional strategies in core content areas, state reading competencies with alignment to state literacy plan; numeracy strategies; classroom management; lesson plans—development and implementation; assessment; collaboration between special education and general education (e.g., co-planning, co-teaching, behavior intervention, accommodations, services/support); collaboration with parents; and data-driven decision making or any other identified needs. Technology will be addressed in all grade levels.

E. Teaching Performance Review (End of First Year)

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

2. Grades PK-3, Grades 1-5, Grades 4-8, Grades 6-12 and All-Level K-12: If weaknesses are cited, teams will identify additional types of instruction to address areas of need. Prescriptive plans that require from one to nine credit hours of instruction, or 15 to 135 equivalent contact hours, will be developed for practitioner teachers.

3. General-Special Education Mild/Moderate Special Education Candidates. If weaknesses are cited, teams will identify additional types of instruction to address areas of need. Prescriptive plans that require from three to nine credit hours of instruction, or 45 to 135 equivalent contact hours, will be developed for practitioner teachers.

F. Prescriptive Plan Implementation (Second Year)

1. Grades PK-3, Grades 1-5, Grades 4-8, Grades 6-12 and All-Level K-12—One to nine credit hours, or 15 to 135 contact hours. Candidates who demonstrate areas of need will complete prescriptive plans.

2. General-Special Education Mild/Moderate Special Education. (Three to nine credit hours, or 45 to 135 contact hours) Candidates who demonstrate area of need will complete prescriptive plans. Practitioner teachers will use prescriptive hours to meet the reading competency requirements by completing the same number of semester hours in reading as required for undergraduate teacher

preparation programs: (1) elementary 1-5 programs, nine hours; middle grades 4-8 programs, six hours; secondary grades 6-12 programs, three hours or (2) pass a reading competency assessment.

G. Total Hours Required in the Program

1. Grades PK-3 Program—24-33 credit hours (or equivalent 360-495 contact hours).

2. Grades 1-5, 4-8, 6-12, All-Level (K-12) Programs—21-30 credit hours (or equivalent 315-450 contact hours).

3. General-Special Education Mild/Moderate Grades 1-5, Grades 4-8, and Grades 6-12 Programs—27-33 credit hours (or equivalent 405-495 contact hours).

H. Praxis Review (Second Year). Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the Praxis.

I. Program requirements must be met within a three year time period. For certification purposes, private providers and colleges or universities will submit signed statements to the Department of Education indicating that the student completing the Practitioner Teacher Program alternative certification path met the following requirements:

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

2. completed all program requirements including the internship with a 2.50 or higher GPA (this applies to candidates in a university program);

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

4. passed the Praxis specialty examination for the area(s) of certification. (Note: This test was required for admission):

a. grades PK-3: Elementary Education: Content Knowledge (#0014);

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

c. grades 4-8 (regular and special education): Middle school subject-specific licensing examination(s) for the content area(s) to be certified;

d. grades 6-12 (regular and special education): Secondary subject-specific examination(s) for the content area(s) to be certified. General-Special Education Mild/Moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

e. all-level K-12 areas (art, dance, foreign language, health and physical education, and music): Subject-specific examination(s) for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

5. passed the pedagogy examination (Praxis):

a. grades PK-3: Principles of Learning and Teaching Early Childhood (#0521)

b. grades 1-5: Principles of Learning and Teaching K-6 (#0522);

c. grades 4-8: Principles of Learning and Teaching 5-9 (#0523);

d. grades 6-12: Principles of Learning and Teaching 7-12 (#0524);

e. all-level K-12 Certification: Principles of Learning and Teaching K-6, 5-9, or 7-12;

f. general-special education mild/moderate: Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild to Moderate Disabilities (#0542); In addition to one of the following aligned to candidates grade level:

i. grades 1-5: Principles of Learning and Teaching K-6 (#0522);

ii. grades 4-8: Principles of Learning and Teaching 5-9 (#0523);

iii. grades 6-12: Principles of Learning and Teaching 6-12 (#0524);

6. all candidates entering an alternate certification program after May 1, 2004, must demonstrate proficiency in the Reading Competencies as adopted by the BESE through either of the following:

a. successfully complete the same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3, elementary 1-5 or general-special education mild/moderate 1-5 programs, nine hours;

ii. middle grades 4-8 programs or general-special education mild/moderate 4-8, six hours;

iii. secondary 6-12 all-level K-12 or general-special education mild/moderate 6-12 programs, three hours;

iv. special education areas (Early Interventionist, Hearing Impaired, Significant Disabilities, or Visually Impaired), nine hours; or

b. pass a reading competency assessment.

J. Ongoing Support (Second and Third Year) Program providers will give support services to practitioner teachers during their second and third years of teaching. Support types may include online support, internet resources, special seminars, etc.

K. Professional License. A practitioner teacher will be issued a practitioner license in a specific level and area upon entrance to the program completion of the summer of fall teacher preparation session. The practitioner teacher is restricted to the specific level and area as designated on the practitioner license. He/she will be issued a Level 1 professional license upon successful completion of all program requirements. After three years of teaching in the area of certification and successful completion of the Louisiana Teacher Assistance and Assessment Program, he/she will be eligible for a Level 2 license.

L. Undergraduate, Graduate Courses; Graduate Programs. Universities may offer the Practitioner Teacher Program courses at the undergraduate or graduate level. Efforts should be made to allow students to use graduate hours as electives if they are pursuing a graduate degree.

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 32:1790 (October 2006), amended LR 34:1387 (July 2008), LR 35:

§235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements)

A. A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. The college or university may offer the master's degree program as either a Master of Education or a Master of Arts in Teaching. Master's Degree Programs may offer certification in Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, music), Early Interventionist Birth to Five Years, General-Special Education Mild Moderate: An Integrated to Merged Approach for Grades 1-5, Grades 4-8, and Grades 6-12, Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12.

B. For all special education programs, the Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

C. Admission to the Program. To be admitted, candidates must:

1. possess a non-education baccalaureate degree from a regionally accredited university;

2. have a 2.50 or higher grade point average (GPA) on a 4.00 scale;

3. pass the Praxis Pre-Professional Skills Tests (PPSTs) in reading, writing, and mathematics (individuals who already possess a graduate degree will be exempted from this requirement);

4. pass the Praxis content-specific subject area examination:

a. candidates for PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

b. candidates for Grades 1-5 (regular education and mild/moderate)—Elementary Education: Content Knowledge (#0014);

c. candidates for Grades 4-8 (regular education and mild/moderate)—the middle school subject-specific licensing examination(s) for the content area(s) to be certified;

d. candidates for Grades 6-12 (regular education and mild/moderate)—the secondary subject-specific examination(s) for the content area(s) to be certified. General-Special Education Mild/Moderate candidates seeking admission to an alternate program must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

e. candidates for All-Level K-12 areas of art, dance, foreign language, health and physical education, and music—the subject-specific examination(s) for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. The provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

f. candidates for special education Early Interventionist Birth to Five Years, Significant Disabilities 1-12, Hearing Impaired K-12, Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014);

5. meet other non-course requirements established by the college/university.

D. Program Requirements

1. Knowledge of Learner and the Learning Environment (15 credit hours)

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

b. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5—Behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundations of special education and child psychology.

c. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 4-8—Behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundation of special education, child/adolescent psychology.

d. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 6-12—Behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundation of special education, adolescent psychology.

e. All-Level (grades K-12)—Coursework across grade levels K-12, as follows: Child and adolescent psychology; the diverse learner; classroom management/organization; assessment; instructional design and instructional strategies.

f. Special Education Early Interventionist Birth to Five Years (coursework specific to needs of infants, toddlers, and preschoolers)—Child development or psychology; learning environment and behavior analysis; motor, sensory, and communication differences; teaming, physical, and medical management; understanding and working with families; communication and literacy in early intervention.

g. Special Education Significant Disabilities 1-12 (coursework specific to needs of children with significant disabilities)—Assessment and evaluation, including IEP and ESYP; communication strategies; behavior support; collaborative techniques and family partnerships; physical support, health and safety; special education law; characteristics of individuals with significant disabilities.

h. Special Education Hearing Impaired K-12 (coursework specific to the needs of hearing impaired students)—Assessment and evaluation; special needs of students with disabilities; transition; instructional strategies and planning in the content areas; instructional strategies in literacy; education law, special education law, school structure; technology in schools; diversity in schools.

i. Special Education Visual Impairments/Blind K-12 (coursework specific to the needs of visually impaired students)—Educational implications of low vision and blindness; orientation and mobility for the classroom

teacher; assessment/evaluation techniques, including functional vision evaluation and reading media assessment; assistive technology for the visually impaired; education law, special education law, school structure; transition.

2. Reading

a. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5: foundations of reading, reading and literacy (9 credit hours)

b. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 4-8 and Grades 6-12: reading and literacy (6 credit hours)

3. Methodology and Teaching

a. For Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music): Methods courses and field experiences. (12 to 15 credit hours)

b. For General-Special Education Mild/Moderate: Grades 1-5: methodology, instructional strategies in core content areas (3 to 6 hours)

c. For General-Special Education Mild/Moderate: Grades 4-8 and Grades 6-12: methodology, instructional strategies in specific core content area (6 hours)

NOTE: For All-Level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

b. For special education Early Interventionist Birth to Five Years (coursework specific to needs of infants, toddlers, and preschoolers)—Curriculum; assessment; early intervention methods; understanding and facilitating play; teaching of reading and mathematics.

c. For special education Significant Disabilities 1-12 (coursework specific to needs of children with significant disabilities, across grades 1-12)—Curriculum development and modifications; transition planning; instructional strategies; inclusive education practices.

d. For special education Hearing Impaired K-12 (coursework specific to needs of children with hearing impairments across grades K-12)—Language development and linguistic principles in language acquisition; speech development, speech reading, audition training; assessment and evaluation; instructional strategies; audiology, and audiology training; anatomy and physiology of the hearing mechanism; auditory assistive devices; history and psychology of deafness; assistive devices and technology; proficiency in either signed, cued, or oral communication.

e. For special education Visual Impairments/Blind K-12 (coursework specific to needs of visually impaired students, across grades K-12)—Instructional strategies; Braille code, teaching Braille reading (with proficiency as defined in LA State Competencies); Nemeth code, teaching Braille mathematics; using slate and stylus.

4. Student Teaching or Internship—6-9 credit hours

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

5. Total hours required in the Grades PK-3, Grades 1-5, Grades 4-8, Grades 6-12, All-Level K-12, Early Interventionist Birth to Five Years, Significant Disabilities 1-12, Hearing Impaired, K-12, and Visual Impairments/Blind K-12 programs—33-39 credit hours

a. Total hours required in the General-Special Education Mild/Moderate: An Integrated to Merged

Approach for Grades 1-5, Grades 4-8 and Grades 6-12 programs – 33-42 credit hours (Electives 0-3 credit hours)

E. Certification Requirements. Colleges/universities will submit signed statements to the Louisiana Department of Education indicating that the student completing the Master's Degree Program alternative certification path met the following requirements:

1. passed PPST components of Praxis (as required for admission);

2. completed all coursework in the Master's Degree alternate certification program with a 2.50 or higher grade point average (GPA);

3. passed the specialty examination (Praxis) for the area of certification (this test was required for admission):

a. grades PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

b. grades 1-5 (regular education and mild/moderate)—Elementary Education: Content Knowledge (#0014);

c. grades 4-8 (regular education and mild/moderate)—Middle school subject-specific licensing examination for content area to be certified;

d. grades 6-12 (regular education and mild/moderate)—Secondary subject-specific examination for content area(s) to be certified. General-Special Education Mild/Moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

e. all-level K-12 Certification—Subject-specific examination for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

f. Special Education Early Interventionist (Birth to Five Years), Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014) specialty examination;

4. passed the pedagogy examination (Praxis):

a. grades PK-3 Principles of Learning and Teaching Early Childhood (#0521);

b. grades 1-5—Principles of Learning and Teaching K-6 (#0522);

c. grades 4-8—Principles of Learning and Teaching 5-9 (#0523);

d. grades 6-12—Principles of Learning and Teaching 7-12 (#0524);

e. all-level K-12 Certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

f. General-Special Education Mild/Moderate—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild to Moderate Disabilities (#0542); In addition to one of the following aligned to candidates grade level:

i. grades 1-5: Principles of Learning and Teaching K-6 (#0522);

ii. grades 4-8: Principles of Learning and Teaching 5-9 (#0523);

iii. grades 6-12: Principles of Learning and Teaching 6-12 (#0524);

g. Special Education Early Interventionist Birth to Five Years—Education of Exceptional Students: Core Content Knowledge (#0353) and Principles of Learning and Teaching: Early Childhood (#0521)

h. Special Education Significant Disabilities 1-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Severe to Profound Disabilities (#0544);

i. Special Education Hearing Impaired K-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Hearing Impairment (#0271);

j. Special Education Visual Impairments/Blind K-12—Education of Exceptional Students: Core Content Knowledge (#0353);

5. prior to receiving a Level 1 or higher professional teaching certificate, a candidate who entered an alternate certification program after May 1, 2004, is required to demonstrate proficiency in the Reading Competencies as adopted by the BESE through either of the following:

a. successfully complete the same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3 or Elementary 1-5 programs, 9 hours;

ii. middle grades 4-8 programs, 6 hours;

iii. secondary 6-12 or All-Level K-12 programs, 3 hours;

iv. special Education areas (Early Interventionist, Hearing Impaired, Significant Disabilities, or Visually Impaired), 9 hours; or

b. pass a reading competency assessment.

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 32:1792 (October 2006), amended LR 35:

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to: Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel Alternate Teacher Preparation Programs**

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

This revised policy will align with the undergraduate General/Special Education Mild/Moderate: An Integrated to Merged Approach program grade level and certification structure. It will result in programs that better prepare special education and regular education teachers to more effectively meet the needs of all children. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0904#036

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Certification-Only Program Alternative Path to Certification (LAC 28:CXXXI.237)

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 746—Louisiana Standards for State Certification of School Personnel: §237. Certification-Only Program Alternative Path to Certification*. This policy revision will allow state approved private providers as well as Louisiana colleges or universities to offer a certification only program. In addition, this policy will allow increased flexibility of delivery and expanded alternate certification options for individuals holding baccalaureate degrees to become certified in Louisiana. Currently, the non-masters/certification-only program can

only be offered by Louisiana colleges or universities with an approved teacher education program.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 2. Louisiana Teacher Preparation Programs Subchapter B. Alternate Teacher Preparation Programs §237. Certification-Only Program Alternative Path to Certification

A. State approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Certification-Only Program for certification in Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), Early Interventionist Birth to Five Years, Hearing Impaired K-12, Significant Disabilities 1-12, and Visual Impairments/Blind K-12. This program offers flexibility in delivery (e.g., face to face and/or online) and is designed to serve candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program.

B. All programs must address the state and national standards, including the performance-based standards for accreditation and licensure (e.g., CEC, NCTE, NCTM, NCSS, NAEYC, etc.).

C. Admission to the Program

1. Screening. The selection process will identify candidates that possess critical thinking skills, proven track records of achievement, a belief that all students can achieve, and a strong desire to teach in schools that educate under-served children.

2. Degree Requirements. Possess a non-education baccalaureate degree from a regionally accredited university.

3. GPA Requirements. The GPA may be calculated using the last 60 hours of coursework earned from a regionally accredited university:

- a. have 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a private provider program;
- b. have 2.20 or higher grade point average (GPA) on a 4.00 scale to enter a college or university program;

4. Testing Requirements

a. Pass the Praxis Pre-Professional Skills Tests (PPSTs). Candidates who already possess a graduate degree will be exempted from this requirement. An ACT composite score of 22 or a SAT combined verbal/critical reading and math score of 1030 may be used in lieu of Praxis I PPST exams.

b. Pass the Praxis content-specific subject area examination:

- i. candidates for PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);
- ii. candidates for Grades 1-5—Elementary Education: Content Knowledge (#0014);
- iii. candidates for Grades 4-8—Pass the middle school subject-specific examination for the content area(s) to be certified;
- iv. candidates for Grades 6-12—Pass the secondary subject-specific examination for the content area(s) to be certified. If no examination has been adopted

for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

v. candidates for All-Level K-12 areas of art, dance, foreign language, health and physical education, and music—Pass the subject-specific examination for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. Provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

vi. candidates for special education Early Interventionist Birth to Five Years, Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014).

D. Program Requirements and Structure

1. Eighty contact hours of classroom readiness training will focus on instructional design and delivery as well as classroom environment and classroom management. Candidates will be provided with professional guidance, support and opportunities to observe classroom teachers.

2. Knowledge of the Learner and the Learning Environment—12 hours or equivalent contact hours. All courses/contact hours for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course or contact hour. Courses/contact hours must address the following:

a. Grades PK-3, 1-5, 4-8, 6-12—child/adolescent development or psychology, the diverse learner, classroom management/organization/ environment, assessment, instructional design, and reading/ instructional strategies that are content and level appropriate;

b. All-Level K-12 areas—child psychology and adolescent psychology; the diverse learner; classroom management/organization/environment; assessment; instructional design; and reading/instructional strategies (all coursework/contact hours should address grade levels K-12);

c. Special Education Early Interventionist birth to five years (coursework/contact hours specific to infants, toddlers, and preschoolers)—child development or psychology; foundations in early childhood education; teaming, physical, and medical management; understanding and working with families; communication and literacy in early intervention;

d. Special Education Significant Disabilities 1-12 (coursework/contact hours specific to needs of children with significant disabilities)—assessment and evaluation; communication strategies; behavior support; collaborative techniques and family partnerships; physical support, health and safety; special education law; characteristics of individuals with significant disabilities;

e. Special Education Hearing Impaired K-12 (coursework/contact hours specific to the needs of hearing impaired students)—assessment and evaluation; special needs of students with disabilities; transition; instructional strategies and planning in the content areas; instructional strategies in literacy; education law, special education law, school structure; technology in schools; diversity in schools;

f. Special Education Visual Impairments/Blind K-12 (coursework/contact hours specific to the needs of visually impaired students)—educational implications of low vision and blindness; orientation and mobility for the classroom teacher; assessment/evaluation techniques, including functional vision evaluation and reading media assessment; assistive technology for the visually impaired; education law, special education law, school structure; transition.

3. Methodology and Teaching: Six semester hours or equivalent contact hours of content-specific methods courses and field/clinical experiences.

a. For Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), -methods courses/contact hours to include case studies and field experiences.

NOTE: For All-Level K-12 areas (Art, Dance, Foreign Language, Health and Physical Education, and Music), experiences should be provided across grades K-12.

b. For Special Education Early Interventionist Birth to Five Years (coursework/contact hours specific to needs of infants, toddlers, and preschoolers)—curriculum; assessment; early intervention methods (including understanding and facilitating play); teaching of reading and mathematics.

c. For Special Education Significant Disabilities 1-12 (coursework/contact hours specific to the needs of children with significant disabilities)—curriculum development and modifications; transition planning; instructional strategies; inclusive education practices.

d. For Special Education Hearing Impaired K-12 (coursework/contact hours specific to needs of children with hearing impairments, across grades K-12)—language development and linguistic principles in language acquisition; speech development, speech reading, audition training; assessment and evaluation; instructional strategies; audiology and audiology training; anatomy and physiology of the hearing mechanism; auditory assistive devices; history and psychology of deafness; assistive devices and technology; proficiency in either signed, cued, or oral communication.

e. For Special Education Visual Impairments/Blind K-12 (coursework/contact hours specific to needs of visually impaired students, across grades K-12)—instructional strategies; Braille code, teaching Braille reading (with proficiency as defined in LA State Competencies); Nemeth code, teaching Braille mathematics; using slate and stylus.

4. Reading Requirements. Candidates completing an alternate certification program after May 1, 2004, are required to demonstrate proficiency in the reading competencies as adopted by BESE through one of the following options:

a. successfully complete same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3 or elementary 1-5 programs, nine hours;

ii. middle grades 4-8 programs, six hours;

iii. secondary 6-12 or all-level K-12 programs, three hours;

iv. special education areas (Early Interventionist, Hearing Impaired, Significant Disabilities, or Visually Impaired), nine hours; or

b. pass a reading competency assessment.
5. Internship or Student Teaching—six hours, to include participant-oriented methodology seminars.

a. For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), internship or student teaching experiences should be provided across grades K-12.

b. If the candidate has accumulated three years of successful teaching experience in an approved Louisiana school in the area(s) of certification, the private provider/university may substitute the three years of successful teaching experience for the required internship or student teaching portion of the program. Experience accumulated by elementary education certification candidates must be in core content areas at appropriate grade levels.

6. Mentoring and Support. Participants will receive content and/or pedagogy support during the school year through small group seminar meetings. The support will be provided by a master teacher who has experience teaching in the same or similar content area and grade level. The master teacher should focus on student achievement and instructional strategies with the program candidate. The master teacher can give the candidate one-on-one support and offer specific ways that the teacher can improve instruction techniques.

7. Total hours required in the program—27-33 credit hours or equivalent contact hours (405-495). Program requirements must be met within three years.

E. Licensure Requirements

1. Practitioner License (PL2)—a program candidate that is hired as a full-time teacher in an approved Louisiana school will be issued a Practitioner License 2. This license is issued at the request of the Louisiana employing school system for a specific grade level and content area once successful completion of the classroom readiness component has been verified. The teacher is restricted to the specific grade level and content area as designated on the Practitioner License 2.

2. Standard Professional License—a standard Level certificate may be issued after the applicant has:

a. completed all program requirements with a 2.50 or higher GPA (this applies to candidates in a university program); and

b. passed the pedagogy examination (Praxis):
i. grades PK-3—Principles of Learning and Teaching Early Childhood (#0521);
ii. grades 1-5—Principles of Learning and Teaching K-6 (#0522);
iii. grades 4-8—Principles of Learning and Teaching 5-9 (#0523);
iv. grades 6-12—Principles of Learning and Teaching 7-12 (#0524);

v. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

vi. Special Education Early Interventionist Birth to Five Years—Education of Exceptional Students: Core Content Knowledge (#0353) and Principles of Learning and Teaching Early Childhood (#0521);

vii. Special Education Significant Disabilities 1-12—Education of Exceptional Students: Core Content

Knowledge (#0353) and Education of Exceptional Students: Severe to Profound Disabilities (#0544);

viii. Special Education Hearing Impaired K-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Hearing Impairment (#0271);

ix. Special Education Visual Impairments/Blind K-12—Education of Exceptional Students: Core Content Knowledge (#0353);

c. completed all requirements of the Certification-Only alternative certification path as verified to the Louisiana Department of Education by the program provider.

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 32:1794 (October 2006), amended LR 35:

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Certification-Only Program Alternative Path to Certification

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

This policy revision will allow state approved private providers as well as Louisiana colleges or universities to offer a certification only program. In addition, this policy will allow increased flexibility of delivery and expanded alternate certification options for individuals holding baccalaureate degrees to become certified in Louisiana. The adoption of this

policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0904#037

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Mild/Moderate Requirements (LAC 28:CXXXI.629 and 630)

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 746—Louisiana Standards for State Certification of School Personnel*: §629. Requirements to add Mild/Moderate and §630. Requirements to add Mild/Moderate (1-5), (4-8), and (6-12)—Mandatory 7/1/2010. This revision in the Mild/Moderate add-on policy will allow an individual to become certified to teach special education at the specific grade levels of 1-5, 4-8, and 6-12. This change in policy is directly aligned to the undergraduate and alternate General/Special Education Mild/Moderate Integrated to Merged programs. The Blended General/Special Education Mild Moderate certification policy has been under review since September 2006. This review of the undergraduate program included university and district teams that attended three Mild/Moderate Special Education Licensure and Teacher Education Institutes hosted by the Department, Board of Elementary and Secondary Education, and Board of Regents between April-November 2007. Subcommittees were formed from these institutes to develop General/Special Education Mild-Moderate Integrated to Merged add-on certification policy. This is the policy that resulted from the subcommittee meetings.

Title 28

EDUCATION

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

Chapter 6. Endorsements to Existing Certificates

Subchapter B. Special Education Level and Area Endorsements

§629. Requirements to Add Mild/Moderate

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g.,

6-12, 7-12, 9-12), special education certificate, or an All-Level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1. 15 semester hours of special education coursework, as follows:

a. methods/materials for mild/moderate exceptional children;

b. assessment and evaluation of exceptional learners;

c. behavioral management of mild/moderate exceptional children;

d. vocational and transition services for students with disabilities;

e. practicum in assessment and evaluation of M/M exceptional learners; or three years of successful teaching experience in Mild/Moderate.

2. Passing Score for Praxis Exams. Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542).

3. Individuals who have completed all stipulations listed above will have until 7/1/2010 to have this endorsement added to their standard teaching 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 32:1817 (October 2006), amended LR 35:

§630. Requirements to add Mild/Moderate (1-5), (4-8) and (6-12)—Mandatory 7/1/2010

A. Mild/Moderate: 1-5—Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), or Early Interventionist certificate must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours- Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

d. Collaborative Teaming—three semester hours. This course should focus on developing effective

partnerships with parents, family members, general educators and related service providers.

e. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address the strengths and needs of diverse learners in grades 1-5.

f. Reading and Literacy—three semester hours. This course should cover all aspects of state reading competencies at the elementary level, to include literacy intervention for students with disabilities.

2. Passing Score for Praxis exams—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542).

B. Mild/Moderate: 1-5—Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), all-level special education certificate (Significant Disabilities, Visually Impaired or Hearing Impaired), or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

d. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

e. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address the strengths and needs of diverse learners in grades 1-5.

f. Reading and Literacy—three semester hours. This course should cover all aspects of state reading competencies at the elementary level, to include literacy intervention for students with disabilities.

2. Passing Score for Praxis Exams—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542), Principles of Learning and Teaching (PLT): K-6, and Elementary Content Knowledge Exam (0014).

C. Mild/Moderate: Middle Grades 4-8 and Secondary 6-12. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), or Early Interventionist certificate must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Self-Determination and Transition—three semester hours. This course presents self-determination and development, implementation, and evaluation of self-management instructional programs for students. Emphasis is upon using self-management and learning strategies to facilitate self-determination. Provides the teacher with an understanding of the special education transition process as specified by federal and state guidelines and the focus on the design and implementation of transition planning that meets students' physical, affective, cognitive and communicative needs across the contexts of school, community, family life, career and vocation and recreation/leisure.

d. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

e. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

f. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional

strategies, assistive technologies, and instructional materials to address strengths and needs of diverse learners in grades 6-12 with concentration in areas of literacy and numeracy.

2. Passing Score for Praxis Exams

a. Mild/Moderate (4-8) and (6-12)—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542); and

b. Mild/Moderate (4-8)—Principles of Learning and Teaching (PLT): 5-9 and Middle School Content Exam(s); or

c. Mild/Moderate (6-12)—Principles of Learning and Teaching (PLT): 7-12 and High School Content Exam(s).

D. Mild/Moderate: Middle Grades 4-8 and Secondary 6-12. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8) must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Self-Determination and Transition—three semester hours. This course presents self-determination and development, implementation, and evaluation of self-management instructional programs for students. Emphasis is upon using self-management and learning strategies to facilitate self-determination. Provides the teacher with an understanding of the Special Education transition process as specified by federal and state guidelines and the focus on the design and implementation of transition planning that meets students' physical, affective, cognitive and communicative needs across the contexts of school, community, family life, career and vocation and recreation/leisure.

d. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

e. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

f. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials

to address strengths and needs of diverse learners in grades 6-12 with concentration in areas of literacy and numeracy.

2. Passing Score for Praxis Exams

a. Mild/Moderate (4-8) and (6-12)—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542); and/or

b. Mild/Moderate (6-12)—Principles of Learning and Teaching (PLT): 7-12 and High School Content Exam(s).

E. Mild/Moderate: Middle Grades 4-8 and Secondary 6-12. Individuals holding a valid secondary certificate (e.g., 6-12, 7-12, 9-12), all-level special education certificate (Significant Disabilities, Visually Impaired, or Hearing Impaired), or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Self-Determination and Transition—three semester hours. This course presents self-determination and development, implementation, and evaluation of self-management instructional programs for students. Emphasis is upon using self-management and learning strategies to facilitate self-determination. Provides the teacher with an understanding of the Special Education transition process as specified by federal and state guidelines and the focus on the design and implementation of transition planning that meets students' physical, affective, cognitive and communicative needs across the contexts of school, community, family life, career and vocation and recreation/leisure.

d. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

e. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

f. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials

to address strengths and needs of diverse learners in grades 6-12 with concentration in areas of literacy and numeracy.

2. Passing Score for Praxis Exams

a. Mild/Moderate (4-8) and (6-12)—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542); and/or

b. Mild/Moderate (4-8)—Principles of Learning and Teaching (PLT): 5-9 and Middle School Content Exam(s).

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 32:1817 (October 2006), amended LR 35:

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards
for State Certification of School
Personnel—Mild/Moderate Requirements**

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

This revision in the Mild/Moderate add-on policy will allow an individual to become certified to teach special education at the specific grade levels of 1-5, 4-8, and 6-12. This change in policy is directly aligned to the undergraduate and alternate General/Special Education Mild/Moderate Integrated to Merged programs. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
Management and Finance
0904#039

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-Field Authorization to Teach (OFAT) (LAC 28:CXXXI.325)

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 746—Louisiana Standards for State Certification of School Personnel: §325, Out-of-Field Authorization to Teach (OFAT)*. This revision in policy will allow the OFAT certificate to be issued for one three year period. Pursuant to current policy, applicants pursuing certification in the areas of Academically Gifted, Significant Disabilities, Early Interventionists, Hearing Impaired, and Visually Impaired may be granted two additional years on an OFAT. Applicants pursuing certification in the area of Mild/Moderate may be granted one additional year on an OFAT. This action came about from continued requests from Louisiana employing school districts. This change will help decrease the amount of paperwork that has to be submitted annually for the renewals of OFAT certificates.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel
Chapter 3. Teaching Authorizations and
Certifications**

**Subchapter B. Nonstandard Teaching Authorizations
§325. Out-of-Field Authorization to Teach (OFAT)**

A. Out-of-Field Authorization to Teach (OFAT)—issued for one three-year period while the holder pursues endorsement (add-on) certification requirements. If the teacher is actively pursuing certification in the field and the Louisiana Department of Education has designated the area as an area that requires extensive hours for completion, up to two additional years of renewal may be granted.

B. Eligibility Requirements: Issued to an applicant who holds a valid Louisiana Out-of-State Certificate; Temporary Employment Permit; or a Type C, Type B, Type A, Level 1,

Level 2, or Level 3 teaching certificate but is teaching outside of the certified area(s).

C. OFAT Stipulations

1. Districts must submit the application and provide an affidavit signed by the local superintendent verifying that good faith efforts for recruiting certified personnel have been made, including consulting the Teach Louisiana website; that "there is no regularly certified, competent, and suitable person available for the position;" and that the applicant is the best-qualified person for the position.

2. If the teacher is actively pursuing certification in the field and the Louisiana Department of Education designates the area as an area that requires extensive hours for completion, up to two additional years of renewal may be granted. Designated areas are as follows:

a. applicants pursuing certification in Academically Gifted, Significant Disabilities, Early Interventionist, Hearing Impaired, and Visual Impairments/Blind may be granted two additional years of renewal;

b. applicants pursuing certification in Mild/Moderate may be granted one additional year of renewal.

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 32:1804 (October 2006), amended LR 33:2355 (November 2007), LR 35:

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel—Out-of-Field
Authorization to Teach (OFAT)**

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

This revision in policy will allow the Out-of-Field Authority to Teach (OFAT) certificate to be issued for one three year period. Pursuant to current policy, applicants pursuing certification in the areas of Academically Gifted, Significant Disabilities, Early Interventionists, Hearing Impaired, and Visually Impaired may be granted two additional years on an OFAT. Applicants pursuing certification in the area of Mild/Moderate may be granted one additional year on an OFAT. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment

Beth Scioneaux
Deputy Superintendent
0904#038

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1179—Driver Education, Traffic Safety, and
Administrative Guide for Louisiana Schools
(LAC 28:XXXI.503 and 507)

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 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools*: §503. Driver Education and Training Program for Children and §507. Driver Education; Required. The proposed policies require that (1) the Department of Education now work in consultation with the Department of Public Safety and Corrections to develop and operate a driver education course; (2) replace "children of secondary school age" with "children who are 15 years of age or older" for participation in a driver education course; and (3) increase actual driving experience from six hours to eight hours in a driver education course. The proposed policy changes are the result of SB 465 passed during the 2008 Regular Legislative Session.

Title 28

Part XXXI. Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools Chapter 5. Administrative Policies

§503. Driver Education and Training Program for Children (R.S.17:270)

A. The State Board of Education and the State Department of Education, in consultation with the Department of Public Safety and Corrections, shall establish and operate a driver education and training program in each parish of this state for children who are 15 years of age or older. The program shall consist of a course of not less than eight hours of actual driving experience and 30 hours of classroom instruction. The State Board of Elementary and Secondary Education shall provide written notice to each city, parish, and local school board of the requirements of the provisions of this Subsection.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1219 (July 1999), amended LR 35:

§507. Driver Education; Required (R.S.32:402.1)

A. No application for a license for the operation of a motor vehicle shall be received from any person 17 years or older making application for the first time unless there is also submitted with the application, on a form approved by the secretary of the Department of Public Safety and Corrections, written evidence of the successful completion by the applicant of:

1. a "driver education course", which shall consist of not less than eight hours of actual driving experience and 30 hours of classroom instruction, including but not limited to training of railroad and highway grade crossing safety, approved by the Department of Public Safety and Corrections or the Department of Education.

A.2. - B. ...

C. Beginning one year after the appropriation of funds by the legislature to the State Department of Education for the implementation of a driver education and training program for all children of secondary school age in each parish of this state, and upon the certification by the state superintendent of education to the secretary of public safety that such program is operating in each parish of this state, no application for the operation of a motor vehicle shall be received from a minor 16 years of age or older unless there is also submitted with the application, on a form approved by the secretary of public safety, written evidence of successful completion by the applicant of a "driver education course" approved by the State Board of Elementary and Secondary Education or the Department of Public Safety and Corrections.

D. No person under the age of 15 shall be allowed to enroll or participate in any driver education course or driver training program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1220 (July 1999), amended LR 35:

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? Yes.

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? Yes. As a result of the proposed policy, a student is now required to participate in eight hours of actual driving experience in a driver education course instead of six hours. Also, a student must now be 15 years of age instead of "secondary school age" to participate in a driver education course.

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 via the U.S. Mail until 4:30 p.m., June 9, 2009, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools

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

There is no estimated savings to the state or local governmental units associated with the proposed policy changes.

It is estimated that the policy changes will result in an approximate cost of \$164.00 to the state for printing charges associated with the Louisiana Register.

Local governmental units (local school districts) may incur an increase in operating costs due to the proposed increase in driving hours. It should be noted, however, that the operating costs of driver education courses are covered through fees paid by parents of attending students. It is anticipated that any increase in personnel/operating costs to local school districts will be offset by an increase in fees to parents of participating students.

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

The proposed policy changes will have no anticipated or measurable effect on revenue collection of state and local governmental units

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

The proposed policy changes could impact persons paying fees for driver education courses. Local governmental units (local school districts) may incur an increase in operating costs due to the proposed increase in driving hours. It is anticipated that any increase in personnel/operating costs to local school districts will be offset by an increase in fees to parents of participating students. Any adjustment in the fees will be determined by the local school district.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy changes will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0904#041

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Cosmetology and Proprietary Schools
(LAC 28:IV.301, 805, 1901, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking will provide the regulatory framework necessary to implement Act 754 of the 2008 Regular Session to allow students who qualify for the TOPS Tech Award to use their award at an eligible cosmetology or proprietary school. The rulemaking provides definitions, requirements to maintain eligibility and billing procedures for the affected schools.

**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.

Average Award Amount (TOPS-Tech)—is applicable to those students awarded the TOPS-Tech and TOPS Opportunity, Performance, and Honors Awards who attend LAICU colleges and universities and to those students awarded the TOPS-Tech Award who attend an eligible cosmetology or proprietary school and are enrolled in a vocational, technical education certificate or diploma program or non-academic undergraduate degree program, and is determined by dividing the total dollar value of awards, which are made to students enrolled in the same types of programs in the prior program year (non-academic program) at eligible public colleges and universities that do

not offer academic degrees at the baccalaureate level, by the total number of students that received the awards. To ensure that the average award amount (TOPS Tech) is not reduced for students during program year (non-academic program) 2006-2007 because of the adverse affects of Hurricanes Katrina and Rita on student enrollment, the average award amount (TOPS Tech) for program year (non-academic program) 2006-2007 shall be the same as calculated for program year (non-academic program) 2005-2006.

Eligible Cosmetology or Proprietary School—a cosmetology or proprietary school that is included as an eligible college or university in this Section.

Full-Time Student—

a. - f. ...

g. a student enrolled in an eligible cosmetology or proprietary school who is considered by the school to be enrolled full time on a billing date as provided in §1903.B.2.b.

Steady Academic Progress—the maintenance of a minimum cumulative grade point average of 2.00 on a 4.00 scale, except at eligible cosmetology or proprietary schools, where it is meeting the federal grant aid requirement for steady academic progress at that 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), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:

**Chapter 8. TOPS-Tech Award
§805. Maintaining Eligibility**

A. - A.6. ...

7. maintain, by the end of the spring term, a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale, provided that this requirement does not apply to a student who is enrolled in a cosmetology or proprietary school that is an eligible college or university and the student has met the federal grant aid steady academic progress requirement at that school; and

8. earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the program year (non-academic program). Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's

eligibility. provided that this requirement does not apply to a student who is enrolled in a cosmetology or proprietary school that is an eligible college or university and the student has met the federal grant aid steady academic progress requirement at that school.

B. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) amended LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), repromulgated LR 27:1856 (November 2001), amended LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1165 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:438 (March 2007), LR 35:

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1901. Eligibility of Post-Secondary Institutions to Participate

A. - E. ...

F. Eligible cosmetology proprietary schools may participate in TOPS, but only for the TOPS Tech Award.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 30:784 (April 2004), LR 31:3111 and 3114 (December 2005), LR 35:

§1903. Responsibilities of Post-Secondary Institutions

A. - B.1. ...

2. institutions will bill LASFAC based on their certification that the recipient of a TOPS Award or a GO-Youth ChalleNge Program Grant is enrolled full-time, as defined in §301:

a. at eligible colleges and universities, except cosmetology and proprietary schools, at the end of the fourteenth class day or later for semester schools and the ninth class day or later for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the full summer session. Institutions shall not bill for students who are enrolled less than full-time at the end of the fourteenth class day for semester schools or the ninth class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the summer session, unless the student qualifies for payment for less than full-time enrollment as defined in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment after the fourteenth or ninth class day, as applicable, shall be returned to the state. Refunds to students

who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures;

b. at eligible cosmetology or proprietary schools, on a billing date for students who were enrolled full time on that date. The billing dates are September 1, December 1, March 1 and June 1. Institutions shall not bill for students who are enrolled less than full-time on a billing date, unless the student qualifies for payment for less than full-time enrollment as provided in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures;

B.3. - 7.a. ...

b. all other eligible colleges and universities, except eligible cosmetology or proprietary schools, may bill for an amount up to the *average award amount (TOPS-Tech)*, as defined in §301;

c. eligible cosmetology and proprietary schools may bill for an amount of up to one quarter of the annual *average award amount (TOPS-Tech)*, as defined in §301;

B.8. - D.5.a. ...

b. verify the student is in good standing;

6. for TOPS-Tech Awards at cosmetology or proprietary schools:

a. verify the student has continued to make steady academic progress; and

b. verify the student is enrolled full time on the billing date.

E. - G. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007).

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG09105NI)

Interested persons may submit written comments on the proposed changes (SG09105NI) until 4:30 p.m., May 11, 2009, 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: Cosmetology and Proprietary Schools

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

On October 20, 2008, a Notice of Intent was published that contained proposed changes to the Scholarship and Grant Program Rules to implement Act 754 of the 2008 Regular Session of the Louisiana Legislature. Act 754 authorized the use of the TOPS Tech award at certain cosmetology and proprietary schools beginning with the 2009-2010 academic year and it was estimated that the proposed change would increase TOPS program expenditures by \$118,787 for the 2009-10 state fiscal year and \$211,160 for 2010-11. A final rule incorporating those changes was published on February 20, 2009. This change proposes procedures and processes to further provide for the administration of the new rule and its adoption will not result in any additional costs to the state or local governments.

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 may use their TOPS Tech award because of Act 754 of the 2008 Regular Session of the Louisiana Legislature by enrolling in an in-state proprietary or cosmetology school to further their education and probably remain in Louisiana upon completion of their education. 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)

These changes give students more education options by including cosmetology and proprietary schools. Any 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
0904#018

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Tuition Trust Authority
Office of Student Financial Assistance**

Interest Rates—2008 (LAC 28:VI.107 and 315)

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

The proposed Rule will implement a change in Section 529 of the IRS Code, which provides that expenses related to computer purchases and computer software are included in the definition of qualified higher education expenses for calendar years 2009 and 2010. The Rule also adds the interest rates for the 2008 calendar year.

Title 28

EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings

Chapter 1. General Provisions

Subchapter A. Tuition Trust Authority

§107. Applicable 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:

* * *

Qualified Higher Education Expenses—

a. tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution; and

b. room and board; and

c. expenses for special needs services in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance; and

d. for the calendar years 2009 and 2010 only, expenses paid or incurred for the purchase of any computer technology or equipment or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution, but shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominately educational in nature.

* * *

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 33:443 (March 2007), LR 34:1885 (September 2008), LR 35:

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A. - B.18. ...

19. For the year ending December 31, 2008, the Louisiana Education Tuition and Savings Fund earned an interest rate of 4.65 percent.

20. For the year ending December 31, 2008, the Savings Enhancement Fund earned an interest rate of 4.39 percent.

C. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761

(August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (ST09106NI)

Interested persons may submit written comments on the proposed changes (ST09106NI) until 4:30 p.m., May 11, 2009, 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: Interest Rates—2008

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

There are no estimated implementation costs or savings to state or local governmental units. This rulemaking places in rule the actual earnings realized by START account owners who invested in the Louisiana Principal Protection investment option and the actual earnings realized on the investment of Earnings Enhancements. This increase in START funds belongs to the account owner (it is not state general fund money), and no expenditure of state general funds is required. This rulemaking will also authorize the use of START funds to purchase computer technology. Since these are not state funds, there is no cost to the state due to this rulemaking.

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)

These changes adopt the actual interest rates for deposits made to the START Louisiana Principal Protection investment option and earnings enhancements for the year ending December 31, 2008. In addition, Louisiana families will benefit from the amendment that allows the purchase of computers, computer software, and computer equipment for calendar years 2009 and 2010 with START Section 529 tax free funds.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

George Eldredge
General Counsel
0904#017

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Abrasive Blasting (LAC 33:III.1327 and 1333)(AQ303)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.1327 and 1333 (Log #AQ303).

This rule will correct two instances of an American Society for Testing and Materials (ASTM) citation, which needs to be updated in order to reflect current ASTM method references. The citation for "ASTM standard D 75-87, reapproved 1992," should read "ASTM standard D 75-03." The basis and rationale for this rule are to keep the Louisiana air regulations accurate and current. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33 ENVIRONMENTAL QUALITY

Part III. Air

Chapter 13. Emission Standards for Particulate Matter (Including Standards for Some Specific Facilities)

Subchapter F. Abrasive Blasting

§1327. Blasting Operations

A. - A.1. ...

2. Abrasives shall contain less than 10 percent (by weight) of fines that would pass through a No. 80 sieve as documented by the supplier. If supplier documentation is not provided for weight percent of fines in abrasive material, samples shall be taken according to ASTM standard ASTM D 75-03 before initial use.

A.3. - B.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:822 (May 2007), amended LR 35:

§1333. Recordkeeping and Reporting

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

b. if abrasive material is being reused, weight percent of fines as determined by sampling. For the purpose of determining weight percent of fines in abrasive material, samples shall be taken according to ASTM standard ASTM D 75-03;

A.5. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:824 (May 2007), amended LR 35:

Family Impact Statement

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

A public hearing will be held on May 28, 2009, 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 Christopher A. Ratcliff at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ303. Such comments must be received no later than June 4, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to chris.ratcliff@la.gov. 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 AQ303. 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; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Abrasive Blasting

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 as a result of the proposed rule.

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

There are no estimated implementation costs (savings) to state or local governmental units as a result of the proposed rule.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment as a result of the proposed rule.

Herman Robinson, CPM
Executive Counsel
0904#022

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Incorporation by Reference for 2008
(LAC 33:I.3931; III.506, 507, 2160, 3003, 5116, 5122, 5311, and 5901; V.3099; IX.2301, 4901, and 4903; and XV.1599)
(MM011ft)

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 Environmental Quality regulations, LAC 33:I.3931; III.506, 507, 2160, 3003, 5116, 5122, 5311, and 5901; V.3099; IX.2301, 4901, and 4903; and XV.1599 (Log #MM011ft).

This rule is identical to federal regulations found in 10 CFR 71, App. A, 1/1/2008; 40 CFR 51, App. M, 60-61, 63, 68, 70.6(a), 117.3, 136, 266, App. I-IX and XI-XIII, 302.4, 302.6(e), 355.40(a)(2)(vii), 401, and 405-471, 7/1/2008; and subsequent revisions to 40 CFR 60 and 63 in the *Federal Register* (see rule text), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

The date of publication for the Code of Federal Regulations (CFR) volumes as contained in the various parts of the Title 33, Environmental Quality, regulations is being updated to reflect that the CFR volumes incorporated by reference into the state regulations are the volumes published in 2008. This rule incorporates by reference (IBR) into LAC 33:I, III, V, IX, and XV the corresponding federal reportable quantity list of hazardous substances in 40 CFR 117.3 and 302.4, July 1, 2008; administrative reporting exemptions for certain air releases of NO_x in 40 CFR 302.6(e) and 355.40(a)(2)(vii), July 1, 2008; Capture Efficiency Test Procedures in 40 CFR Part 51, Appendix M, July 1, 2008; Standards of Performance for New Stationary Sources in 40 CFR Part 60, July 1, 2008; National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61, July 1, 2008; NESHAP for Source Categories in 40 CFR Part 63, July 1, 2008; Chemical Accident Prevention and Minimization of Consequences in 40 CFR Part 68, July 1, 2008; Part 70 Operating Permits Program in 40 CFR 70.6(a), July 1, 2008; Federal SO₂ Model Rule in 40 CFR Part 96, July 1, 2008; hazardous waste regulations in

40 CFR Part 266, Appendices I-IX and XI-XIII, July 1, 2008; National Pollutant Discharge Elimination System regulations in 40 CFR Parts 136, 401, 405-471, July 1, 2008; and radiation regulations in 10 CFR Part 71, Appendix A, January 1, 2008. Also incorporated are subsequent revisions to 40 CFR Parts 60 and 63 promulgated in the *Federal Register*. In order for Louisiana to maintain equivalency with federal regulations, the most current CFR volumes must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference rule will keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this rule are to mirror the federal regulations in order to maintain equivalency. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations

1. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

a. 40 CFR 117.3, July 1, 2008, Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

b. 40 CFR 302.4, July 1, 2008, Table 302.4—List of Hazardous Substances and Reportable Quantities.

2. Notification Requirements. The following administrative reporting exemptions are hereby incorporated by reference:

a. 40 CFR 302.6(e), July 1, 2008—Notification Requirements; and

b. 40 CFR 355.40(a)(2)(vii), July 1, 2008—Emergency Release Notification.

B. - C. ...

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 33:2628 (December 2007), LR 34:69 (January

2008), LR 34:866 (May 2008), repromulgated LR 34:981 (June 2008), amended LR 35:

Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. - B.4 ...

C. Annual Sulfur Dioxide. Except as specified in this Section, The Federal SO₂ Model Rule, published in the *Code of Federal Regulation* at 40 CFR Part 96, July 1, 2008, is hereby incorporated by reference, except for Subpart III—CAIR SO₂ OPT-in Units and all references to opt-in units.

D. - 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), LR 33:2083 (October 2007), LR 34:978 (June 2008), LR 35:

§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, 2008. 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), LR 33:2083 (October 2007), LR 33:2630 (December 2007), LR 34:1391 (July 2008), LR 35:

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, 2008, 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 33:1620 (August 2007), LR 34:1391 (July 2008), LR 35:

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, 2008, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are the following revisions to 40 CFR Part 60: stay of effective date of Subpart Ja as promulgated on July 28, 2008, in the *Federal Register*, 73 FR 43626-43627; amendments to Subpart JJJJ as promulgated on October 8, 2008, in the *Federal Register*, 73 FR 59175-59178; and amendments to Subparts D, Da, Db, and Dc as promulgated on January 28, 2009, in the *Federal Register*, 74 FR 5072-5093.

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), LR 33:2092 (October 2007), LR 33:2626 (December 2007), LR 34:1391 (July 2008), LR 35:

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, 2008, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

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), LR 33:2094 (October 2007), LR 34:1391 (July 2008), LR 35:

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, 2008, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference are the following revisions to 40 CFR Part 63, applicable to major sources: withdrawal of and revision to Subpart M as promulgated on July 11, 2008, in the *Federal Register*, 73 FR 39871-39875; partial withdrawal of direct final rule and amendments to Subpart EEEE as promulgated on July 17, 2008, in the *Federal Register*, 73 FR 40977-40982; and amendments to Subpart BBBB as promulgated on July 22, 2008, in the *Federal Register*, 73 FR 42529-42532.

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), LR 33:2095 (October 2007), LR 33:2677 (December 2007), LR 34:1392 (July 2008), LR 35:

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, 2008, are hereby incorporated by reference as they apply to area sources in the state of Louisiana. Also incorporated by reference are the following revisions to 40 CFR Part 63, applicable to area sources: withdrawal of and revision to Subpart M as promulgated on July 11, 2008, in the *Federal Register*, 73 FR 39871-39875; Subpart XXXXXX as promulgated on July 23, 2008, in the *Federal Register*, 73 FR 42977-43011; and Subpart YYYYYY as promulgated on December 23, 2008, in the *Federal Register*, 73 FR 78637-76847.

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), LR 33:2096 (October 2007), LR 34:1392 (July 2008), LR 35:

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, 2008.

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 Secretary, Legal Affairs Division, LR 32:810 (May 2006), LR 33:1621 (August 2007), LR 34:1392 (July 2008), LR 35:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3099. Appendices—Appendix A, B, C, D, E, F, G, H, I, J, K, and L

Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals

A. 40 CFR 266, Appendix I, July 1, 2008, is hereby incorporated by reference.

Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine

A. 40 CFR 266, Appendix II, July 1, 2008, is hereby incorporated by reference.

Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

A. 40 CFR 266, Appendix III, July 1, 2008, is hereby incorporated by reference.

Appendix D. Reference Air Concentrations

A. 40 CFR 266, Appendix IV, July 1, 2008, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, Appendix VIII and 266, Appendix V shall mean LAC 33:V.3105, Table 1 and LAC 33:V.3099, Appendix E, respectively.

Appendix E. Risk-Specific Doses (10⁻⁵)

A. 40 CFR 266, Appendix V, July 1, 2008, is hereby incorporated by reference.

Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]

A. 40 CFR 266, Appendix VI, July 1, 2008, is hereby incorporated by reference.

Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues

A. 40 CFR 266, Appendix VII, July 1, 2008, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105, Table 1, 3025.B.1 and B.2.a, and LAC 33:V.2299.Appendix, Table 2, respectively.

Appendix H. Organic Compounds for Which Residues Must Be Analyzed

A. 40 CFR 266, Appendix VIII, July 1, 2008, is hereby incorporated by reference.

Appendix I. Methods Manual for Compliance with the BIF Regulations

A. 40 CFR 266, Appendix IX, July 1, 2008, is hereby incorporated by reference, except as follows.

A.1. – B. ...

Appendix J. Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters

A. 40 CFR 266, Appendix XI, July 1, 2008, is hereby incorporated by reference.

Appendix K. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces

A. 40 CFR 266, Appendix XII, July 1, 2008, is hereby incorporated by reference, except that the footnote should be deleted.

Appendix L. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

A. 40 CFR 266, Appendix XIII, July 1, 2008, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII shall mean LAC 33:V.3105, Table 1.

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 22:827 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:751 (April 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 33:640 (April 2007), LR 34:866 (May 2008), LR 35:

Part IX. Water Quality

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

Chapter 23. Definitions and General LPDES Program Requirements

§2301. General Conditions

A. – E. ...

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter shall refer to those regulations published in the July 1, 2008 CFR, unless otherwise noted.

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 23:199 (February 1997), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December

2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:230 (February 2004), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 33:2365 (November 2007), LR 34:867 (May 2008), LR 35:

Chapter 49. Incorporation by Reference §4901. 40 CFR Part 136

A. 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2008, in its entirety, is hereby incorporated by reference.

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 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 35:

§4903. 40 CFR, Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2008, are hereby incorporated by reference.

B. Amendments as promulgated in the *Federal Register* to 40 CFR 412.37 and 412.46 in 73 FR 70485-70486, November 20, 2008, are hereby incorporated by reference.

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 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division LR 32:604 (April 2006), LR 32:819 (May 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 35:0000 (April 2009), LR 35:

Part XV. Radiation Protection

Chapter 15. Transportation of Radioactive Material

§1599. Appendix—Incorporation by Reference of 10 CFR Part 71, Appendix A, Tables A-1, A-2, A-3, and A-4; Procedures for Determining A₁ and A₂ [Formerly §1517]

A. Tables A-1, A-2, A-3, and A-4 in 10 CFR Part 71, Appendix A, January 1, 2008, are hereby incorporated by reference. These tables are used to determine the values of A₁ and A₂, as described in Subsections B-F of this Section.

B. – F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005),

amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 34:2114 (October 2008), LR 35:

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on May 28, 2009, 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 Christopher A. Ratcliff at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by MM011ft. Such comments must be received no later than May 28, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to chris.ratcliff@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 MM011ft. 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; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

0904#005

NOTICE OF INTENT

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

General Subgrant Guidelines
(LAC 22:III.Chapters 41 and 43)

In accordance with the provision of R.S. 15:1204, R.S. 14:1207, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby gives notice of its intent to promulgate rules and regulations relative to subgrants.

The text of this Notice of Intent may be viewed in its entirety in the Declaration of Emergency section of this issue of the *Louisiana Register*.

Family Impact Statement

There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

Interested persons may submit written comments on this proposed rule no later than May 10, 2009 at 5 p.m. to Bob Wertz, Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Judy A. Dupuy
Executive Director

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

RULE TITLE: General Subgrant Guidelines

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

This provision will empower and provide a process for the Priorities Committee of the Commission to act in the event of emergency circumstances and to allocate and award federal grant funds to state and local criminal justice agencies. Any such allocations or grant awards would be subject to legislative appropriation and ratification by the full Commission.

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

Implementation of the proposed rule will not increase revenue collections of state or local governmental units.

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

It is estimated that implementation of the proposed rule could accelerate the distribution of federal grant funds to state and local criminal justice agencies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition or employment in the public or private sector as a result of this proposal.

Judy A. Dupuy
Executive Director
0904#048

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Peace Officer Training
(LAC 22:III.4703, 4707, and 4721)

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 gives notice of its intent to 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

§4703. Basic Certification

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

2. Level 2 Certification for Basic Correctional Peace Officer

a. The student will complete a training course with a minimum of 218 hours and is limited to those peace officers whose duties are the care, custody, and control of inmates. The training course consists of corrections core curriculum plus a sufficient number of hours to obtain POST certification. POST Firearm certification for Level 2 students is required (effective March 26, 2001).

b. - c. ...

3. Level 3 Certification for Jailer Training Officers

a. The student will complete a training course with a minimum of 90 hours and is limited to those correctional officers whose duties are the care, custody, and control of inmates. This course consists of the core correctional officer curriculum. POST Firearm certification for Level 3 students is not required.

B. - B.4 ...

C.1. Students shall be required to pass the POST statewide written examination for peace officers as prescribed by state law. Seventy percent shall constitute a passing score. The time limit for completing the statewide written examination is 90 minutes unless specifically modified by the council.

2. In the event a student fails the written examination, one retest may be administered if the agency head requests it. However, the student must wait a minimum of 15 working days before the retest can be administered with a maximum time limit of 30 working days. If the respective student fails the retest, the student shall be required to complete another basic training course and satisfy all POST requirements to obtain certification.

3. Oral testing on the statewide examination if prohibited.

D. To maintain firearm certification, an officer shall be required to requalify yearly on the POST firearms qualification course, demonstrating at least 80 percent proficiency. Scores shall be computed and verified by a POST certified firearms instructor. If the period between qualifying exceeds 18 months for any reason, the officer will be required to successfully complete a firearms course prescribed by the POST council conducted by a POST certified firearms instructor, unless the officer had been in the military for more than five years and was exercising their veteran reemployment rights.

E. ...

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 13:434 (August 1987), amended LR 25:663

(April 1999), LR 27:49 (January 2001), LR 28:475 (March 2002), LR 31:2008 (August 2005), LR 35:

§4707. Out-of-State Transfers

A. - A.5. ...

B. Out of state transfers with less than the minimum basic training course hours or a cumulative training equivalent (as determined by the Council) are required to complete an entire POST basic training course.

C. ...

D. Out of state corrections training courses are not accepted toward certification of Basic Corrections Peace Officer (Level 2) or Jailer Training Officers (Level 3).

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 13:434 (August 1987), amended LR 25:664 (April 1999), LR 35:

§4721. Firearms Qualification

A. - A.1. ...

B. Pre-Academy and Basic Firearms Qualification

1. - 1.b....

2. On a 25-yard range equipped with POST-approved P-1 targets, the student given a pistol or revolver and 240 rounds of ammunition, will fire the POST firearms qualification course at least four times. Scores must be averaged and the student must:

B.2.a. - C.2. ...

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 13:435 (August 1987), amended LR 25:664 (April 1999), LR 35:

Interested persons may submit written comments on this proposed Rule no later than June 15, 2009 at 5 p.m. to Bob Wertz, Peace Officer Standards and Training Council, Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Judy Dupuy
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Peace Officer Training

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

Implementation of the proposed rule will not have any impact on expenditures for state or local governmental units.

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

The proposed rule will not increase revenue collections of state or local governmental units.

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

The proposed rule will have little or no effect on directly affected persons or non-governmental groups. Minor clarifications are being made in the POST qualification course, policies for POST curriculums and written examinations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition or employment in the public or private sector as a result of this proposed amendment.

Judy A. Dupuy
Executive Director
0904#049

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

Membership Requirements
(LAC 4:VII.1151 and 1153)

In accordance with the Administrative Procedures Act, R.S. 49:950(B) et seq., the Governor's Office of Elderly Affairs proposes to amend LAC 4, Part VII, Chapter 11 Sections 1151 and 1153, regarding the requirements for individuals to serve on the council on aging board of directors.

The purpose of this proposed Rule is to clarify the requirements for persons to serve on a council on aging board of directors. There will be no adverse fiscal impact on the state as a result of this Rule inasmuch as the members of the council on aging board of directors are volunteers and are not reimbursed for participation.

**Title 4
ADMINISTRATION
Part VII. Governor's Office**

Chapter 11. Elderly Affairs

Subchapter C. Council on Aging

§1151. Establishment of Parish Councils on Aging

A. ...

B. Governance

1 - 3.e. ...

f. For board member's qualifications, refer to §1153.B.

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:87.2(E), 46:932(8), 46:1601, 46:1602, 46:1605.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 25:1467 (August 1999), amended LR 35:

§1153. Membership

A. ...

B. Board of Directors

1 - 6.e. ...

f. If a council on aging's charter is revoked, by the Governor's Office of Elderly Affairs and the formation of a new council on aging for the parish is approved, former board members who served during the 12-month period prior to the time of revocation shall be prohibited from serving as board members on the council on aging board for a period of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8), 46:1602, 46:1603.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 25:1468 (August 1999), amended LR 35:

Family Impact Statement

The effect of this Rule on the stability of the family. This Rule does not affect the stability of the family.

The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule does not deal with the education or supervision of children and will not make an impact of families with children.

The effect of this Rule on the functioning of the family. This Rule does not affect the functioning of the family.

The effect of this Rule on the behavior and personal responsibly of children. This Rule does not deal with children and will not have any impact.

The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. N/A

Interested persons should submit written comments on the proposed Rule to Beverly Armstead, Office of Elderly Affairs through the close of business May 10, 2009 at 412 North Fourth Street, Third Floor, Baton Rouge, LA 70802.

James Bulot, Ph.D.
Executive Director

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

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

The only cost of implementation is the minimal cost of the rulemaking. No savings to the state is anticipated, and there are no anticipated costs or savings to local governmental units.

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

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

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

This proposed rule details the requirements of the Board of Directors for the parish council on aging. There will be no additional costs to the Governor's Office of Elderly Affairs contractors and subcontractors, including area agencies on aging, parish councils on aging and other service providers, or the elderly residents of the state. This proposed rule will not make any changes in the economic benefits to the elderly.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule is not anticipated to have any effect on competition or employment in the public or private sectors.

James Bulot, Ph.D.
Executive Director
0904#054

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Dentistry

Continuing Education Requirements for
Relicensure of Dentists, Dental Hygienists
(LAC 46:XXXIII.1611, 1613, and 1615)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1611, 1613, and 1615. No preamble has been prepared. There will be no family impact in regard to issues set forth in R.S. 49:972.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 16. Continuing Education Requirements

§1611. Continuing Education Requirements for Relicensure of Dentists

A. - B. ...

C. No more than 20 of the required 40 hours can be completed from the following:

1. - 2. ...

3. Repealed.

D. ...

E. Past and present dentist members of the Louisiana State Board of Dentistry are allowed four hours of continuing dental education credit for each meeting of the American Association of Dental Examiners attended by said past or present dentist member.

F. No credit will be given for activities directed primarily to persons preparing for licensure in Louisiana.

G. Dentists who are on staffs of hospitals accredited by the Joint Commission on Accreditation of Health Care Organizations may receive continuing education credit for those continuing education courses provided by said hospital.

H. Dentists will be awarded three clinical credit hours for successful completion of Cardiopulmonary Resuscitation Course "C", Basic Life Support for Healthcare Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course. When being audited for compliance with cardiopulmonary resuscitation course completion, a photocopy of the CPR card evidencing successful completion of the course for each year shall be appended to the form.

I. Dentists who successfully complete certification courses in advanced cardiac life support continuing education will be awarded up to 16 hours of clinical continuing dental education. However, dentists completing the shorter recertification course in advanced cardiac life support will be awarded 3 hours of clinical continuing dental education.

J. In order to renew permits for the administration of deep sedation, parenteral sedation, and enteral sedation, each licensee shall complete a board approved course pertinent to the level of their sedation permit no less than once every five years.

1. Recertification for deep sedation or general anesthesia as required by the American Association of Oral and Maxillofacial Surgeons every five years shall satisfy this requirement.

K. Dentists successfully completing the calibration training for the administration of the clinical licensing examination administered by the Council of Interstate Testing Agencies (CITA) may be awarded up to 20 hours of clinical continuing education per each renewal period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:

§1613. Continuing Education Requirements for Relicensure of Dental Hygienists

A. - B. ...

C. No more than 12 of the required 24 hours can be completed from the following:

1. - 2. ...

3. Repealed.

D. - G. ...

H. Dental hygienists who are on staffs of hospitals accredited by the Joint Commission on Accreditation of Health Care Organizations may receive continuing education credit for those continuing education courses provided by said hospital.

I. Dental hygienists will be awarded three clinical credit hours for successful completion of Cardiopulmonary Resuscitation Course "C", Basic Life Support for Healthcare Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course. When being audited for compliance with cardiopulmonary resuscitation course completion, a photocopy of the CPR card evidencing successful completion of the course for each year shall be appended to the form.

J. ...

K. Dental hygienists successfully completing the calibration training for the administration of the clinical licensing examination administered by the Council of Interstate Testing Agencies (CITA) may be awarded up to 12 hours of clinical continuing education per each renewal period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 24:1118 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:245 (February 2006), LR 35:

§1615. Approved Courses

A. - B.2.c.ii. ...

C. Clinical credit will be given to programs dealing with the mechanical delivery of dental services as well as those addressing biological and psychological aspects of therapy such as pharmacology, nutrition, behavioral modification, etc., which are pertinent to the restoration and maintenance of oral health.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:662 (June 1994), amended LR 22:24 (January 1996), LR 24:1118 (June 1998), LR 35:

Interested persons may submit written comments on these proposed Rule changes to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 60 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

C. Barry Ogden
Executive Director

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

**RULE TITLE: Continuing Education Requirements for
Relicensure of Dentists, Dental Hygienists**

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

There will be a one-time cost of \$500 in FY 08-09 for publication of the proposed rule in the *Louisiana Register* and in a mass mailing which is sent to all licensees every summer.

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

It is anticipated that the implementation of these rule changes will neither increase nor decrease revenues for the Louisiana State Board of Dentistry.

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

Dentists and dental hygienists are required to receive three hours of cardiopulmonary resuscitation training per year under current rules. Dentists and dental hygienists who pay for their Continuing Education credits will have reduced costs for such Continuing Education credits because they will be able to apply their three hours of cardiopulmonary resuscitation training per year towards their continuing education credits each year. Such dentists and hygienists will also benefit from having fewer demands on their time by using current cardiopulmonary resuscitation training towards their Continuing Education requirements.

A small number of dentists and hygienists work with the Council of Interstate Testing Agencies (CITA) to calibrate CITA licensing tests taken by new dentists and hygienists. Such dentists and dental hygienists who pay for their Continuing Education credits will have reduced costs for such Continuing Education credits because they will be able to apply up to 10 hours per year towards working on calibrating the CITA tests towards their continuing education credits each year. Such dentists and hygienists will also benefit from having fewer demands on their time by using time spent calibrating the CITA tests towards their Continuing Education requirements.

Dentists and dental hygienists will also benefit from having a wider range of approved Continuing Education subjects to study each year. The proposed rules add biological, psychological, pharmacological nutrition, and behavior

modification aspect of therapy to the Approved Courses for Continuing Education.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

C. Barry Ogden
Executive Director
0904#063

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Wholesale Drug Distributors**

Wholesale Drug Distributors
(LAC 46:XCI.103, 105, 301, 303, 305, 315, 317,
319, 321, 501, 503, 507, 509, 711, and 801)

The Louisiana Board of Wholesale Drug Distributors proposes to amend LAC 46:XCI.103, 105, 301, 303, 305, 315, 317, 319, 321, 501, 503, 507, 509, 711, and 801 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq., of the Louisiana Board of Wholesale Drug Distributors Practice Act. These proposed Rule amendments will assist the board in its ability to safeguard life and health and promote the welfare of the citizen of Louisiana by regulating wholesale distributors of legend drugs or devices in and into the state. The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amendments to the Rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 1. General Provisions

§103. Definition

A. As used in this regulation, unless the context otherwise requires:

Adulterated Drug or Device—a drug or device shall be deemed adulterated if:

a. - c. ...

d. it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of federal or Louisiana law or rule; or

ii. Repealed.

e. - g.i. ...

ii. substituted wholly or in part thereof.

h. Repealed.

Blood—whole blood collected from a single donor and processed either for transfusion or further manufacturing.

Blood Components—that part of blood separated by physical or mechanical means.

Consumer or Patient—a person who is the end user of a drug or device.

* * *

Delivery—actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration.

Distribute—to sell, offer to sell, broker, give away, or transfer, drugs or devices whether by passage of title, physical movement, or both.

Drug or Device—any legend drug or legend device.

Drug Sample—a unit of a prescription drug that is labeled "sample," "not to be sold," or "complimentary," or other words to that effect, which is provided as a courtesy and not intended to be sold but is intended to promote the sale of the drug.

Facility or Physical Location—structure, warehouse, or building used by a person for the reception, storage, handling, repackaging, and/or offering for sale of a drug or device.

Label or Labeling—a display of written, printed, or graphic matter located immediately upon, or accompanying, a drug or device.

Medical Gas—any pure gas or gas mixture packaged as any liquefied (cryogenic) or compressed gas (vaporized) that is designated as a drug product.

* * *

Off-Site Storage Facility—a structure, warehouse, or building used by a licensed wholesale drug or device distributor strictly for storage of legend drugs or devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:381 (April 1992), amended LR 29:1479 (August 2003), LR 32:394 (March 2006), LR 34:874 (May 2008), LR 35:

§105. Wholesale Drug Distribution—Exemptions

A. Wholesale drug distribution does not include:

1. intra-company sales;
2. the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug or device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organization;
3. the sale, purchase or trade of a drug or device or an offer to sell, purchase, or trade a drug or device by a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
4. the sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device among hospitals or other health care entities that are under common control; for the purposes of this section *common control* means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;
5. the sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device for emergency medical reasons; for purposes of this Section, *emergency medical reasons* include transfers of prescription drugs or devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage that arises from delays in or interruptions of regular distribution schedules;
6. the dispensing of a drug or device pursuant to a prescription;
7. the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

8. the sale, purchase, or trade of blood and blood components intended for transfusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 35:

Chapter 3. Wholesale Drug or Device Distributors

§301. Licensing, Renewal and Reinstatement Requirements

A. Every wholesale drug or device distributor shall submit an initial application for a new license on a form furnished by the board and accompanied by the initial license fee.

1. - 2. ...

B. All new licenses issued by the board shall expire on December 31 of the calendar year issued.

C. A license shall be renewed annually by timely submitting an application and the license renewal fee.

D. Each application for the renewal of the license must be made between October 1 and December 31 of each year on a form provided by the board.

1. If a license is not renewed on or before the expiration date, a person may apply for reinstatement of the expired license within one year by submitting an application, the license renewal fee, and the license reinstatement fee.

2. If a license is expired beyond one year, a person may apply for reinstatement of the expired license by submitting an application, the initial license fee, the license reinstatement fee, and if applicable, the initial inspection fee.

3. A person may not lawfully operate as a wholesale drug or device distributor in Louisiana until the expired license has been reinstated.

E. Licenses renewed annually between October 1 and December 31 shall expire on December 31 of the following calendar year.

F. Each license issued hereunder shall be displayed by the licensee in a conspicuous place at the licensed facility or physical location.

G. Out-of-state wholesale drug or device distributors licensed by the board must have on file at all times with the board a current copy of a valid certificate of registration or license for wholesale drug or device distribution as issued by the appropriate regulatory board or agency of the state in which the facility or physical location licensed with the board is located.

1. If the state in which the facility licensed with the board is located does not require the facility to be registered or licensed as a wholesale drug or device distributor and the facility or physical location is registered or licensed in the state in which it is located as a manufacturer of drugs or devices, a current copy of the valid manufacturer registration or license must be submitted to and maintained with the board.

2. If the state in which the facility or physical location licensed with the board is located does not require the facility or physical location to be registered or licensed as a wholesale drug or device distributor and/or the facility or physical location is not a registered/licensed manufacturing facility and the state in which the facility or physical location is located does not require any registration or licensure of the facility or physical location, a letter from the

appropriate regulatory board or agency must be submitted to the board confirming such fact.

3. If the facility or physical location licensed with the board does not physically distribute and/or manufacture the drugs or devices that it owns or holds title to and/or the facility or physical location licensed with the board contracts with another facility for the warehousing and/or distribution of the drugs or devices and the state in which the facility or physical location licensed by the board is located does not require any registration or licensure of the facility or physical location, a letter from the appropriate regulatory board or agency confirming this fact and a current copy of the valid registration or license from the state in which the contracted facility is located must be submitted to the board.

H. Wholesale drug or device distributor applicants and licensees physically located and conducting operations in Louisiana shall provide a list of their wholesale drug or device distributors from whom they purchased and/or received a legend drug or device within the 12 months prior to application or renewal application; the list shall include, but not be limited to:

1. name of each wholesale drug or device distributor;
2. each wholesale drug or device distributor's business address and telephone number; and
3. each wholesale drug or device distributor's distribution address(es) from which the legend drug or device was shipped.

I. An initial application for a new license is valid for 180 days after receipt by the board. If the application is not completed, the application becomes void and any fees paid are non-refundable.

J. Requests for voluntary cancellation of a license made by a licensee must be made in writing and must include information such as, but not limited to, the date the request is effective and the reason for the voluntary cancellation of the license.

1. If the request for voluntary cancellation is made before the license has expired, the original unexpired license certificate must be returned to the board and no refund of any portion of the license fee(s) paid will be made by the board.

K. If a licensed in-state wholesale drug or device distributor has an additional off-site storage facility, the off-site storage facility may operate under the current wholesale drug or device distribution license held by the licensee as long as the off-site storage facility is in compliance with §309.A.1 of these regulations and has temperature monitoring and an alarm system and the off-site storage facility does not physically receive or distribute legend drugs or devices from its location.

L. A license shall not be issued by the board for any wholesale drug or device distributor to operate from or out of a dwelling, building, or property zoned as residential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:396 (March 2006), LR 34:875 (May 2008), LR 35:

§303. Required Information

A. The board requires the following from each applicant as part of the initial licensing procedure and as part of any renewal or reinstatement of such license:

1. the name, full business address, and telephone number of the applicant;
2. all trade or business names used by the applicant;
3. addresses, telephone numbers, and the names of contact persons for the facility or physical location used by the applicant;
4. the type of ownership or form of business operation used by the applicant (i.e., partnership, corporation, or sole proprietorship); if other than a natural person, the type of entity and the name of the state where formed;
5. the names of the owners of the applicant including the percentage of interest owned;
6. the name of the person designated as the responsible party;
7. the names and titles of the directors and officers of the applicant;
8. a list of every state or territory, other than Louisiana, where the applicant holds a current license for wholesale drug or device distribution;
9. any other information which the board may require to determine qualification for obtaining, renewing, or reinstating a license.

B. Changes in any information required in this regulation shall be submitted in writing to the board within 60 days after such changes become effective. Failure to do so may result in disciplinary action being taken against the licensee.

C. A license shall be valid only for the person or the facility or physical location for which it is issued. Licenses are not transferable for change of location or change of ownership of the facility or physical location licensed by the board. Any such change shall require the submission of an application and fee for, and the issuance of, a new license by the board and the termination of the existing license.

D. Wholesale drug or device distributors with a place of business physically located in Louisiana must notify the board, in writing, within three business days of discovery of, or being in a position to have acquired such knowledge of, any theft or diversion of drugs or devices.

E. Wholesale drug or device distributors with a place of business physically located in Louisiana must notify the board, in writing, within 24 hours of discovery of, or being in a position to have acquired such knowledge of, any contraband, counterfeit, or misbranded drugs or devices in their possession whether actual or constructive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 30:1481 (July 2004), LR 32:397 (March 2006), LR 35:

§305. Qualifications

A. - A.9. ...

B. The board shall deny a license to an applicant if it determines that the issuing of such a license would not be in the interest of public health, safety or welfare.

C. The designated responsible party must have knowledge of the policies and procedures pertaining to operations of the applicant facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 32:398 (March 2006), LR 35:

§315. Organizational On-Site List

A. Wholesale drug or device distributors shall establish and maintain an on-site list of owners, officers, directors, managers, and other persons in charge of wholesale drug or device distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:400 (March 2006), LR 35:

§317. Federal, State and Local Law Compliance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:400 (March 2006), repealed LR 35:

§319. Salvaging and Reprocessing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:401 (March 2006), repealed LR 35:

§321. Inspection Alternatives

A. The board, in its discretion, may accept a satisfactory inspection by the United States Food and Drug Administration (USFDA) or a state agency which the board determines to be comparable to that made by USFDA or the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:401 (March 2006), LR 35:

Chapter 5. Powers and Functions of the Board

§501. Injunctive Powers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 32:401 (March 2006), repealed LR 35:

§503. Board Domicile; Meetings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 29:1481 (August 2003), LR 32:401 (March 2006), repealed LR 35:

§507. Rule Promulgation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 32:401 (March 2006), repealed LR 35:

§509. Inspection Contracts

A. The board may contract with any person or agency it deems qualified to conduct any inspections or reinspections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 30:1481 (July 2004), LR 32:401 (March 2006), LR 35:

Chapter 7. Disciplinary Procedures

§711. Grounds for Disciplinary Action

A. After notice and hearing, the board may deny, revoke or suspend a license or otherwise sanction a licensee, for any of the grounds set forth in R.S. 37:3474.1 or R.S. 37:3474.2 and any of the following:

1. - 3. ...

B. The authority of the board to impose a monetary penalty in a case is not to be affected by any other civil or criminal proceeding concerning the same violation, nor shall the imposition of a monetary penalty preclude the board from imposing other sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:403 (March 2006), LR 35:

Chapter 8. Fees

§801. Fees

A. The board may collect the following fees.

1. Initial License Fee—\$200
2. License Renewal Fee—\$200
3. Initial Inspection Fee—\$100
4. Duplicate License Fee—\$10
5. License Reinstatement Fee for licenses suspended, revoked, or expired—\$200
6. License Verification Fee—\$15

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 32:403 (March 2006), amended LR 35:

Interested parties may submit written comments to John Liggio, Executive Director, Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, LA 70816. Comments will be accepted through the close of business on May 19, 2009. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on May 26, 2009, at 11 a.m. at the office of the Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, LA.

Kimberly B. Barbier
Executive Assistant

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

RULE TITLE: Wholesale Drug Distributors

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 rule amendment (estimated at \$1,600—\$800 in fiscal year 2009 and \$800 in fiscal year 2010). Licensees will be informed of this rule change via the Board's regular newsletter 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)

The proposed rules are estimated to increase the Board's self-generated revenues by an estimated \$6,100 per year. An *Initial Inspection Fee* of \$100 for the initial inspection of new applicant facilities located in Louisiana for approximately 30 new in-state license applications per year; a *Duplicate License Fee* of \$10 for processing requests for duplicate license certificates for approximately 10 licensees per year; and a *License Verification Fee* of \$15 for processing requests for verification of Louisiana licenses for approximately 200 requests per year.

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

Wholesale drug distributors will pay an estimated \$6,100 per year in additional fees based on the proposed rule changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

John Liggio
Executive Director
0904#021

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Adult Residential Care Providers—Minimum Licensing
Standards—Dementia Training Requirements
(LAC 48:I.6803, 6851 and 6867)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.6803, §§6851 and 6867 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2200.1-2200.5. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

In compliance with the directives of Act 433 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the minimum licensing standards for adult residential care providers (ARCPs) (*Louisiana Register*, Volume 34, Number 12).

Act 571 of the 2008 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to establish dementia training requirements for persons who are employed by adult residential care facilities and nursing

facilities. In compliance with Act 571, the department proposes to amend the December 20, 2008 Rule governing the minimum licensing standards for ARCPs to incorporate dementia training requirements.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by assuring that ARCP staff have the training necessary to provide adequate care to residents diagnosed with dementia and related illnesses.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

**Chapter 68. Adult Residential Care Providers
Licensing Standards**

Subchapter A. General Provisions

§6803. Definitions

* * *

Alzheimer's Special Care Unit (ASCU)—any adult residential care provider, as defined in R.S. 40:2166.3, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's/dementia care services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40:2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2582 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter D. ARCP Services

§6851. Alzheimer Special Care Units

A. - B.2. ...

C. Staff Training for Alzheimer's/Dementia Program. In an ARCP that advertises or markets itself as an ASCU, training in specialized care of residents who are diagnosed by a physician as having Alzheimer's/dementia shall be provided to all licensed and unlicensed staff who provide direct care to such residents. Said training shall be provided in accordance with the provisions established in §6867 of this Chapter.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40:2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2595 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter F. Provider Responsibilities

§6867. Staff Training

A. - H.1. ...

I. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related

practices that include or that are informed by evidence-based care practices.

2. ARCP staff who provide care to residents in an Alzheimer's special care unit shall meet the following training requirements:

a. Staff who provide direct face-to-face care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and eight hours of dementia-specific training annually. The training shall include the following topics:

- i. an overview of Alzheimer's disease and related dementias;
- ii. communicating with persons with dementia;
- iii. behavior management;
- iv. promoting independence in activities of daily living; and
- v. understanding and dealing with family issues.

b. Staff who have regular contact with residents, but who do not provide direct face-to-face care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually. This training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

3. ARCP staff who do not provide care to residents in an Alzheimer's special care unit shall meet the following training requirements:

a. Staff who provide direct face-to-face care to residents shall be required to obtain at least two hours of dementia-specific training annually. This training shall include the following topics:

- i. an overview of Alzheimer's disease and related dementias; and
- ii. communicating with persons with dementia.

b. All other staff shall receive general written information provided by the facility on interacting with residents with dementia.

4. Any dementia-specific training received in a nursing or nursing assistant program approved by the Department of Health and Hospitals or the Department of Social Services may be used to fulfill the training hours required pursuant to this Section.

5. Adult residential care providers may offer a complete training curriculum themselves or they may contract with another organization, entity, or individual to provide the training.

6. The dementia-specific training curriculum must be approved by the department. To obtain training curriculum approval, the organization, entity, or individual must submit the following information to the department or its designee:

- a. a copy of the curriculum;
- b. the name of the training coordinator and his/her qualifications;
- c. a list of all instructors;
- d. the location of the training; and
- e. whether the training will be web-based or not.

7. A provider, organization, entity, or individual must submit any content changes to an approved training

curriculum to the department, or its designee, for review and approval.

8. If a provider, organization, entity, or individual, with an approved curriculum, ceases to provide training, the department must be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity, or individual must reapply to the department for approval to resume the program.

9. Disqualification of Training Programs and Sanctions

a. The department may disqualify a training curriculum offered by a provider, organization, entity, or individual that has demonstrated substantial noncompliance with training requirements including, but not limited to:

- i. the qualifications of training coordinators; or
- ii. training curriculum requirements.

10. Compliance with Training Requirements

a. The review of compliance with training requirements will include, at a minimum, a review of:

- i. the existence of an approved training curriculum; and
- ii. the provider's adherence to established training requirements.

b. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40:2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2599 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Family Impact Statement

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 Wednesday, May 27, 2009 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Adult Residential Care Providers—Minimum Licensing Standards Dementia Training Requirements

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 the cost of promulgation for FY 08-09. It is anticipated that \$738 (SGF) will be expended in FY 08-09 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.

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

This rule proposes to amend the minimum licensing standards for adult residential care providers to incorporate dementia training requirements (approximately 30 providers). Annual projected cost for the training will be approximately \$1,000 per facility. We are not certain how many facilities will provide the training, therefore the anticipated cost to adult residential care providers is indeterminable for FY 08-09, FY 09-10 and FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0904#084

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Ambulatory Surgical Centers—Reimbursement Rate
Reduction (LAC 50:XI.Chapter 75)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal the April 20, 1977 Rule governing ambulatory surgical services and to adopt LAC 50:XI.Chapter 75 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Human Resources, Office of Family Support adopted provisions to allow for Medicaid reimbursement of services provided by ambulatory surgical centers (*Louisiana Register*, Volume 3, Number 4). The April 20, 1977 Rule was amended to revise the reimbursement methodology. Reimbursement for these surgical procedures was set at a flat fee per service if the procedure code is included in one of the four Medicaid established payment groups. Reimbursement for those surgical procedures not included in the Medicaid outpatient surgery list was not changed from the established methodology (*Louisiana Register*, Volume 11, Number 12).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates paid for ambulatory surgical services (*Louisiana Register*, Volume 35, Number 3). This action is necessary to avoid a budget deficit in the medical assistance programs. This proposed Rule is being promulgated to continue the provisions of the February 26, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7501. General Provisions

A. The services rendered by ambulatory surgical centers must be medically necessary preventive, diagnostic, therapeutic, rehabilitative or palliative services furnished to an outpatient by or under the direction of a physician or dentist in a facility which is not part of a hospital but which is organized and operated to provide medical care to patients.

B. This type of facility will not provide services or accommodations for patients to stay overnight. Therefore, the ambulatory surgical center shall have a system to transfer patients requiring emergency admittance or overnight care to a fully licensed and certified Title XIX hospital following any surgical procedure performed at the facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§7503. Reimbursement Methodology

A. The reimbursement for surgical procedures performed in an ambulatory surgical center is a flat fee per service in accordance with the four payment groups established for ambulatory surgery services as specified on the Medicaid fee schedule.

1. The flat fee reimbursement is for facility charges only, which covers all operative functions associated with the performance of a medically necessary surgery including admission, patient history and physical, laboratory tests, operating room staffing, recovery room charges, all supplies related to the surgical care of the patient and discharge.

2. The flat fee excludes payments for the physician performing the surgery, the radiologist and the anesthesiologist when these professionals are not under contract with the ambulatory surgery center.

B. For those surgical procedures not included in the payment groupings on the Medicaid fee schedule, the reimbursement is the established flat fee for the service.

C. Effective for dates of service on or after February 26, 2009, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 3.5 percent of the rate in effect on February 25, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

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 Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Ambulatory Surgical Centers—Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$10,832 for FY 08-09, \$42,630 for FY 09-10, and \$43,908 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$28,848 for FY 08-09, \$112,218 for FY 09-10, and \$115,585 for FY 10-11. It is anticipated that \$205 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009

(72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 26, 2009 emergency rule which amended the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates paid for ambulatory surgical services (approximately 28,527 services per year). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$40,090 for FY 08-09, \$154,848 for FY 09-10 and \$159,493 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payments made to ambulatory surgical centers. The reduction in payments may adversely impact the financial standing of ambulatory surgical centers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#085

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

End Stage Renal Disease Facilities
Reimbursement Rate Reduction
(LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.6901 and 6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing Medicaid

reimbursement for co-insurance and deductibles for Medicare Part B claims for hemodialysis services (*Louisiana Register*, Volume 30, Number 5). As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions of the May 20, 2004 Rule to reduce the reimbursement rates paid for services provided by end stage renal disease (ESRD) facilities (*Louisiana Register*, Volume 35, Number 3). This proposed Rule is being promulgated to continue the provisions of the February 26, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 9. End Stage Renal Disease Facilities

Chapter 69. Reimbursement

§6901. Non-Medicare Claims

A. For non-Medicare claims, end stage renal disease (ESRD) facilities are reimbursed a hemodialysis composite rate. The composite rate is a comprehensive payment for the complete hemodialysis treatment in which the facility assumes responsibility for providing all medically necessary routine dialysis services.

B. Covered non-routine dialysis services, continuous ambulatory peritoneal dialysis (CAPD), continuous cycling peritoneal dialysis (CCPD), epogen (EPO) and injectable drugs are reimbursed separately from the composite rate.

C. Effective for dates of service on or after February 26, 2009, the reimbursement to ESRD facilities shall be reduced by 3.5 percent of the rates in effect on February 25, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1022 (May 2004), amended LR 35:

§6903. Medicare Part B Claims

A. For Medicare Part B claims, ESRD facilities are reimbursed for full co-insurance and deductibles.

B. The Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the service.

C. Effective for dates of service on or after February 26, 2009, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 3.5 percent of the rates in effect on February 25, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: End Stage Renal Disease Facilities—Reimbursement Rate Reduction

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 savings to the state of \$52,942 for FY 08-09, \$312,806 for FY 09-10, and \$322,190 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$139,698 for FY 08-09, \$823,431 for FY 09-10, and \$848,134 for FY 10-11. It is anticipated that \$205 will be collected in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This rule, which continues the provisions of the February 26, 2009 emergency rule, proposes to reduce the

reimbursement rates paid for services provided by end stage renal disease (ESRD) facilities (approximately 156 facilities). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$193,050 for FY 08-09, \$1,136,237 for FY 09-10 and \$1,170,324 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payment made to providers of end stage renal disease services. The reduction in payments may adversely impact the financial standing of ESRD facilities and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#086

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
the Office of Aging and Adult Services**

**Home and Community-Based Services Waivers—Elderly
and Disabled Adults—Reimbursement Rate Reduction
(LAC 50:XXI.9101)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services proposes to amend LAC 50:XXI.9101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq.

The Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to adopt provisions governing the reimbursement methodology for the EDA Waiver services, including implementation of an hourly wage enhancement payment to providers for direct care staff (*Louisiana Register*, Volume 34, Number 2).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions

governing the reimbursement methodology for the EDA Waiver to reduce the reimbursement rates paid for designated services (*Louisiana Register*, Volume 35, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 7. Elderly and Disabled Adults

Chapter 91. Reimbursement

§9101. Reimbursement Methodology

A. - B.8.d. ...

C. Effective for dates of service on or after February 1, 2009, the reimbursement rate for companion services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

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 Aging and Adult Services, LR 34:251 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

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

**RULE TITLE: Home and Community-Based
Services Waivers—Elderly and Disabled Adults
Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$140,575 for

FY 08-09, \$434,883 for FY 09-10, and \$447,929 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$370,316 for FY 08-09, \$1,144,784 for FY 09-10, and \$1,179,128 for FY 10-11. It is anticipated that \$164 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 1, 2009 emergency rule which amended the provisions governing the reimbursement methodology for EDA Waiver services to reduce the reimbursement rates paid for designated services (approximately 4,046 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$511,219 for FY 08-09, \$1,579,667 for FY 09-10 and \$1,627,057 for FY 10-11.

ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payments made for services in the EDA Waiver. The reduction in payments may adversely impact the financial standing of waiver service providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#087

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Waivers New Opportunities Waiver—Reimbursement Rate Reduction (LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) to implement a wage enhancement payment for direct support professionals who provide certain services to NOW recipients (*Louisiana Register*, Volume 34, Number 2).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for the New Opportunities Waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 143. Reimbursement §14301. Reimbursement Methodology

A. - F.10.d. ...

G. Effective for dates of service on or after February 1, 2009, the reimbursement rate for certain services provided in the NOW Waiver shall be reduced by 3.5 percent of the rate in effect on January 31, 2009.

1. The reimbursement rates shall be reduced for the following services:
 - a. individualized and family support services;
 - b. center-based respite care;
 - c. community integration development;
 - d. residential habilitation-supported independent living;
 - e. substitute family care;
 - f. day habilitation;
 - g. supported employment;
 - h. employment-related training; and
 - i. professional services.
2. The following services shall be exempt from the rate reduction:
 - a. environmental accessibility adaptations;
 - b. specialized medical equipment and supplies;
 - c. personal emergency response systems (PERS);
 - d. skilled nursing services; and
 - e. one-time transitional expenses.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—New Opportunities Waiver Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$1,424,649 for FY 08-09, \$4,402,798 for FY 09-10, and \$4,534,882 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$3,750,581 for FY 08-09, \$11,589,930 for FY 09-10, and \$11,937,627 for FY 10-11. It is anticipated that \$205 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 1, 2009 emergency rule which amended the reimbursement methodology for the New Opportunities Waiver (NOW) to reduce the reimbursement rates paid for certain services (approximately 5,179 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$5,175,640 for FY 08-09, \$15,992,728 for FY 09-10 and \$16,472,509 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and

employment as it will reduce the payments made for waiver services. The reduction in payments may adversely impact the financial standing of waiver service providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#088

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Home Health Program—Durable Medical Equipment—Reimbursement Reduction (LAC 50:XIII.10301)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage and reimbursement for medical equipment, supplies and appliances in the Home Health Program. Reimbursement for these services is either the lesser of: billed charges; 70 percent of either the applicable Medicare fee schedule or the manufacturer's suggested retail price (MSRP); or the lowest cost at which the item has been determined to be widely available.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for medical equipment, supplies and appliances to reduce the reimbursement rates and to repromulgate the general provisions governing the reimbursement methodology, in its entirety, in the appropriate place in the *Louisiana Administrative Code (Louisiana Register, Volume 35, Number 2)*. This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health Program

Subpart 3. Medical Equipment, Supplies and Appliances

Chapter 103. Reimbursement Methodology

§10301. General Provisions

A. Unless otherwise stated in this Part XIII, the reimbursement for all medical equipment, supplies and appliances is established at:

1. 70 percent of the 2000 Medicare fee schedule for all procedure codes that were listed on the 2000 Medicare fee schedule and at the same amount for the Health Insurance Portability and Accountability Act (HIPAA) compliant codes which replaced them; or

2. 70 percent of the Medicare fee schedule under which the procedure code first appeared; or

3. 70 percent of the manufacturer's suggested retail price (MSRP) amount; or

4. billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the applicable established flat fee or 70 percent of the MSRP, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

C. Effective for dates of service on or after February 1, 2009, the reimbursement paid for the following medical equipment, supplies, appliances and repairs shall be reduced by 3.5 percent of the rate on file as of January 31, 2009:

1. ambulatory equipment;

2. bathroom equipment;

3. hospital beds, mattresses and related equipment; and

4. the cost for parts used in the repair of medical equipment, including the parts used in the repair of wheelchairs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for

Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home Health Program—Durable Medical Equipment—Reimbursement Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$4,226 for FY 08-09, \$13,693 for FY 09-10, and \$14,104 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$11,460 for FY 08-09, \$36,044 for FY 09-10, and \$37,125 for FY 10-11. It is anticipated that \$205 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 1, 2009 emergency rule to amend the reimbursement methodology in the Home Health Program by reducing the reimbursement for durable medical equipment (approximately 11,417 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Home Health Program by approximately \$16,096 for FY 08-09, \$49,737 for FY 09-10 and \$51,229 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the reimbursement made for durable medical equipment. The reduction in payments may adversely impact the provider's financial standing and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#089

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Hospice—Payment for Long Term Care Residents Reimbursement Rate Reduction (LAC 50:XV.4307)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.4307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq.

Section 1902(a)(13)(B) of the Social Security Act allows Medicaid programs to pay hospice providers an additional amount equal to at least 95 percent of the nursing facility or intermediate care facility for persons with developmental disabilities (ICF/DD) per diem rate when hospice patients are residents of nursing facilities or ICF/DDs. Pursuant to Section 1902, the department established provisions to pay hospice providers 100 percent of the long term care facility's per diem rate (*Louisiana Register*, Volume 28, Number 6). At the recommendation of the Centers for Medicare and Medicaid Services (CMS), the department amended the provisions of the June 20, 2002 Rule governing hospice services covered under the Medicaid Program to clarify the hospice payment rate provisions (*Louisiana Register*, Volume 34, Number 3).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement for hospice services provided to long term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). This proposed Rule is being promulgated to

continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 3. Hospice

Chapter 43. Reimbursement

§4307. Payment for Long Term Care Residents

A. Pursuant to Section 1902(a)(13)(B) of the Social Security Act, an additional amount will be paid to hospice providers for routine home care and continuous home care to take into account the room and board furnished by a long term care facility for a Medicaid recipient:

1. who is residing in a nursing facility or intermediate care facility for persons with developmental disabilities (ICF/DD);

2. who would be eligible under the state plan for nursing facility services or ICF/DD services if he or she had not elected to receive hospice care;

3. who has elected to receive hospice care; and

4. for whom the hospice agency and the nursing facility or ICF/DD have entered into a written agreement in accordance with the provisions set forth in the Licensing Standards for Hospice Agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. Under these circumstances, payment to the facility is discontinued and payment is made to the hospice provider which must then reimburse the facility for room and board.

C. The rate reimbursed to hospice providers shall be 95 percent of the per diem rate that would have been paid to the facility for the recipient if he/she had not elected to receive hospice services.

1. This rate is designed to cover "room and board" which includes performance of personal care services, including assistance in the activities of daily living, administration of medication, maintaining the cleanliness of the patient's environment, and supervision and assistance in the use of durable medical equipment and prescribed therapies.

2. This rate is in addition to the routine home care rate or the continuous home care rate.

D. Any patient liability income (PLI) determined by the bureau will be deducted from the additional payment. It is the responsibility of the Medicaid enrolled facility to collect the recipient's PLI.

E. - F. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S.

49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hospice—Payment for Long Term Care Residents

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$196,038 for FY 08-09, \$606,518 for FY 09-10, and \$624,714 for FY 10-11. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$516,453 for FY 08-09, \$1,596,599 for FY 09-10, and \$1,644,497 for FY 10-11. It is anticipated that \$246 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected

to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 1, 2009 emergency rule which amended the provisions governing the reimbursement methodology for hospice services provided to long term care residents to reduce the reimbursement rates (approximately 144 hospice providers). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Hospice Program by approximately \$712,983 for FY 08-09, \$2,203,117 for FY 09-10 and \$2,269,211 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payments made for hospice services. The reduction in payments may adversely impact the financial standing of hospice providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#090

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Hospital Services—Inpatient Hospitals
Reimbursement Rate Reduction
(LAC 50:V.953, 955 and 959)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.953, §955 and §959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted Rules which established the prospective reimbursement methodology for inpatient hospital services provided in free-standing psychiatric hospitals and distinct part psychiatric units of acute care general hospitals (*Louisiana Register*, Volume 19, Number 6) as well as in private (non-state) acute care general hospitals (*Louisiana Register*, Volume 20, Number 6). In compliance with the directives of Act 17 of

the 2006 Regular Session of the Louisiana Legislature, the bureau amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to private hospitals and free-standing and distinct part psychiatric units (*Louisiana Register*, Volume 33, Number 2). The bureau subsequently adopted a Rule to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than thirty percent (hereafter referred to as high Medicaid) and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana in New Orleans due to the impact of Hurricane Katrina (*Louisiana Register*, Volume 34, Number 5).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). Taking into consideration the 3.5 percent reduction in per diem rates and the 3 percent reduction in the last two quarterly supplemental payments to high Medicaid hospitals in state fiscal year 2009, the department carefully reviewed the proposed rates and was satisfied that they were consistent with efficiency, economy and quality of care and were sufficient to enlist enough providers so that private (non-state) inpatient hospital services under the State Plan were available at least to the extent that they were available to the general population in the state. This proposed Rule is being promulgated to continue the provisions of the February 20, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - B.3. ...

C. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 3.5 percent of the per diem rate on file as of February 19, 2009.

1. Payments to the following hospitals and/or specialty units for inpatient hospital services shall be exempted from these reductions:

a. small rural hospitals, as defined in R.S. 40:1300.143; and

b. high Medicaid hospitals, level III Regional Neonatal Intensive Care Units and level I Pediatric Intensive Care Units as defined in R.S. 46:979.

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

D. Effective for dates of service on or after February 20, 2009, the amount appropriated for quarterly supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be reduced to \$4,925,000. Each qualifying hospital's quarterly supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§955. Long Term Hospitals

A. ...

B. For dates of service on or after February 20, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Payments for inpatient hospital services to high Medicaid hospitals classified as long term hospitals shall be exempted from these reductions.

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§959. Inpatient Psychiatric Hospital Services

A. ...

B. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Distinct part psychiatric units that operate within an acute care hospital that qualifies as a high Medicaid hospital, as defined in §953.C.2, are exempt from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hospital Services—Inpatient Hospitals—Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$699,729 for FY 08-09, \$3,762,047 for FY 09-10, and \$3,874,908 for FY 10-11. It is anticipated that \$656 (\$328 SGF and \$328 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$1,842,504 for FY 08-09, \$9,903,217 for FY 09-10, and \$10,200,314 for FY 10-11. It is anticipated that \$328 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009

(72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 20, 2009 emergency rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (approximately 103 hospitals). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Hospital Program by approximately \$2,542,889 for FY 08-09, \$13,665,264 for FY 09-10 and \$14,075,222 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payments made for inpatient hospital services. The reduction in payments may adversely impact the financial standing of hospitals, and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#091

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Laboratory and Radiology
Reimbursement Rate Reduction
(LAC 50:XIX.4329 and 4334-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XIX.4329 and 4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing reimbursement for laboratory and X-ray services in a codified format for

inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 28, Number 5)*. As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions of the May 20, 2002 Rule to reduce the reimbursement rates paid for laboratory and X-ray services, hereafter referred to as radiology services (*Louisiana Register, Volume 35, Number 3*). This proposed rule is being promulgated to continue the provisions of the February 26, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIX. Other Services

Subpart 3. Laboratory and Radiology

Chapter 43. Billing and Reimbursement

Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

A. Providers should use the most appropriate Healthcare Common Procedure Coding System (HCPCS)/Current Procedural Terminology (CPT) code representing the service performed when submitting claims to Medicaid.

1. - 3. Repealed.

B. Guidelines indicated in the pertinent CPT manual are to be followed when billing for these services unless specifically directed otherwise by the department.

C. Limitations on select services are indicated on the published fee schedules and/or in provider manuals.

D. Reimbursement for clinical laboratory procedures shall not exceed 100 percent of the current year's Medicare allowable. Reimbursement of clinical laboratory services shall be paid at the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

E. Those services not subject to the Medicare fee schedule shall continue to be reimbursed to physicians and independent laboratories based on the published Medicaid fee schedule or billed charges, whichever is lower.

F. Effective for dates of service on or after February 26, 2009, the reimbursement rates for laboratory services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

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 28:1025 (May 2002), amended LR 35:

§4334. Radiology Services

A. Providers should use the most appropriate Healthcare Common Procedure Coding System (HCPCS)/Current Procedural Terminology (CPT) code representing the service performed when submitting claims to Medicaid.

B. Guidelines indicated in the pertinent CPT manual are to be followed when billing for these services unless specifically directed otherwise by the department.

C. Limitations on select services are indicated on the published fee schedules and/or in provider manuals.

D. Reimbursement of radiology services shall be the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

E. Effective for dates of service on or after February 26, 2009, the reimbursement rates for radiology services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

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 35:

§4335. Portable Radiology Services

A. Providers should use the most appropriate Healthcare Common Procedure Coding System (HCPCS)/Current Procedural Terminology (CPT) code representing the service performed when submitting claims to Medicaid.

B. Reimbursement of portable radiology services shall be the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

C. Effective for dates of service on or after February 26, 2009, the reimbursement rates for portable radiology services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:

§4337. Radiation Therapy Centers

A. Radiation therapy centers are reimbursed fee for service according to the appropriate procedure code.

B. Reimbursement for radiation therapy center services shall be the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

C. Effective for dates of service on or after February 26, 2009, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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.

Alan Levine
Secretary

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

**RULE TITLE: Laboratory and Radiology
Reimbursement Rate Reduction**

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 savings to the state of \$253,951 for FY 08-09, \$1,013,672 for FY 09-10, and \$1,044,083 for FY 10-11. It is anticipated that \$574 (\$287 SGF and \$287 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$668,970 for FY 08-09, \$2,668,392 for FY 09-10, and \$2,748,443 for FY 10-11. It is anticipated that \$287 will be collected in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This rule, which continues the provisions of the February 26, 2009 emergency rule, proposes to reduce the reimbursement rates paid for laboratory and radiology services. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$923,495 for FY 08-09, \$3,682,064 for FY 09-10 and \$3,792,526 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payment made to providers of

laboratory and radiology services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#092

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program Reimbursement Rate Reduction (LAC 50:XV.901)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the existing Rules governing the administration of the Mental Health Rehabilitation (MHR) Program that had been promulgated prior to 2004 and adopted revised provisions governing MHR services, including the reimbursement methodology (*Louisiana Register*, Volume 31, Number 5). The reimbursement paid for MHR services is a flat fee for each covered service provided to a qualified recipient.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for mental health rehabilitation services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 9. Reimbursement

§901. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after February 1, 2009, the reimbursement rates for MHR services shall be

reduced by 3.5 percent of the fee amounts on file as of January 31, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Mental Health Rehabilitation Program Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$99,372 for FY 08-09, \$307,438 for FY 09-10, and \$316,661 for FY 10-11. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount

In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$261,786 for FY 08-09, \$809,300 for FY 09-10, and \$833,579 for FY 10-11. It is anticipated that \$123 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 1, 2009 emergency rule which amended the reimbursement methodology for mental health rehabilitation (MHR) services to reduce the reimbursement rates (approximately 5,961 recipients per year). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Mental Health Rehabilitation Program by approximately \$361,404 for FY 08-09, \$1,116,738 for FY 09-10 and \$1,150,240 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payments made for mental health rehabilitation services. The reduction in payments may adversely impact the financial standing of MHR providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#093

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Nursing Facilities—Minimum Licensing Standards
Dementia Training Requirements
(LAC 48:I.9701 and 9727)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.9701 and §9727 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2200.1-2200.5. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the minimum licensing standards for

nursing facilities to allow a licensed nursing facility to inactivate its license for a period of time due to a declared disaster or other emergency situation (*Louisiana Register*, Volume 35, Number 2).

Act 571 of the 2008 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to establish dementia training requirements for persons who are employed by adult residential care facilities and nursing facilities. In compliance with Act 571, the department proposes to amend the provisions governing the minimum licensing standards for nursing facilities to incorporate dementia training requirements.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter A. General Provisions

§9701. General Provisions

Alzheimer's Special Care Unit—any nursing home as defined in R.S. 40:2009.2, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer/dementia care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4 and R.S. 40:2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:44 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§9727. Staff Orientation, Training and Education

A. - F. ...

G. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related practices that include or that are informed by evidence-based care practices.

2. Nursing facility staff who provide care on a regular basis to residents in Alzheimer's special care units shall meet the following training requirements:

a. Staff who provide nursing and nursing assistant care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and five hours of dementia-specific training annually. The training shall include the following topics:

- i. an overview of Alzheimer's disease and related dementias;
- ii. communicating with persons with dementia;
- iii. behavior management;
- iv. promoting independence in activities of daily living; and
- v. understanding and dealing with family issues.

b. Staff who have regular communicative contact with residents, but who do not provide nursing and nursing assistant care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment

and one hour of dementia training annually. This training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

3. Nursing facility staff who do not provide care to residents in an Alzheimer's special care unit shall meet the following training requirements:

a. Staff who provide nursing assistant care shall be required to obtain four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually.

b. Staff who are not licensed and who have regular communicative contact with residents but do not provide nursing assistant care shall be required to obtain four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. The training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

4. Nothing herein shall be construed to increase the number of training hours already required by regulations promulgated by the department.

5. Any dementia-specific training received in a nursing assistant program approved by the Department of Health and Hospitals or the Department of Social Services may be used to fulfill the training hours required pursuant to this Section.

6. Nursing facility providers may offer an approved complete training curriculum themselves or may contract with another organization, entity, or individual to provide the training.

7. The dementia-specific training curriculum must be approved by the department. To obtain training curriculum approval, the organization, entity, or individual must submit the following information to the department or its designee:

- a. a copy of the curriculum;
- b. the name of the training coordinator and his/her qualifications;
- c. a list of all instructors;
- d. the location of the training; and
- e. whether the training will be web-based or not.

8. A provider, organization, entity, or individual must submit any content changes to an approved training curriculum to the department, or its designee, for review and approval.

9. If a provider, organization, entity, or individual, with an approved curriculum, ceases to provide training, the department must be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity, or individual must reapply to the department for approval to resume the program.

10. Disqualification of Training Programs and Sanctions

a. The department may disqualify a training curriculum offered by a provider, organization, entity, or

individual that has demonstrated substantial noncompliance with training requirements, including, but not limited to:

- i. the qualifications of training coordinators; or
- ii. training curriculum requirements.

11. Compliance with Training Requirements

a. The review of compliance with training requirements will include, at a minimum, a review of:

- i. the existence of an approved training curriculum; and
- ii. the provider's adherence to established training requirements.

b. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4 and R.S. 40:2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:48 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by assuring that nursing facility staff have the training necessary to provide adequate care to residents diagnosed with dementia and related illnesses.

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 Wednesday, May 27, 2009 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facilities—Minimum Licensing Standards—Dementia Training Requirements

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 the cost of promulgation for FY 08-09. It is anticipated that \$656 (SGF) will be expended in FY 08-09 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.

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

This rule proposes to amend the minimum licensing standards for nursing facilities to incorporate dementia training requirements. Annual projected cost for the training will be approximately \$1,000 per facility. We are not certain how many facilities will provide the training, therefore the anticipated cost to nursing facility providers is indeterminable for FY 08-09, FY 09-10 and FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0904#094

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Outpatient Hospital Services—Non-Rural, Non-State
Hospitals—Reimbursement Rate Reduction
(LAC:50.V.5313, 5513, 5713, 5913 and 6115)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.5313, §§5513, 5713, 5913 and to adopt §6115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the bureau amended the provisions governing the reimbursement methodology for outpatient hospital services to increase the reimbursement paid to private (non-state) acute care hospitals for cost-based outpatient services (*Louisiana Register*, Volume 33, Number 2). As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 2). This proposed Rule is being

promulgated to continue the provisions of the February 20, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5313. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5513. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5713. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5913. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6115. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 3.5 percent of the rates effective as of February 19, 2009. Final reimbursement shall be at 83.18

percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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.

Alan Levine
Secretary

\$4,949,923 for FY 10-11. It is anticipated that \$246 will be collected in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This rule, which continues the provisions of the February 20, 2009 emergency rule, proposes to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$1,180,340 for FY 08-09, \$6,631,365 for FY 09-10 and \$6,830,306 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payment made to hospitals for outpatient services. The reduction in payments may adversely impact the financial standing of hospitals and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#095

Robert E. Hosse
Staff Director
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Outpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Reduction

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 savings to the state of \$324,702 for FY 08-09, \$1,825,615 for FY 09-10, and \$1,880,383 for FY 10-11. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$855,146 for FY 08-09, \$4,805,750 for FY 09-10, and

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Personal Care Services—Long Term
Reimbursement Rate Reduction
(LAC 50:XV.12917)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services proposes to amend LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Pursuant to the Deficit Reduction Act of 2005, the Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing long term personal care services to implement a pilot program called the Louisiana Personal Options Program (La POP) which allows Medicaid recipients to direct and manage their own personal care services (*Louisiana Register*, Volume 34, Number 12). The December 20, 2008 Rule also amended the provisions governing the reimbursement methodology for long-term personal care services to establish a payment methodology for La POP.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for long term personal care services to reduce the reimbursement rate (*Louisiana Register*, Volume 35, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12917. Reimbursement Methodology

A. - C.3. ...

D. Effective for dates of service on or after February 1, 2009, the reimbursement rate for long term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Personal Care Services—Long Term Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$553,791 for FY 08-09, \$1,592,299 for FY 09-10, and \$1,640,068 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$1,458,068 for FY 08-09, \$4,191,569 for FY 09-10, and \$4,317,316 for FY 10-11. It is anticipated that \$164 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 1, 2009 emergency rule which amended the provisions governing the reimbursement methodology for long term personal care services to reduce the reimbursement rate (approximately 10,847 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$2,012,187 for FY 08-09, \$5,783,868 for FY 09-10 and \$5,957,384 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payments made for long term personal care services. The reduction in payments may adversely impact the financial standing of LT-PCS providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#096

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Program—Prescription Limit Reduction (LAC 50:XXIX.113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.113 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act, and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 32, Number 6)*. As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions governing prescription limits to reduce the number of prescriptions covered by the Medicaid Program within a calendar month for certain recipients (*Louisiana Register, Volume 35, Number 4*). This proposed Rule is being promulgated to continue the provisions of the May 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§113. Prescription Limit

A. Effective May 1, 2009, the Department of Health and Hospitals will pay for a maximum of five prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the five prescriptions per calendar month limitation:

1. persons under 21 years of age;
2. persons who are residents of long-term care institutions, such as nursing homes and ICF-DD facilities; and
3. pregnant women.

C. The five prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. "medically necessary override;" and
2. a valid ICD-9-CM diagnosis code that directly related to each drug prescribed that is over the five prescription limit (no ICD-9-CM literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than five prescriptions per calendar month is required by the recipient.

E. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

F. An acceptable statement and ICD-9-CM are required for each prescription in excess of five for that month.

G. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in that it may be necessary for individuals and families to use their own funds or to rely on others in order to purchase medications in excess of the reduced prescription limit.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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.

Alan Levine
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Pharmacy Program
Prescription Limit Reduction**

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 savings to the state of \$167,905 for FY 08-09, \$1,008,662 for FY 09-10, and \$1,038,922 for FY 10-11. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$442,329 for FY 08-09, \$2,655,202 for FY 09-10, and \$2,734,858 for FY 10-11. It is anticipated that \$205 will be collected in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This rule, which continues the provisions of the May 1, 2009 emergency rule, proposes to amend the provisions governing prescription limits to reduce the number of prescriptions covered by the Medicaid Program within a calendar month for certain recipients (approximately 24,000 recipients per month). It is anticipated that implementation of

this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$610,644 for FY 08-09, \$3,663,864 for FY 09-10 and \$3,773,780 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it may reduce the payments made to some providers of pharmacy services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities

Jerry Phillips
Medicaid Director
0904#097

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Professional Services Program—Anesthesia Services
Reimbursement Rate Reduction
(LAC 50:IX.15111)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15111 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule amending the provisions governing the billing and reimbursement methodology for anesthesia services (*Louisiana Register*, Volume 30, Number 5).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to certified registered nurse anesthetists (CRNAs) for services rendered to Medicaid recipients (*Louisiana Register*, Volume 35, Number 3). This proposed Rule is being promulgated to continue the provisions of the February 26, 2009 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

§15111. Anesthesia Services

A. The most appropriate procedure codes and modifiers shall be used when billing for surgical anesthesia procedures and/or other services performed under the professional licensure of the physician (anesthesiologist or other specialty) or certified registered nurse anesthetist (CRNA).

B. Formula-Based Reimbursement. Reimbursement is based on formulas related to 100 percent of the 2003 Medicare Region 99 payable.

C. Flat Fee Reimbursement

1. Reimbursement for maternity related anesthesia services is a flat fee, except for general anesthesia related to a vaginal delivery which is reimbursed according to a formula.

2. Other anesthesia services that are performed under the professional licensure of the physician (anesthesiologist or other specialty) or CRNA are reimbursed a flat fee based on the appropriate procedure code.

D. Effective for dates of service on or after February 26, 2009, the reimbursement rates paid to CRNAs will be reduced by 3.5 percent of the reimbursement as of February 25, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is contingent upon 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Professional Services
Program—Anesthesia Services
Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated savings to the state of \$19,108 for FY 08-09, \$108,276 for FY 09-10, and \$111,524 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$50,569 for FY 08-09, \$285,025 for FY 09-10, and \$293,576 for FY 10-11. It is anticipated that \$164 will be expended in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This proposed rule is being promulgated to continue the provisions of the February 26, 2009 emergency rule which amended the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to certified registered nurse anesthetists (CRNAs) for services rendered to Medicaid recipients (approximately 82,412 services per year). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Professional Services Program by approximately \$70,005 for FY 08-09, \$393,301 for FY 09-10 and \$405,100 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and

employment as it will reduce the payments made to CRNAs for anesthesia services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#098

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Prosthetics and Orthotics—Reimbursement Rate Reduction (LAC 50:XVII.501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement for prosthetic and orthotic devices to repeal the reimbursement methodology for specific items and to increase the reimbursement rates (*Louisiana Register*, Volume 34, Number 5).

As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 7, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XVII. Prosthetics and Orthotics

Subpart 1. General Provisions

Chapter 5. Reimbursement

§501. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after March 7, 2009, the reimbursement for prosthetic and orthotic devices shall be reduced by 3.5 percent of the fee amounts on file as of March 6, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, May 27, 2009 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Prosthetics and Orthotics Reimbursement Rate Reduction

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 savings to the state of \$9,986 for FY 08-09, \$44,804 for FY 09-10, and \$46,148 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$26,554 for FY 08-09, \$117,942 for FY 09-10, and \$121,480 for FY 10-11. It is anticipated that \$164 will be collected in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This rule, which continues the provisions of the March 7, 2009 emergency rule, proposes to amend the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rate. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$36,868 for FY 08-09, \$162,746 for FY 09-10 and \$167,628 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payment made to providers of prosthetic and orthotic devices. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#099

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Targeted Case Management—Reimbursement Rate
Reduction (LAC 50:XV.10701)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50: XV.10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior

authorization, service limitations and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management services to: 1) require case management agencies to bill in 15 minute increments; 2) establish cost reporting requirements; and 3) increase the reimbursement rate paid for targeted case management services provided to infants and toddlers (*Louisiana Register, Volume 35, Number 1*).

As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for targeted case management to reduce the reimbursement rate (*Louisiana Register, Volume 35, Number 2*). This rate reduction was not applicable to Infants and Toddlers and EPSDT case management. This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 7. Targeted Case Management

Chapter 107. Reimbursement

§10701. Reimbursement

A. - D. ...

E. Effective for dates of service on or after February 1, 2009, the reimbursement for case management services provided to the following targeted populations shall be reduced by 3.5 percent of the rates on file as of January 31, 2009:

1. participants in the Nurse Family Partnership Program;
2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and
3. individuals with disabilities resulting from HIV.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:73 (January 2009), amended LR 35:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Implementation of the provisions of this Rule is 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 proposed Rule. A public hearing on this proposed Rule is scheduled for

Wednesday, May 27, 2009 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.

Alan Levine
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Targeted Case Management
Reimbursement Rate Reduction**

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 savings to the state of \$45,589 for FY 08-09, \$171,365 for FY 09-10, and \$176,506 for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 08-09 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$120,276 for FY 08-09, \$451,103 for FY 09-10, and \$464,636 for FY 10-11. It is anticipated that \$164 will be collected in FY 08-09 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the "hold harmless" Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (72.47%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match (estimated to be 80.01% in the current year) for the eligibility period (through December 2010), state general fund match could be reduced. In FY 10-11, the FMAP is projected to drop below the hold harmless rate by an unknown amount. In the event of this decrease, the state general funds will increase to the federally required match.

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

This rule, which continues the provisions of the February 1, 2009 emergency rule, proposes to reduce the reimbursement rates paid for targeted case management (TCM) services (approximately 7,174 cases). It is anticipated that implementation of this proposed rule will decrease program

expenditures in the Medicaid Program by approximately \$166,193 for FY 08-09, \$622,468 for FY 09-10 and \$641,142 for FY 10-11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule may have a negative effect on competition and employment as it will reduce the payment made to providers of targeted case management services. The reduction in payments may adversely impact the financial standing of TCM providers and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0904#100

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

Management of Refuse, Infectious Waste, Medical Waste,
and Potentially Infectious Biomedical Waste
(LAC 51:XXVII.301 and 501)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(2)(b)(ii) and R.S. 40:5, intends to amend and revise Title 51, Part XXVII (Management of Refuse, Infectious Waste, Medical Waste, and Potentially Infectious Biomedical Waste) by effecting substantive changes as outlined below.

Title 51

PUBLIC HEALTH—SANITARY CODE

**Part XXVII. Management of Refuse, Infectious Waste,
Medical Waste, and Potentially Infectious Biomedical
Waste**

**Chapter 3. Management of Infectious Waste, Medical
Waste and Potentially Infectious
Biomedical Waste**

§301. Definitions

[formerly Chapter XXVII Part 2]

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the sanitary code are defined for the purposes thereof as follows.

* * *

Transporter—any person or firm who transports large quantities of potentially infectious biomedical waste or who transports any quantity of such waste generated by another. This definition shall not apply to municipal waste haulers who transport such waste disposed of in household waste under the provisions of §503.A.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(2)(b) and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1450 (June 2002), amended LR 35:

Chapter 5. Requirements for Small Health Care and Medical Facilities, Household and Other Small Quantity Generators of Potentially Infectious Biomedical Waste [formerly paragraph 27:022]

§501. General Provisions [formerly paragraph 27:022-1]

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(2)(b) and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1452 (June 2002), amended LR 35:

§503. Home-Generated Sharps

A. [Formerly §501.D] Small quantities of potentially infectious biomedical waste generated as a result of self administered or non professional health care or veterinary care services in a household or other non health care facility may be disposed of in ordinary municipal waste without treatment, provided that such waste is packaged to assure no loss of contents, should the integrity of the original package be violated. This shall generally be interpreted to mean placing the original plastic bag or rigid disposal into a second bag or rigid disposal container. Sharps must be encased as specified in §1101 or placed in a sharps disposal container of standard manufacture or other similar container of a type approved by the state health officer. This sharps container should then be placed within another bag or rigid container containing a greater volume of non infectious waste.

B. On an annual basis, all persons who collect and transport public municipal household waste shall provide a copy of the Department of Health and Hospitals—Office of Public Health's (DHH-OPH) educational brochure to its clients to include the current DHH-OPH procedures for the proper handling, packaging, treatment and disposal of home generated sharps and medical wastes. Persons who collect municipal household waste shall direct clients to their own name and contact numbers on the brochure for client questions.

C. No later than January 31 of each year, persons who collect and transport municipal household wastes shall provide written certification to DHH-OPH that it has complied with Subsection B of this Section for the previous calendar year. A copy of the brochure and any additional information provided to each household in this effort shall accompany the certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(2)(b) and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 35:

Family Impact Statement

DHH-OPH will conduct a public hearing at 10 a.m. on Wednesday, May 27, 2009 in Room 132 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 N. Sixth and N. Fifth/North and Main Sts. (catercorner 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, May 29, 2009 at COB, 4:30 p.m., and should be addressed to Mr. Albert Mancuso, Infectious Wastes Program Administrator, Sanitarian Services Section, Center for Environmental Health Services, Office of Public Health, CEHS Mail Bin #10, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7552. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 N. Fourth Street, Room 150, Baton Rouge, LA 70802.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Management of Refuse, Infectious Waste, Medical Waste, and Potentially Infectious Biomedical Waste

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

The purpose of this rule is to amend Title 51, Part XXVII, Management of Refuse, Infectious Waste, and Medical Waste, and Potentially Infectious Biomedical Waste per Act 267 of the 2007 Regular Legislative Session. This rule adds language to require that waste collectors annually provide a copy of the Department of Health and Hospital-Office of Public Health educational brochure to its clients. The purpose of the brochure is to provide information regarding the proper handling, packaging, treatment and disposal of home generated sharps and medical wastes.

For FY 2008-09, the proposed rule change will result in an estimated cost to DHH/OPH of \$3,064 for printing 30,000 copies of the educational brochure to distribute to health clinics and to use for public relations campaigns. It will cost an additional \$430 to publish the notice of intent and the final rule in the *Louisiana Register*. The total cost for FY 2008-09 is \$3,494. This cost will be funded with State General Fund revenues appropriated in the agency's current year budget.

For subsequent fiscal years, DHH/OPH estimates a cost of \$3,156 for FY 09-10 and \$3,251 for FY 10-11 to print 30,000 copies for each year. This cost includes a 3% inflation adjustment. DHH/OPH anticipates that this cost will be funded with State General Fund.

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

There are no effects on revenue collections of state or local governmental units anticipated as a result of promulgation of this regulation.

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

All persons who collect and transport municipal household waste will be required to print and distribute the DHH/OPH educational brochure at their expense. The total cost these persons will incur depends on the number of clients served; however, it is reasonably estimated that the printing cost should be similar to DHH/OPH per copy cost of 10 cents.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment anticipated as a result of promulgation of this regulation.

M. Rony Francois, MD, MSPH, PhD Assistant Secretary 0904#074	Robert E. Hosse Staff Director Legislative Fiscal Office
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NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

Marine and Freshwater Animal Food Products
(LAC 51:IX. 305, 321 and 331)

Editor's Note: This Notice of Intent is being reprinted because of an error upon submission. The original Rule can be viewed in its entirety on page 545 of the March 20, 2009 *Louisiana Register*.

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(6) and R.S. 40:5, intends to amend and revise Title 51, Part IX (Marine and Fresh Water Animal Food Products), by effecting changes as outlined below. The proposed change will result in code provisions which are consistent with the National Shellfish Sanitation Program (NSSP) 2007 Model Ordinance. The NSSP is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

Title 51

PUBLIC HEALTH—SANITARY CODE

**Part IX. Marine and Fresh Water Animal Food
Products**

**Chapter 3. Preparation and Handling of Seafood for
Market**

**§305. Sewage Disposal on Shellfish Boats
[formerly paragraph 9:007]**

A. Owners and operators of all vessels in which persons are engaged in the handling of shellfish from the planting or growing grounds, shall provide their vessels with suitable receptacles, including tight fitting lids. These waste receptacles shall be properly labeled with the wording "FOR HUMAN WASTE ONLY" with the letter size being no less than 1 and 1/2 inches and be of adequate size and type having a capacity of at least 2 gallons for each person on the boat, in which the extract, both solid and liquid, of person on the boats, shall be received. The contents of such receptacles shall be disposed of either by means of the sewerage system of a municipality, by incineration, or by burial in the ground at points sufficiently removed from the banks of streams or tidal waters to prevent the pollution of the waters thereof, or any other means of disposal authorized by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:4.A.(6), R.S. 40:5(2)(3)(5)(7)(9)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1302 (June 2002), amended LR 33:850 (May 2007), LR 35:

**§321. Shipping Shell-Stock Requirements
[formerly paragraph 9:047]**

A. - D. ...

E. If shellstock is received either "sacked or in boxes" from a certified dealer and is not processed or repacked in any form, the product when reshipped to another certified dealer, wholesaler, or retailer, must have a label attached to the package, bearing the name and certification number of the reshipper.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1307 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:445 (March 2008), LR 34:2175 (October 2008), LR 35:

**§331. Refrigeration Requirements for Shell-Stock
Harvested for Shucking by a Certified Dealer
during the Months January through December
[formerly paragraph 9:052-2]**

A. - A.2 ...

3. Dealer/harvester tags utilized for shellstock harvested outside of the time-temperature matrix must be labeled "FOR SHUCKING BY A CERTIFIED DEALER OR POST-HARVEST PROCESSING ONLY".

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008), LR35:

Family Impact Statement

1. The Effect on the Stability of the Family. There will be no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. There will be no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. There will be no effect on the functioning of the family.

4. The Effect on the Family Earnings and Family Budget. There will be no effect on family earnings or budget.

5. The Effect on the Behavior and Personal Responsibility of Children. There will be no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. There will be no effect on the ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons are invited to submit written comments on the proposed regulation. Persons may submit written comments no later than 4:30 pm on April 24, 2009 to David Guilbeau, Commercial Seafood Program Administrator, Office of Public Health, 628 North Fourth Street, P.O. Box 4489, Baton Rouge, LA. 70821.

Alan Levine
Secretary

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

**RULE TITLE: Marine and Freshwater
Animal Food Products**

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

Safe Drinking Water Program

(LAC 51:XII.101, 355, 1101, 1103, 1113,
1115, 1117, 1119, 1123, 1125, 1127, 1129,
1133, 1135, 1137, 1139, 1141, 1903, and 1911)

Editor's Note: This Notice of Intent is being reprinted because of an error upon submission. The original Rule can be viewed in its entirety on page 547 of the March 20, 2009 *Louisiana Register*.

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

These proposed rule changes to Title 51, Part IX, Sections 305 and 331, will result in code provisions which are consistent with the National Shellfish Sanitation Program (NSSP) Model Ordinance. The (NSSP) is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

The first proposed rule requires owners of all oyster vessels in which persons are engaged in the handling of shellfish from oyster harvesting areas to provide their vessels with suitable receptacles including tight fitting lids. These waste receptacles shall be properly labeled with the wording "FOR HUMAN WASTE ONLY".

The second proposed rule makes a technical change to the labeling requirement for shellstock that is received either "sacked or in boxes" from a certified dealer and is not processed or repacked in any form, when reshipped to another certified dealer, wholesaler, or retailer to require that the label bear the name and certification number of the reshipper.

The third proposed rule makes a technical change to require that oysters harvested outside the time-temperature matrix be tagged "FOR SHUCKING BY A CERTIFIED DEALER OR POST-HARVEST PROCESSING ONLY".

The only cost associated with this rule change for the Office of Public Health is an estimated cost of \$1,189 (SGF) to publish the notice of intent and the final rule in the *Louisiana Register*. This cost is routinely covered in the agency's budget.

These changes will not require any additional enforcement measures and; therefore, is not anticipated to result in any additional costs to the Louisiana Department of Wildlife and Fisheries.

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

There are no effects on revenue collections of state or local governmental units anticipated as a result of promulgation of this regulation.

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

There are no significant costs or economic benefits to directly affected persons or non-governmental groups anticipated as a result of promulgation of this regulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no significant effect on competition and employment anticipated as a result of promulgation of this regulation.

M. Rony Francois, M.D., MSPH, Ph.D.
Assistant Secretary
0904#076

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), intends to amend Part XII (Water Supplies) of the Louisiana State Sanitary Code (LAC 51). These amendments are necessary in order that DHH-OPH may be able to maintain primacy (primary enforcement authority) from the United States Environmental Protection Agency (USEPA) over public water systems within Louisiana. USEPA requires state primacy agencies to adopt state rules and regulations which are no less stringent than the federal Safe Drinking Water Act's (42 U.S.C. §300f et seq.) primary implementing regulations (40 CFR Part 141).

The proposed Rule herein is intended to amend and update DHH-OPH's existing rule for public water systems. The Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182/August 6, 1996) required the USEPA to issue updated rules relative to the regulation of radionuclides, arsenic, treatment of surface waters used to produce potable water, and to enact a new rule relative to filter backwash recycling. Subsequently, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on December 7, 2000 (65 FR 76745-76751) by promulgating a rule entitled "National Primary Drinking Water Regulations: Radionuclides; Final Rule". The December 7, 2000 federal radionuclide regulations became effective for Louisiana public water systems at the federal level on December 8, 2003. Again, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on January 22, 2001 (66 FR 7060-7066) by promulgating a Rule entitled "National Primary Drinking Water Regulations: Arsenic; Final Rule". The January 22, 2001 federal arsenic regulation became fully effective for Louisiana public water systems at the federal level on January 23, 2006. Likewise, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on June 8, 2001 (66 FR 31103-31105) by promulgating a rule entitled "National Primary Drinking Water Regulations: Filter Backwash Recycling Rule; Final Rule". The June 8, 2001 federal filter backwash recycling regulation became effective for applicable Louisiana public

water systems on the federal level on December 8, 2003. On the federal level, systems were required to be in full compliance by June 8, 2004 unless it received a capital improvement extension to physically relocate its recycle return location (if necessary). Again, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on January 14, 2002 (67 FR 1835-1843) by promulgating a rule entitled the "National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment Rule; Final Rule". The January 14, 2002 federal Long Term 1 Enhanced Surface Water Treatment Rule became effective for applicable Louisiana public water systems [surface water systems (and ground water under the direct influence of surface water systems) serving less than 10,000 individuals] on March 15, 2002. Disinfection profiling and benchmarking were required to be performed in 2003 and 2004 with a final compliance deadline date of January 1, 2005.

It is the intent of this rulemaking to amend the current state regulations relative to radionuclides and arsenic by adopting these newly amended federal radionuclides and arsenic regulations by reference. It is also the intent of this rulemaking to adopt state-equivalent rules of the new federal Long Term 1 Enhanced Surface Water Treatment Rule. The current Chapter 11 titled the Interim Enhanced Surface Water Treatment Rule is to be amended and its title renamed as the Long Term 1 Enhanced Surface Water Treatment Rule. Just as the state's current Interim Enhanced Surface Water Treatment Rule incorporated provisions from the original Louisiana Surface Water Treatment Rule (adopted in 1991), so too will the state's Long Term 1 Enhanced Surface Water Treatment Rule incorporate provisions from both the original Louisiana Surface Water Treatment Rule as well as from the state's Interim Enhanced Surface Water Treatment Rule (adopted in 2002). It is also the intent of this rulemaking to adopt state-equivalent rules of the new federal filter backwash recycling regulations by proposing to enact Subchapter G (Recycle Provisions) into Chapter 11 (Long Term 1 Enhanced Surface Water Treatment Rule).

For the reasons set forth above, Part XII (Water Supplies) of the Louisiana State Sanitary Code (LAC 51:XII) is proposed to be amended as follows.

Title 51

PUBLIC HEALTH-SANITARY CODE

Part XII. Water Supplies

Chapter 1. General

§101. Definitions [formerly paragraph 12:001]

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the Sanitary Code, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows:

National Primary Drinking Water Regulations—

a. drinking water regulations promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of title XIV of the Public Health Service Act, commonly known as the "Safe Drinking Water Act," 42 U.S.C.A. §300f, et seq., and as published in the July 1, 2005 edition of the *Code of Federal Regulations*, Title 40, Part 141 (40 CFR 141), less and except:

i. Subpart H—Filtration and Disinfection (40 CFR §§141.70-141.76);

ii. Subpart P—Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People (40 CFR §§141.170-141.175); and

iii. Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People (40 CFR §§141.500—571).

b. when "Subpart H", "Subpart P", or "Subpart T" is used within the actual text of the drinking water regulations cited in Subparagraph "a." of this Paragraph (definition), "LAC 51:XII.Chapter 11" shall be substituted therein.

AUTHORITY NOTE: The first source of authority for promulgation of the Sanitary Code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with R.S. 36:254 (B)(7), R.S. 40:4 (A)(8), R.S. 40:5 (2)(3)(5)(6)(17)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1318 (June 2002), amended LR 28:2513 (December 2002), LR 30:1194 (June 2004), LR 30:2326 (October 2004), LR 35:

Chapter 3. Water Quality Standards

§355. Mandatory Disinfection

[formerly paragraph 12:021-1]

A. - B. ...

C. Public water systems which use surface water or ground water under the direct influence of surface water shall meet the requirements of applicable sections of the Long Term 1 Enhanced Surface Water Treatment Rule (LAC 51:XII.Chapter 11) as it pertains to CT and *Giardia*, *Cryptosporidium*, and virus removal/inactivation/disinfection requirements.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1326 (June 2002), amended LR 28:2514 (December 2002), LR 35:

Chapter 11. Long Term 1 Enhanced Surface Water Treatment Rule

Subchapter A. General Requirements and Definitions

§1101. General Requirements

A. For public water systems using surface water or groundwater under the direct influence of surface water (GWUDISW), this Chapter establishes or extends treatment technique requirements in lieu of maximum contaminant levels for the following microbial contaminants: *Giardia lamblia* (cysts), viruses, heterotrophic plate count bacteria, *Legionella*, turbidity, and *Cryptosporidium* oocysts.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1335 (June 2002), amended LR 28:2514 (December 2002), LR 35:

§1103. Definition of Terms

A. ...

B. Definitions. Definitions contained in §101 of this Part shall also apply to this Chapter where the following special definitions apply.

Disinfection Profile—a summary of *Giardia lamblia* inactivation through the treatment plant. For any system that uses chloramines, ozone, or chlorine dioxide for primary disinfection, this term shall additionally include a summary of virus inactivation through the treatment plant.

Groundwater under the Direct Influence of Surface Water (GWUDISW)—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 documentation of well construction characteristics and geology with field evaluation.

IESWTR—Interim Enhanced Surface Water Treatment Rule.

Liquids from Dewatering Processes—a stream containing liquids generated from a unit used to concentrate solids for disposal.

LTIESWTR—Long Term 1 Enhanced Surface Water Treatment Rule.

Spent Filter Backwash Water—a stream containing particles that are dislodged from filter media when water is forced back through the filter (backwashed) to clean the filter.

SWTR—Surface Water Treatment Rule.

SWTR Guidance Manual—U.S. EPA's Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources, March 1991 Edition.

Thickener Supernatant—a stream containing the decant from a sedimentation basin, clarifier or other unit that is used to treat water, solids, or semi-solids from the primary treatment processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8), R.S. 40:5(2)(3)(5)(6)(17)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1336 (June 2002), amended LR 28:2514 (December 2002), LR 30:1195 (June 2004), LR 35:

Subchapter B. Treatment Technique Requirements and Performance Standards

§1113. Treatment Technique Requirements

A. - A.2. ...

3. a total of 99 percent (2 Log) removal of *Cryptosporidium* oocysts through treatment processes including filtration;

4. the total reductions to be required by the DHH may be higher and are subject to the source water concentration of *Giardia lamblia*, viruses, and *Cryptosporidium*.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1340 (June 2002), amended LR 28:2518 (December 2002), LR 35:

§1115. Filtration Performance Standards

A. - A.4. ...

B. Conventional filtration treatment shall be deemed to be capable of achieving at least 99.7 percent (2.5 Log) removal of *Giardia* cysts, 99 percent (2 Log) removal of *Cryptosporidium* oocysts, and 99 percent (2 Log) removal of viruses when in compliance with operation criteria (Subchapter D of this Chapter) and performance standards (§§1115 and 1119 of this Subchapter). Direct filtration treatment and diatomaceous earth filtration shall be deemed to be capable of achieving at least 99 percent (2 Log) removal of *Giardia* cysts, 99 percent (2 Log) removal of *Cryptosporidium* oocysts, and 90 percent (1 Log) removal of viruses when in compliance with operation criteria (Subchapter D of this Chapter) and performance standards (§§1115 and 1119 of this Subchapter). Slow sand filtration shall be deemed to be capable of achieving at least 99 percent (2 Log) removal of *Giardia* cysts, 99 percent (2 Log) removal of *Cryptosporidium* oocysts, and 99 percent (2 Log) removal of viruses when in compliance with operation criteria and performance standards.

1. Expected minimum removal credits for public water systems are listed in Table 2 of this Chapter along with the corresponding remaining minimum disinfection log inactivation required.

Table 2						
Treatment Methods						
Filtration Method	Expected Minimum Log Removals			Remaining Minimum Disinfection Log Inactivation Required		
	<i>Giardia</i>	<i>Crypto</i>	Virus	<i>Giardia</i>	<i>Crypto</i>	Virus
Conventional	2.5	2.0	2.0	0.5	-0-	2.0
Direct	2.0	2.0	1.0	1.0	-0-	3.0
Slow Sand	2.0	2.0	2.0	1.0	-0-	2.0
Diatomaceous Earth	2.0	2.0	1.0	1.0	-0-	3.0

2. The remaining minimum disinfection log inactivation shall not be less than what is required pursuant to Table 2.

C. Conventional Filtration Treatment or Direct Filtration Treatment shall comply with the following performance standards for each treatment plant.

1. The turbidity level of the filtered water shall be equal to or less than 0.3 NTU in at least 95 percent of the measurements taken each month.

2. Filtered water turbidity shall not exceed 1 NTU at any time.

D. - E.1. ...

F. An alternative to the filtration technologies specified in §1115.A of this Chapter may be used provided the supplier demonstrates to the DHH that the alternative technology: provides a minimum of 99 percent *Giardia* cyst removal, a 99 percent virus removal, and a 99 percent (2 Log) *Cryptosporidium* oocyst removal, and meets the turbidity performance standards established in §1115.C of this Chapter. Such alternative filtration technology, in combination with disinfection treatment, shall be shown to consistently achieve a total of no less than 99.9 percent (3 Log) removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent (4 Log) removal and/or inactivation of viruses. The demonstration shall be based on the results from a prior equivalency demonstration or a testing of a full scale installation that is treating a water with similar characteristics and is exposed to similar hazards as the water proposed for treatment. A pilot plant test of the water to be treated may also be used for this demonstration if conducted with the approval of the DHH. The demonstration shall be presented in an engineering report prepared by a qualified engineer. Additional reporting for the first full year of operation of a new alternative filtration treatment process approved by the DHH, may be required at DHH discretion. The report shall include results of all water quality tests performed and shall evaluate compliance with established performance standards under actual operating conditions. It shall also include an assessment of problems experienced, corrective actions needed, and a schedule for providing needed improvements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1340 (June 2002), amended LR 28:2519 (December 2002), LR 30:1196 (June 2004), LR 35:

§1117. Non-Filtering Systems

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

c. Minimum Sampling Frequencies

Population	Samples/Week
≤500	1
501-3300	2
3301-10,000	3
10,001-25,000	4
> 25,000	5

B.1.d. - D.1.b. ...

c. identify within each WHPA all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons, specifically with the goal of minimizing the potential for contamination of the source water by *Giardia lamblia* cysts, viruses, and *Cryptosporidium* oocysts;

1.d. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2520 (December 2002), LR 35:

§1119. Disinfection Performance Standards

A. - B.2. ...

C. Determination of Inactivation by Disinfection. Minimum disinfection requirements shall be determined by DHH on a case-by-case basis but shall not be less than those required in Table 2 of §1115.B.1 of this Chapter. The desired level of inactivation shall be determined by the calculation of CT values; residual disinfectant concentration ("C") times the contact times ("T") when the pipe or vessel is in operation. Disinfectant contact time shall be determined by tracer studies.

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2522 (December 2002), LR 35:

Subchapter C. Monitoring Requirements

§1123. Filtration Monitoring

A. - B.2. ...

C. Combined Filter Effluent Turbidity Monitoring. To determine compliance with the performance standards specified in §§1115 of this Chapter, each supplier using surface water or GWUDISW shall conduct continuous turbidity monitoring of representative samples of the combined filter effluent prior to clearwell storage during all times that the system is in operation. Combined filter effluent turbidity measurements shall be recorded every 15 minutes. The accuracy of the turbidity measurements from the continuous turbidity monitor shall be validated weekly in accord with §1107.D of this Chapter. If there is a failure in the continuous turbidity monitoring equipment, the system shall collect and analyze a grab sample every two hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. Failure to have the continuous monitoring equipment replaced or repaired and put back into continuous service following the five working days allowed herein shall be deemed to constitute a violation of this Chapter. Systems shall maintain the results of combined filter effluent turbidity monitoring for at least three years.

EXCEPTION: In the case of public water systems using surface water or GWUDISW and serving less than 10,000 individuals, if there is a failure in the continuous turbidity monitoring equipment, the system shall collect and analyze a grab sample every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of equipment. Failure to have the continuous monitoring equipment replaced or repaired and put back into continuous service following the five working days allowed herein shall be deemed to constitute a violation of this Chapter. Systems shall maintain the results of combined filter effluent turbidity monitoring for at least three years.

C.1. - D. ...

E. Individual Filter Turbidity Monitoring/Additional Actions

1. Monitoring Individual Filters for Turbidity. Public water systems using surface water or GWUDISW as its source of water supply and which utilizes conventional filtration treatment or direct filtration shall conduct continuous turbidity monitoring for each individual filter.

Such systems shall record the results of individual filter monitoring every 15 minutes while the filter is in service. The accuracy of the turbidity measurements from the continuous turbidity monitor shall be validated weekly in accord with §1107.D of this Chapter. If there is a failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of equipment. Failure to have the continuous monitoring equipment replaced or repaired and put back into continuous service following the five working days allowed herein shall be deemed to constitute a violation of this Chapter. Systems shall maintain the results of individual filter monitoring for at least three years.

a. ...

2. Triggered Actions Based on Individual Filter Results

a. For a public water system using surface water or GWUDISW and which serves at least 10,000 individuals, refer to §1135.E.1 of this Chapter for additional actions which may be triggered dependent upon the results of individual filter turbidity monitoring. Compliance deadlines for performing such additional actions are also contained in §1135.E.1 of this Chapter.

b. For a public water system using surface water or GWUDISW and which serves less than 10,000 individuals, refer to §1135.F.1 of this Chapter for additional actions which may be triggered dependent upon the results of individual filter turbidity monitoring. Compliance deadlines for performing such additional actions are also contained in §1135.F.1 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1342 (June 2002), amended LR 28:2522 (December 2002), LR 35:

§1125. Disinfection Monitoring

A. CT Parameters Monitoring. To determine compliance with disinfection inactivation requirements specified in Table 2 of §1115.B.1 of this Chapter, each supplier shall develop and conduct a monitoring program to measure those parameters that affect the performance of the disinfection process. This shall include but not be limited to:

A.1. - B. ...

C. Small System Disinfectant Residual Monitoring at Plant. Suppliers serving fewer than 3,300 people may collect and analyze grab samples of the water being delivered to the distribution system for disinfectant residual determination each day in lieu of the continuous monitoring, in accordance with Table 4 of this Chapter, provided that any time the residual disinfectant falls below 0.2 mg/l free chlorine or 0.4 mg/l total chlorine, the supplier shall take a grab sample every two hours until the residual concentrations is equal to or greater than 0.2 mg/l free chlorine or 0.4 mg/l total chlorine.

Table 4 (Applicable to Systems Serving less than 3,300 Individuals)	
Disinfectant Residual Sampling	
System Population	Samples/Day
#500	1
501-1,000	2
1,001-2,500	3
2,501-3,300	4

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8) and R.S. 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1342 (June 2002), amended LR 28:2523 (December 2002), LR 35:

§1127. Disinfection Profiling

A. All public water systems using surface water or GWUDISW as its source of water supply and serving at least 10,000 individuals shall perform a disinfection profile of its disinfection practice on a continuous, daily basis. All public water systems using surface water or GWUDISW as its source of water supply and serving less than 10,000 individuals shall perform a disinfection profile of its disinfection practice on a continuous, weekly basis.

1. Any system that meets the criteria of Subsection A of this Section shall perform monitoring on each day [or, in the case of systems serving less than 10,000 individuals, once each week (on the same calendar day)] of operation to determine the total logs of inactivation of *Giardia lamblia* cysts, based upon the CT_{99,9} (3-Log) values in Appendix E of the SWTR Guidance Manual, as appropriate, through the entire treatment plant. Any system that uses chloramines, ozone, or chlorine dioxide for primary disinfection shall additionally calculate the total logs of inactivation of viruses for each day of operation, based upon the CT_{99,99} (4-Log) values in Appendix E of the SWTR Guidance Manual. Systems with more than one point of disinfectant application shall conduct monitoring for each disinfection segment. The following parameters shall be monitored:

a. - b. ...

c. the disinfectant contact time(s) ("T") at peak hourly flow at each residual disinfectant concentration sampling point using approved mathematical computations as outlined in Appendix C of the SWTR Guidance Manual or using the system's specific curve which is graphed as "Detention Time (T₁₀ in minutes) vs. Flow (in MGD)" (as per the example shown in Figure C-4 of Appendix C of the SWTR Guidance Manual) to determine the contact time based upon flow, subject to the following additional requirements:

i. for systems serving 3,300 persons or more, the disinfectant contact time(s) is to be determined through the use of data developed from actual tracer studies conducted on the system (see Paragraph 1119.C.1). [Theoretical contact time(s) using baffling factors are not to be used for systems serving 3,300 persons or more.];

ii. for systems serving less than 3,300 persons, the disinfectant contact time(s) may be estimated through the use of data developed in a theoretical manner by determining pipeline capacities, treatment basin capacities, clearwell storage capacity, storage tank capacities, etc., and applying the appropriate geometry and baffling factor(s) (see Paragraph 1119.C.2);

d. - e. ...

B. In addition, systems subject to the requirements of Subsection A of this Section shall compute their daily or weekly (dependent upon system size, see Subsection A of this Section) total logs of inactivation utilizing a computer spread sheet format/formulas approved by DHH. The system shall retain printed disinfection profile data as daily or weekly (dependent upon system size, see Subsection A of this Section) individual spreadsheets (containing the

monitoring data, CT computation, and total log inactivation data) and in monthly/yearly graphical profile form for review as part of sanitary surveys conducted by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2524 (December 2002), amended LR 35:

§1129. Disinfection Practice Changes

A. - A.3. ...

4. any disinfection practice modification which may lower the system's ability to comply with the required minimum log inactivation attributable to disinfection as listed in Table 2 of §1115.B.1 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8) and R.S. 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2525 (December 2002), amended LR 35:

Subchapter E. Reporting

§1133. DHH Notification

A. The supplier shall notify DHH by telephone or other equally rapid means (see Subsection C of this Section) as soon as possible but no later than 24 hours whenever:

1. the turbidity of the combined filter effluent as monitored exceeds 1.0 NTU at any time for conventional filtration treatment or direct filtration treatment;

2. more than two (i.e., three) consecutive four hour monitoring periods of the combined filter effluent show an exceedance of 0.5 NTU for conventional filtration treatment or direct filtration treatment;

3. - 7. ...

B. In accord with the requirement of §321 of this Part, the supplier shall notify DHH by telephone or other equally rapid means (see Subsection C of this Section) as soon as possible but no later than 48 hours whenever:

1. non-compliance with a combined filter effluent turbidity standard occurs during any one particular month, e.g., anytime a minimum number of individual turbidity measurements above the turbidity standard will cause the system to exceed its 5 percent monthly allowance. [For example, in a 30 calendar day month and a plant operating 24 hours per day a total of 180 combined filter effluent turbidity compliance measurements are to be taken per month. Whenever a total of 10 combined filter effluent compliance measurements have been found to exceed 0.3 NTUs, the system is in violation of its treatment technique requirement ($10 \div 180 \times 100 = 5.5$ percent) and must notify DHH as soon as possible but not later than 48 hours of the violation.]

C. When the need arises to contact DHH during weekends, state holidays, and other times when DHH offices are closed, the public water system shall contact a DHH representative via Blackberry® (or equivalent smartphone) by e-mail communication to: "safe.water@la.gov". The e-mail message should provide the name of the public water system, the PWS ID # (for example, PWS ID # 1095009) which has been assigned to identify your water system, the name of the person sending the e-mail communication, and a telephone number (with area code) so that a DHH staff member can in turn speak with whoever sent the e-mail. [In most cases, it is expected that your own District or Regional

Engineer will be returning the call (even when the office is closed) in order to consult directly with you on your problem or situation.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2525 (December 2002), amended LR 35:

§1135. Monthly Report

A. - B.3. ...

4. For public water systems using surface water or GWUDISW which utilize conventional or direct filtration treatment, the monthly report shall advise whether or not combined filter effluent turbidity monitoring has been conducted continuously and whether or not the measurements were recorded every 15 minutes. The monthly report shall also indicate the date and time when there is a failure in the continuous turbidity monitoring equipment or plant out of service as well as the date and time that such equipment/plant was placed back into service.

B.5. - D. ...

E. Individual Filter Turbidity Results/Additional Actions—for Systems Serving at Least 10,000 Individuals

1. - 2.a. ...

F. Individual Filter Turbidity Results/Additional Actions—for Systems Serving Less than 10,000 Individuals

1. For public water systems using surface water or GWUDISW which serve less than 10,000 individuals and utilizes conventional or direct filtration treatment, the monthly report shall advise whether or not individual filter turbidity monitoring has been conducted continuously and whether or not the measurements were recorded every 15 minutes. Such systems shall additionally report individual filter turbidity measurement results taken only if measurements demonstrate one or more of the following three exceedance conditions.

a. For any individual filter [or the turbidity of the combined filter effluent (CFE) for systems having only two filters and which monitor the CFE in lieu of monitoring each individual filter] that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number(s), the turbidity measurement(s), and the date(s) on which the exceedance occurred. In addition, the system shall report the cause or obvious reason (if known) for the exceedance.

b. For any individual filter [or the turbidity of the CFE for systems having only two filters and which monitor the CFE in lieu of monitoring each individual filter] that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months [unless a CPE as specified in Subparagraph c of this Paragraph was required], the system shall report the filter number(s), the turbidity measurement(s), and the dates on which the exceedances occurred. In addition, the system shall conduct a self-assessment of the filter within 14 days of the last exceedance date (the exceedance which occurred during the third straight month). The self-assessment shall consist of at least the following components: an in-depth evaluation of filter performance, including analysis of historical filtered water turbidity from the filter; development of a filter profile;

identification and prioritization of factors limiting filter performance; evaluation of the applicability of corrections; and, preparation of a filter self-assessment report. The filter self-assessment report shall also include the date that the self-assessment was triggered and the date that the self-assessment was completed. Systems having only two filters and which monitor the CFE in lieu of monitoring each individual filter shall conduct a self-assessment on both filters.

c. For any individual filter [or the turbidity of the CFE for systems having only two filters and which monitor the CFE in lieu of monitoring each individual filter] that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the system shall arrange for the conduct of a comprehensive performance evaluation (CPE) by DHH or a third party approved by DHH no later than 60 days following the exceedance and have the evaluation completed and submitted to DHH no later than 120 days following the last exceedance date (the exceedance which occurred during the second straight month). For systems experiencing multiple exceedances, only one CPE is adequate until that CPE has been completed and the appropriate corrective actions taken. If a CPE has been completed by DHH or a third party approved by DHH within the 12 prior months or the system and DHH are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required.

i. This CPE shall be considered a compliance CPE; thus, either or both of the following shall be considered a violation(s) of this Chapter:

(a.) failure to respond in writing to performance-limiting factors identified in the CPE within 45 days after receipt of the report, indicating how and on what schedule the system will address performance-limiting factors noted in the report; or

(b.) failure to correct the performance-limiting factors identified in the CPE within a time schedule acceptable to DHH.

2. When the cause/obvious reason, self-assessment, or CPE has been triggered by the turbidity results of an individual filter [or the turbidity of the CFE for systems having only two filters and which monitor the CFE in lieu of monitoring each individual filter], the following additional information for such filter(s) shall be reported in the monthly report.

a. Data recorded relative to the occurrence of a failure in the continuous turbidity monitoring equipment for the affected individual filter(s) or filter out of service conditions, the identity of the individual filter(s), the date and time of such equipment failure or out of service conditions as well as the date and time that the equipment and/or filter(s) was placed back into service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2526 (December 2002), amended LR 35:

§1137. Disinfection Profiling Report

A. Public water systems subject to the requirements of §1127.A of this Chapter shall submit to DHH a printed report on the initial 12 consecutive months of disinfection

profiling data [including daily or weekly (dependent upon system size, see §1127.A), individual spreadsheets containing the monitoring data, CT computation, and total log inactivation data] and in monthly/yearly graphical profile form as required under §§1127 of this Chapter. For systems serving at least 10,000 individuals, this disinfection profiling report is due on no later than February 15, 2004. For systems serving less than 10,000 individuals which have not yet submitted a report to DHH, this disinfection profiling report is due on *final date of this rule*.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2527 (December 2002), amended LR 35:

Subchapter F. Public Notification

§1139. Consumer Notification

A. Treatment Technique/Performance Standard Violations. The supplier shall notify persons served by the system whenever there is a failure to comply with the treatment technique requirements specified in §§1113 or 1141 or the performance standards specified in §§1115, 1117, or 1119 of this Chapter. The notification shall be given in a manner approved by the DHH, and shall include the following mandatory language.

A.1. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2527 (December 2002), amended LR 35:000 (March 2009), LR 35:

Subchapter G. Filter Backwash Recycling

§1141. Recycling Provisions

A. Applicability. All public water systems having treatment plants which utilize surface water or GWUDISW that employ conventional filtration treatment or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements in Subsections B through D of this Section.

B. Reporting. A system must notify the Department of Health and Hospitals (DHH) in writing if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include, at a minimum, the following information:

1. a plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are re-introduced back into the treatment plant;

2. typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and the DHH-approved operating capacity for the plant where the DHH has made such determinations.

C. Treatment Technique Requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional or direct filtration system as defined in §1103.B or at an alternate location approved by the DHH.

D. Recordkeeping. The system must collect and retain on file recycle flow information for review and evaluation by DHH as follows:

1. copy of the recycle notification and information submitted to the DHH under Subsection B of Section;
2. list of all recycle flows and the frequency with which they are returned;
3. average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;
4. typical filter run length and a written summary of how filter run length is determined;
5. the type of treatment provided for the recycle flow;
6. data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 35:

Chapter 19. Public Notification Rule

§1903. Public Notification [formerly §313]

A. ...

B. In addition, if a public water system fails to report required analytical data to the appropriate office designated by the state health officer within the applicable time limit(s) stipulated by the National Primary Drinking Water Regulations (as defined in this Part), the Louisiana Total Coliform Rule (Chapter 9 of this Part), the Long Term 1 Enhanced Surface Water Treatment Rule (Chapter 11 of this Part), the Stage I Disinfectants and Disinfection Byproducts Rule (Chapter 13 of this Part), or the Approved Chemical Laboratories/Drinking Water Rule (Chapter 15 of this Part), and such data (e.g., turbidity measurements, corrosion control chemical concentrations, etc.) is required to determine a maximum contaminant level or treatment technique requirement prescribed by this Code, the public water system shall be assessed a monitoring violation and must give appropriate public notification.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 35:000 (March 2009), amended LR 35:

§1911. Public Notice for Certain Violations of Specific Drinking Water Rules

A. ...

B. Long Term 1 Enhanced Surface Water Treatment Rule. Also refer to §1139 of this Part.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 35:000 (March 2009), amended LR 35:

Family Impact Statement

1. The Effect on the Stability of the Family. No effect on the stability of the family is anticipated as a result of this proposed rulemaking.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. No effect on the authority and rights of parents regarding the education and supervision of their children is anticipated as a result of this proposed rulemaking.

3. The Effect on the Functioning of the Family. No effect on the functioning of the family is anticipated as a result of this proposed rulemaking.

4. The Effect on the Family Earnings and Family Budget. No effect on the family earnings and family budget is anticipated as a result of this proposed rulemaking.

5. The Effect on the Behavior and Personal Responsibility of Children. No effect on the behavior and personal responsibility of children is anticipated as a result of this proposed rulemaking.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. The family has no function to perform under this Rule; therefore, the family's ability to perform a function under this rule is a non-issue. The local government's ability to perform the function as contained in the proposed Rule is anticipated to be good as local governments owning or operating a public water system have already been implementing the rule to comply with equivalent federal regulation deadline dates (which have now all passed).

DHH-OPH will conduct a public hearing at 10 a.m. on Friday, April 24, 2009, in Room 671/673 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 Sts. (catercorner 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 Wednesday, April 29, 2009 at COB, 4:30 p.m., and should be addressed to Karen Irion, Chief, Engineering Services, Center for Environmental Health Services, Office of Public Health, CEHS Mail Bin #3, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7303. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, Room 134, Baton Rouge, LA 70802.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Safe Drinking Water Program

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

The rule proposes to amend Part XII (Water Supplies) of the State Sanitary Code (LAC 51) to update the Department of Health and Hospital, Office of Public Health (DHH-OPH) regulations relative to Arsenic and Radionuclide Contaminants and to adopt the Filter Backwash Recycling Rule and Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) to comply with certain United States

Environmental Protection Agency (USEPA) regulations regarding drinking water. In order for DHH-OPH to maintain its primacy delegation from the USEPA, it must continue to adopt and/or amend its state regulations such that they continue to be equivalent to the federal regulations.

For FY 08-09, the proposed rule changes will result in an estimated cost to DHH-OPH of \$2,460 to publish the notice of intent and the final rule in the *Louisiana Register*. No additional costs to DHH-OPH are estimated in FY 09-10 or FY 10-11. This cost is routinely covered in the agency's budget.

The arsenic rule changes the maximum contaminant level for arsenic from 50 mg/L to 10 mg/L. The radionuclide rule requires monitoring to be done at the source of the water supply instead of just anywhere in the distribution system. There are no anticipated costs for state or local governmental units that own or operate a public water system to comply with these changes because systems have already been required to comply with the equivalent federal provisions since January 23, 2006 and December 8, 2003 respectively.

The Filter Backwash Recycling rule requires surface water systems and ground water under the direction influence of surface water systems to notify DHH-OPH of any recycling of any liquids from dewatering processes, spent filter backwash water, or thickener supernatant. There is no cost associated with this requirement because these systems have been required to be in compliance with federal provisions since June 8, 2004, or if granted an extension, since June 8, 2006.

The LTIESWTR lowers turbidity standards for the 30 publicly-owned surface water systems serving less than 10,000 individuals. In addition, these systems will be required by DHH-OPH to perform a continuous weekly disinfection profiling to ensure that *Giardia lamblia* and viral contaminants are being adequately destroyed in the disinfection process. Federal regulations only required these systems to perform weekly disinfection profiling for one 12-month period. This change could result in an estimated cost of \$312 per year for these water systems (based on 1/2 hour time required per week X \$12 per hourly rate of pay for operator). However, performing the weekly profiling will let the operator know if there is any overfeeding of disinfectant chemicals, especially in warm and summer months. As a result, these water systems should be able to offset some or all of this cost by the savings it will generate from reducing the amount of disinfectant used in water treatment.

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

There are no effects on revenue collections of state or local governmental units anticipated as a result of promulgation of this regulation.

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

There are 9 privately-owned surfaced water systems serving less than 10,000 individuals that will be required to comply with the same LTIESWTR requirements as the publicly-owned water systems. These systems can also expect to generate the same potential cost and savings as the publicly-owned systems.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

M. Rony Francois, M.D., MSPH, Ph.D.
Assistant Secretary
0904#075

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Practical Nurse Examiners

Adjudication and Temporary Permits
(LAC 46:XLVII.306 and 1705)

The Board of Practical Nurse Examiners proposes to amend LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979. The proposed amendments to §306 clarify current language in the Rule. The proposed amendments to §306 do not change the meaning or intent of the Rule and will not change the way the Rule is currently implemented or the way the Rule has been implemented in the past. The proposed amendment to §1705 will allow a licensed practical nurse, who is working in Louisiana on an emergency temporary permit during a declared state of public health emergency, to receive a wage for nursing services rendered. This change is proposed in order to help employers attract sufficient numbers of licensed practical nurse volunteers to work in Louisiana during a declared state of public health emergency.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 3. Board of Practical Nurse Examiners

§306. Adjudication Proceedings

A. - D. ...

E. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default. A consent order or agreed settlement shall be presented to the board for approval before it becomes binding on the board.

F. - O. ...

P. After the hearing is concluded, the hearing officer shall issue a report containing his/her findings of fact, conclusions of law and recommendations. This report shall be presented to the board in executive session and shall be considered privileged and confidential until and unless it is adopted in final form by the board.

Q. - U. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:978 and Acts 675 and 827, 1993.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 2:275 (September 1976), amended LR 3:193 (April 1977), LR 10:336 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 20:663 (June 1994), LR 26:2614 (November 2000), LR 28:2353 (November 2002), LR 30:1478 (July 2004), LR 34:1912 (September 2008), LR 35:

Chapter 17. Licensure

§1705. Temporary Permit

A. - C. ...

D. During a declared state of public health emergency, an emergency temporary permit may be issued to practical nurses licensed in another jurisdiction of the U.S. whose

license is current, unrestricted and in good standing in such jurisdiction, provided that the practical nurse register with the board prior to providing practical nursing care. The emergency permit may be issued for 60 days or until termination of the state of public health emergency, whichever comes first. The permit may be extended for two additional 60 day periods.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:200 (April 1977), amended LR 10:341 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1130 (October 1992), repromulgated LR 18:1263 (November 1992), amended LR 28:2355 (November 2002), LR 32:637 (April 2006), LR 33:93 (January 2007), amended LR 35:

Family Impact Statement

The proposed amendments to LAC 46:XLVII.Subpart 1. 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 functioning of the family, family earnings and family budget, the behavior and personal 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 to Claire Doody Glaviano, Executive Director, Board of Practical Nurse Examiners, 3421 N. Causeway, Ste. 505, Metairie, LA 70002. All comments must be submitted by 3:30 p.m., May 10, 2009.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Adjudication and Temporary Permits

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 2009, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Practical Nurse Examiners, any state unit or local governmental 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 rules allow nurses from other states working in Louisiana on an emergency temporary permit to receive financial reimbursement for their services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Authorizing financial reimbursements for nurses from other states working in Louisiana on an emergency temporary permit will likely result in more out of state nurses working in emergency temporary nursing jobs in the state.

Claire Doody Glaviano
Executive Director
0904#016

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Offender Visitation (LAC 22:I.316)

In accordance with the provisions of the Administrative Procedures Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of §316, Offender Visitation.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

Subchapter A. General

§316. Offender Visitation.

A. Purpose. To establish the secretary's policy regarding offender visitation and to set forth the procedures to be followed concerning offender visitation.

B. Applicability. Deputy Secretary, Chief of Operations, Assistant Secretary, Regional Wardens and Wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its content to all offenders, affected employees and visitors.

C. Policy. The department recognizes the importance of visitation in the maintenance of an offender's family ties; visitation is an integral component of institutional management. Visiting can improve public safety and encourage offender accountability. Authorized visitation is permitted by the department to facilitate an offender's institutional adjustment in accordance with the department's goals and mission. The visiting process shall be conducted in an atmosphere that is conducive for the safe, secure and orderly management and operation of the institution. Thus, the visiting process will not overly tax the institution's resources or its ability to maintain adequate control and supervision. In this matter, as in all others affecting institutional operations, safety and security are primary considerations.

1. Each warden shall be responsible for ensuring written information regarding visiting procedures is made available to offenders within 24 hours following the offender's arrival at the institution. At a minimum, the information shall include, but is not limited to, the following: address and phone number of the institution; directions to the institution; information regarding local transportation; days and hours of visitation; approved dress code; identification requirements; authorized items; rules for children and special visits.

D. Definitions

Attorney Visit—visit by an attorney or authorized representative, such as a paralegal assistant, law clerk and investigator whose credentials have been verified.

Disrespect—hostile, sexual, abusive, threatening language or gestures, verbal or written, towards or about another person by a visitor.

Disturbance—conduct or activity which unnecessarily interferes with visitation operations, and/or which advocates,

encourages, promotes or otherwise creates or poses a threat to the safety, security, health and good order of the institution, and/or the safety and security of offenders, staff or visitors. A visitor commits a disturbance if the visitor advocates, creates, engages in, maintains or promotes an annoying condition or disorder characterized by unruly, noisy or violent conduct.

Employee—any person employed full-time, part-time or on temporary appointment by the department.

Excessive Contact—prolonged or frequent contact between a visitor and an offender that exceeds the brief embrace and kiss upon meeting and leaving and hand-holding. Excessive is not casual contact, but rather a pattern of contact beyond rule limits.

Family Member—includes the offender's identifiable parents, siblings, children, legal spouse, aunts, uncles, nieces, nephews, grandchildren and grandparents, including foster, in-law, and step-relationships or any others indicated on the offender's master prison record as having raised the offender.

Immediate Family Member—includes the offender's identifiable parents, siblings, children, legal spouse and any others indicated on the offender's master prison record as having raised the offender.

Intake Status—the 30-day period of time following delivery of an offender to the custody of the department. During this time, staff conducts intake processing of the offender including, but not limited to, medical and mental health assessments, custody classification and identification of programming needs and assignments.

Minor Child—anyone under the legal age of majority (17 years.)

Non-Contact Visit—a type of visitation whereby an offender and an approved visitor on the offender's visiting list are not permitted to be in physical contact during visitation and are generally separated by a physical barrier.

Picnic Visit—a type of visitation in an area of the institution set aside for picnicking.

Regular Visit—visitation whereby an offender and an approved visitor on the offender's visiting list are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with limited physical contact, consisting of a brief embrace and kiss upon meeting and leaving, hand-holding and holding of children.

Sex Crime Involving a Minor Child—any conviction of a sexual crime committed, attempted or conspired in which a minor child was involved, victimized or was the intended victim.

Special Visits are as follows:

a. requests for special visits shall be submitted to the warden or designee as soon as possible;

b. visitation may be authorized by the warden or designee on a case-by-case basis to allow an offender to visit with a person who is not on the offender's approved visiting list, such as out-of-state family members or friends;

c. an extra visit by an offender and a person who is on the offender's approved visiting list that is permitted beyond the limits of the number of visits established by this regulation and institutional policy and procedures; and

d. a visit that is permitted at an hour and/or place at which visits are not normally permitted.

NOTE: Specialized Visiting is also authorized for hospitalized or terminally ill offenders.

E. Visiting Procedures. Visitation is a privilege and not a right and violation of rules may result in termination of the visit, loss of the offender's visiting privileges, banning of the visitor from entering the institution or its grounds and/or criminal charges as circumstances warrant.

1. Offender Eligibility

a. All offenders, except those offenders in intake status or as specifically provided herein, are eligible to apply for visits while confined in a departmental facility.

b. Visitation will not be allowed while an offender is in intake status. Once an offender is removed from intake status, visitation with immediate family members may be authorized by the receiving facility at the request of an offender.

c. Offenders who have a current or prior conviction for a sex crime involving a minor child family member, or who have a documented history of sex abuse with a minor child family member, are ineligible to visit with any minor child, including their own biological or step-child.

d. Offenders who have a current or prior conviction for a sex crime involving a minor child who is not a family member are ineligible to visit with any minor child. However, at the warden's discretion, such offenders may be authorized to visit with their own biological child. The legal guardian shall submit a written request and shall accompany the minor child during the visit. If approved by the warden, the visit may be contact or non-contact at the warden's discretion.

Exception: Special visits for offenders who have successfully completed or are participating satisfactorily in sex offender treatment may be considered by the warden. (Treatment staff who teach the sex offender class shall be involved in the decision-making process for this type of special visit.) The legal guardian shall submit a written request and shall accompany the minor child during the visit. If approved by the warden, the visit may be contact or non-contact at the warden's discretion.

2. Eligibility of Prospective Visitors

a. All persons, except as specifically prohibited in accordance with this regulation, are eligible to be considered for approval to visit an offender confined in a departmental facility upon application and request by the offender.

b. A person is ineligible to visit if the individual has been convicted of, and/or has criminal charges pending against him for the following crimes/criminal activities:

i. introduction and/or supplying, attempting or conspiring to introduce or supply contraband;

ii. possession, control or delivery of an explosive device or substance, including attempt or conspiracy to do the same; or

iii. assisting an offender in an escape or unlawful departure from a correctional facility, including an attempt or conspiracy.

c. Visits from the offender's direct victim(s) are prohibited.

d. A person who has been convicted of a felony, who has not been finally discharged from an institution or from probation or parole supervision for more than two years without an intervening criminal record shall be denied approval to be placed on an offender's visiting list. In addition, any person who in the previous five years had three or more felony charges (regardless of disposition) shall be considered ineligible to visit or, if already an approved visitor, shall have visiting privileges revoked.

e. All prospective visitors shall be screened for criminal history by one of the following approved methods:

- i. request for a police check to local law enforcement agencies by utilizing the Police Questionnaire;
- ii. CAJUN 2 inquiry;
- iii. National Crime Information Center (NCIC); or
- iv. Louisiana Computerized Criminal History (LACCH.)

f. While the use of LACCH is considered optimum, the warden retains the option of choosing the method of obtaining the police record that best meets the needs of the institution. Each institution shall honor the criminal history check of another institution.

g. Visitation by employees of the department is reserved for immediate family members only. Requests to visit an incarcerated family member shall be submitted to the requesting employee's warden or designee for consideration. A departmental employee or an ex-employee may be denied approval to visit if such denial is deemed by the warden or designee to be in the best interest of the institution.

h. Exceptions to the provisions of this section, including the approval of former offenders as visitors, may be specifically authorized by the warden or designee.

3. Visiting Lists/Maximum Number of Approved Visitors

a. Offenders may be permitted a maximum of 10 approved visitors on their respective visiting lists. The Initial Request for Visitors Form shall be used by offenders to request visitors.

NOTE: At the discretion of the warden or designee, an offender participating in a special recognition program may be allowed to have up to a maximum of 15 approved visitors placed on his visiting list.

b. The name of each approved visitor shall appear on the offender's visiting list; however, legal advisors, one approved religious advisor and children under 14 years shall not be counted toward the maximum number of approved visitors, although their names must still appear on the list.

c. Except as noted in Paragraph E.1. relative to offenders who have a current or prior conviction for a sex crime, minor children may visit on any of the regular visiting days when accompanied by an adult visitor on the offender's approved visiting list. Both visitors must be visiting the same offender at the same time. Exceptions to being accompanied by an adult may be specifically authorized by the warden or designee, including, but not limited to, the following:

- i. minor spouse;
- ii. emancipated minors (Judgment of Emancipation required as proof); or
- iii. minors visiting as part of approved institutional programs such as school groups, church groups, parenting groups, etc.

d. It is the offender's responsibility to provide the correct name, address, date of birth, race and sex of all prospective visitors. A record shall be maintained of approved visitors, as well as a confirmation of their actual visits.

e. All visiting records/information obtained on an offender by institutional staff shall be transferred with the offender when the offender is reassigned to another institution within the department. This includes transfers to

work release programs. The offender's current visiting information shall be utilized by the work release program to allow for visitation.

4. Restrictions on Visiting

a. An offender may refuse to see a visitor; however, the offender will be required to sign a statement to that effect and the statement shall be filed in the offender's master prison record. Should the offender refuse to sign a statement, documentation of the refusal shall be placed in the offender's master prison record.

b. A person may be removed from the offender's approved visiting list at his own request.

c. Any person may be denied permission to visit during the time of a disturbance at the institution. All visiting shall be suspended during an emergency.

d. A visitor can be on only one offender's visiting list per institution unless that visitor is a family member of more than one offender. The burden of proof and documentation will be the responsibility of the offender and his family.

e. All visitors 15 years of age and older must have picture identification in order to visit an offender.

f. When an offender requests a visitor be added to his visiting list, it shall be the offender's responsibility to mail the Individual Questionnaire Form to the proposed visitor. By signing the questionnaire, the proposed visitor is agreeing to be on the offender's visiting list and to obey all institutional rules. The proposed visitor shall return the completed questionnaire to the institution's classification department for further processing. The information received from the questionnaire shall be used to run the criminal history check prior to final approval.

g. The institution shall develop and post procedures regarding the notification to visitors of their approval or disapproval.

h. Grandfather Clause

i. All approved visitors on an offender's visiting list on July 20, 2009, will remain approved (unless removed for cause.) If the offender has more than 10 approved visitors, the offender may not add or substitute an additional visitor without bringing their visiting list into compliance with this regulation.

5. Changing the Visiting List

a. Each offender shall be allowed to request changes (additions, deletions, substitutions) to his approved visiting list every four months.

b. A Request for Changes of Approved Visiting List Form shall be made available to offenders to request changes to their approved visiting list.

c. Offenders entering an institution with no established visiting record should be granted tentative approval to visit family members upon request of the offender. Some preliminary verification of relationship may be required. Exceptions must be approved by the warden or designee and be based upon legitimate security considerations.

d. Offenders transferring to another institution should be authorized to visit with their approved visitors at the receiving institution, unless it is demonstrated that the requirements/restrictions of this regulation were not previously adhered to in the approval process or unless the

warden or designee at the receiving institution identifies the need to apply restrictions based upon current security considerations. (An offender shall be allowed to request a change in his visiting list when he first arrives at the receiving institution and at four-month intervals thereafter.)

6. Number, Duration and Conditions of Visits

a. Approved visitors should be allowed to visit the offender at least two times per month.

b. While a two-hour visit is optimum, each warden or designee retains the discretion to determine the duration of visits, as well as the days and hours on which they may occur. Available space and staff will determine visiting lengths.

c. Each warden or designee retains the discretion to determine the number of visitors who may visit an offender at one time. Family visiting and contact visits are to be permitted to the extent possible.

d. All visitors are to be informed in writing of the rules governing visiting. Rules will be conspicuously posted in the visiting areas.

e. Visitors are allowed to bring only enough cash money for vending machines and/or concessions into the visiting area. Any financial transactions including cash money, money orders (bank or postal) or cashier's checks for deposit into an offender's account will only be accepted at the visiting processing area.

Exception: Deposits into an offender's account at the Louisiana State Penitentiary may be accepted in the visiting room.

f. Any visit may be terminated if the offender or visitor violates the rules governing visiting.

g. Non-Contact Visits

i. The warden or designee may place a visitor on a non-contact visitation status for the safe and secure operation of the institution. Visitors placed on non-contact visitation status shall have their status reviewed every six months.

ii. Offenders who are housed in segregation or disciplinary units shall be placed on non-contact visitation status.

iii. Any offender who pleads guilty or has been found guilty of a disciplinary rule for one or more of the following reasons will be subject to non-contact visits for a minimum of six months:

(a). possession of any drug or drug paraphernalia;

(b). producing a positive or adulterated urine sample;

(c). refusal or substantial delay to provide a urine sample;

(d). introduction of contraband into the institution;

(e). positive breathalyzer test; or

(f). any major rule violation that occurs in the visitation area.

iv. Such restriction must be formally reviewed, at a minimum, every six months. Restriction of contact visiting is not a disciplinary penalty.

h. Where available, picnic visits are authorized as approved by the warden or designee. The warden or designee shall authorize foods that will be allowed for picnics.

7. Dress Code for Visitors

a. Visitors should be aware that visiting areas are designed to cultivate a family atmosphere for family and friends of all ages. Visitors should dress and act accordingly. The following apparel is considered inappropriate and shall result in the denial of visits:

i. clothing that is similar in appearance to the clothing worn by the unit's offender population;

ii. clothing that is similar in appearance to the clothing worn by correctional officers, i.e. camouflage, blue BDU's, etc.

iii. transparent clothing;

iv. swimming suits;

v. skirts, shorts, skorts, culottes, and dresses shorter than 1 inch above the knee cap or those with revealing slits;

vi. strapless, tube and halter tops, tank tops and strapless dresses;

vii. tops that expose the midriff;

viii. blouses, shirts and dresses that are low cut;

ix. Spandex, Lycra or Spandex-like athletic pants, aerobic/exercise tights or leotards;

x. underwear cannot be exposed;

xi. clothing with revealing holes or tears one inch above the knee cap;

xii. clothing or accessories with obscene or profane writing, images or pictures;

xiii. gang or club-related clothing or insignia indicative of gang affiliation.

b. All visitors must wear shoes; house slippers and shower shoes are not allowed. Footwear must remain on feet at all times. These restrictions apply equally to men, women and children.

8. Suspension of Visiting Privileges

a. Any person may be refused approval to visit an offender and removed from an approved visiting list if the visitor does not comply with the rules of the institution. (Such removal may be temporary or permanent, depending upon the severity of the violation.)

b. Any person causing or participating in a disturbance or one that is disrespectful may be refused approval to visit an offender. If an offense is such that it is the warden or designee's desire to remove the visitor from the visitor list (either indefinitely or for a fixed period of time), the following procedures must be followed.

i. The warden or designee must notify the visitor in writing that he has been removed from all applicable visiting lists, the reason why and that the removal will be reviewed after a specified amount of time. The visitor shall also be notified that he may appeal the warden's decision to the secretary by sending a letter within 15 days of the date of the notice.

ii. If the visitor exercises this appeal right, the secretary or designee will review the appeal and investigate, as appropriate, within 30 days of notice. If necessary, a hearing will be scheduled and the visitor will be notified of the time, date and location of the hearing.

iii. The warden or designee may submit a report to the secretary setting forth any information that he feels may assist in making the decision. If a hearing is held, the

secretary or designee may determine that the warden or designee should attend this hearing; in this case, the warden shall be so advised. Otherwise, the hearing shall consist of a meeting between the visitor and the secretary or designee and shall be preserved by minutes.

iv. The secretary shall render a written decision granting or denying the appeal and shall notify the visitor and the warden of the decision without undue delay. Brief reasons for the decision shall be given.

9. Treatment of Visitors

a. There shall be no discrimination in visiting. All visitors and offenders shall be provided equal opportunities in visiting in accordance with the offender's security classification and housing assignment.

b. Visitors shall be treated with courtesy at all times and shall not be subjected to unnecessary delay or inconvenience in accomplishing a visit.

c. Without warning, visitors are subject to a search of their vehicles, possessions and persons. This is necessary to preclude the introduction of weapons, ammunition, explosives, cell phones, alcohol, escape devices, drugs, drug paraphernalia or other forbidden items or contraband into the prison environment. All searches of visitors will be conducted in accordance with established rules and regulations.

d. All visitors with disabilities will have readily accessible facilities and will be reasonably accommodated as appropriate and to the extent possible within the context of the department's fundamental mission to preserve the safety of the public, staff and offenders. Advance notice of the accommodation requested will be necessary to ensure its availability at the time of the visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:2 (January 1979), amended LR 11:1096 (November 1985), repromulgated LR 29:2851 (December 2003), amended by the Department of Public Safety and Corrections, Corrections Services, LR 32:406 (March 2006), LR 35:

Family Impact Statement

Amendment to the current Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on May 11, 2009.

James M. Le Blanc
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Offender Visitation

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

This is a technical adjustment to an existing regulation. There will be no fiscal impact with repealing and implementing the new regulation.

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 since this is a technical adjustment.

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

There is no estimated cost or economic benefit 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 with this rule.

Thomas C. Bickham, III
Undersecretary
0904#056

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Gaming Control Board

Accounting Regulations
(LAC 42:VII.2723, IX.2723, and XIII.2723)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.2723; IX.2723; and XIII.2723.

Title 42

LOUISIANA GAMING

Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming

Subpart 1. Economic Development and Gaming Corporation

Chapter 27. Accounting Regulations

§2723. Internal Controls; Slots

A. Any reference to Slot Machines or slots in this Section includes all Electronic Gaming Devices. Provisions within this Section shall not apply to coinless and tokenless devices.

B. - D.2.e. ...

3. Jackpot slips that are voided shall be clearly marked "Void" across the face of all copies. On manual slips, only the first and second copies shall have "Void" written across the face. The cashier and slot or cage Supervisor shall print their employee numbers and sign their names on the voided slip. The Supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

4. Computerized jackpot/Payout systems shall be restricted so as to prevent unauthorized access and fraudulent Payouts by an individual.

5. Jackpot payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures, or by altering the amount paid subsequent to the payout, and misappropriating the funds. One copy of the jackpot payout slip shall be retained in a locked box located outside the change booth/cage where jackpot payout slips are executed or as otherwise approved by the division.

D.6. - W.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:751 (April 2000) amended LR 26:2305 (October 2000), LR 31:1603 (July 2005), LR 34:2648 (December 2008), LR 35:

Part IX. Landbased Casino Gaming

Subpart 1. Economic Development and Gaming Corporation

Chapter 27. Accounting Regulations

§2723. Internal Controls; Slots

A. Any reference to Slot Machines or slots in this Section includes all Electronic Gaming Devices. Provisions within this Section shall not apply to coinless and tokenless devices.

B. - W.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1936 (October 1999), amended LR 26:2306 (October 2000), LR 31:1605 (July 2005), LR 34:2657 (December 2008), LR 35:

Part XIII. Riverboat Gaming

Subpart 2. State Police Riverboat Gaming Division

Chapter 27. Accounting Regulations

§2723. Internal Controls; Slots

A. Any reference to Slot Machines or slots in this Section includes all Electronic Gaming Devices. Provisions within this Section shall not apply to coinless and tokenless devices.

B. - D.2.e. ...

3. Jackpot slips that are voided shall be clearly marked "Void" across the face of all copies. On manual slips, only the first and second copies shall have "Void" written across the face. The cashier and slot or cage Supervisor shall print their employee numbers and sign their names on the voided slip. The Supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

4. Computerized jackpot/Payout systems shall be restricted so as to prevent unauthorized access and fraudulent Payouts by an individual.

5. Jackpot payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures, or by altering the amount paid subsequent to the payout, and misappropriating the funds. One copy of the jackpot payout slip shall be retained in a locked box located outside the change booth/cage where jackpot payout slips are executed or as otherwise approved by the division.

6. ...

7. Jackpot payout slips shall be used in sequential order.

E. - W.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1887 (October 1999), repromulgated LR

25:2243 (November 1999), amended LR 26:2306 (October 2000), LR 31:1607 (July 2005), LR 34:2667 (December 2008), LR 35:

Family Impact Statement

Pursuant to the provisions of La. R.S. 49:953 A., the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:VII.2723; IX.2723; and XIII.2723.

It is accordingly concluded that amending LAC 42:VII.2723; IX.2723; and XIII.2723 would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on 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.

Small Business Impact Statement

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that there will be no adverse impact on small business if LAC 42:VII.2723; IX.2723; and XIII.2723 are amended as they do not apply to small businesses.

All interested persons may contact Jonathon Wagner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to these proposed rules, through May 11, 2009, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Accounting Regulations

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

The proposed administrative rule changes will have no implementation costs to state or local governmental units. These rule changes are merely technical updates to practices currently taking place in the industry and/or language changes for consistency among the three areas being monitored (Land-based Casino, racetrack slots and Riverboats).

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

The proposed administrative rule change will have no impact on revenue collections for state or local governmental units.

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

The proposed administrative rule changes will have no significant costs and/or economic benefit to industry. These rule changes are merely technical updates to practices currently taking place in the industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule change will have no effect on competition or employment.

H. Charles Gaudin
Chairman
0904#053

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Advertising—Compulsive and Problem Gaming
(LAC 42:VII.2927; IX.2919; and XIII.2927)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.2927; IX.2919; and XIII.2927 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

**Part VII. Pari-Mutual Live Racing Facility Slot Machine
Gaming**

Chapter 29. Operating Standards

§2927. Advertising

A. - C. ...

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the casino. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. The casino operator or casino manager may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:765 (April 2000), amended LR 33:856 (May 2007), LR 35:

Part IX. Landbased Casino Gaming

Chapter 29. Operating Standards Generally

§2919. Advertising; Mandatory Signage

A. - C. ...

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the casino. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. The casino operator or casino manager may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1953 (October 1999), amended LR 26:335 (February 2000), LR 33:857 (May 2007), LR 35:

**Part XIII. Riverboat Gaming Commission
Chapter 29. Operating Standards**

§2927. Advertising

A. - C. ...

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the riverboat. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. Licensees may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR21:702 (July 1995), amended by the Department of Public Safety and Correction, Gaming Control Board, LR 33:858 (May 2007), LR 35:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953(A), the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:VII.2927, IX.2919, and XIII.2927.

It is accordingly concluded that amending LAC 42:VII.2927, IX.2919, and XIII.2927 would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on 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.

Small Business Impact Statement

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that there will be no adverse impact on small business if LAC 42:VII.2927, IX.2919, and XIII.2927 are amended as they will not apply to small businesses.

All interested persons may contact Jonathon Wagner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to this proposed Rule, through May 11, 2009, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

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

**RULE TITLE: Advertising
Compulsive and Problem Gaming**

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

The proposed administrative rule changes will have no implementation costs to state or local governmental units. These rule changes are merely a clarification of a practice already required to take place in industry.

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

The proposed administrative rule change is designed to eliminate confusion among licensed eligible facilities regarding the proper display of signage. This confusion sometimes led to fines being levied which were then paid to the Department of Public Safety and Corrections. Elimination of the confusion will likely lead to a slight reduction of fines collected as a result of fewer citations being issued for signage violations.

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

The proposed administrative rule changes will have no significant costs and/or economic benefit to industry. These rule changes are merely a clarification of a practice already required to take place in industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule changes will have no effect on competition and employment.

H. Charles Gaudin
Chairman
0904#050

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Compulsive and Problem Gaming (LAC 42:III.304)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:III.304, in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42
LOUISIANA GAMING
Part III. Gaming Control Board
Chapter 3. Compulsive and Problem Gaming
§304. Self Exclusion**

A. - C.5. ...

D. Self-Exclusion List

1. - 5. ...

6.a. Except as otherwise provided herein, neither the casino operator, casino manager, nor any casino gaming licensee, employee, or agent thereof shall disclose the Self-Exclusion List or the name of, or any information about, any person who has requested self-exclusion to anyone other than employees and agents of the casino operator, casino manager, or casino gaming licensee whose duties and functions require access to such information. Notwithstanding the foregoing, the casino operator, casino manager, and each casino licensee may disclose the name of and information about a self-excluded person to appropriate

employees of other casino licensees in Louisiana for the purpose of alerting other casinos that a self-excluded person has tried to gamble or otherwise obtain gaming related privileges or benefits in a casino gaming establishment. Nothing herein shall be construed to prohibit the licensee from disclosing the identity of self-excluded persons to affiliated entities in Louisiana and other gaming jurisdictions for the limited purpose of assisting in the proper administration of compulsive and problem gaming programs operated by such affiliated entities.

b. The casino operator, casino manager, or a casino gaming licensee may release the names and identifying information of those persons on the Self-Excluded List to contracted service providers that provide check cashing, marketing, credit evaluations, automated teller machines, cash advances, or other financial services provided:

i. the identifying information shall be limited to the address, driver's license or state issued identification number, photograph, and physical description;

ii. only the name and identifying information may be disclosed to the contracted service provider. The casino operator, casino manager, or a casino gaming licensee shall neither disclose the reasons for providing the name and identifying information nor shall it be disclosed that the person is on the Self-Excluded List;

iii. the casino operator, casino manager, or a casino gaming licensee shall require by written contract that the contracted service provider implement measures designed to ensure the confidentiality of the names and identifying information and to prohibit the release of the names and identifying information to any other person or entity;

iv. the casino operator, casino manager, or a casino gaming licensee shall immediately report to the Division all instances of a self-excluded person accessing or attempting to access the services provided by the contracted service providers and investigate the incident as required by LAC 42:III.304(E).

c. Administrative hearings regarding or related to self-excluded persons shall be closed to the public and any record created or evidence introduced in conjunction with such hearings shall be maintained confidential and not made available for public inspection.

E. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:1990 (September 2002), amended LR 30:2493 (November 2004), LR 35:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953 A, the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:III.304(D)(6).

It is accordingly concluded that amending LAC 42:III.304(D)(6) would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;

5. the effect on 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.

Small Business Impact Statement

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that there will be no adverse impact on small business if LAC 42:III.304(D)(6) is amended as it will not apply to small businesses.

All interested persons may contact Jonathon Wagner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to these proposed rules, through May 11, 2009, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Compulsive and Problem Gaming

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

The proposed administrative rule change will have no implementation costs to state or local governmental units.

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

The proposed administrative rule change will have no impact on revenue collections for state or local governmental units.

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

The proposed administrative rule change will not have any cost to industry associated with its implementation but it will provide an inestimable economic benefit to it by making it easier to identify self-excluded individuals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule change will have no effect on competition or employment.

H. Charles Gaudin,
Chairman
0904#051

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Gaming Control Board

Operation of Video Draw Poker Devices
(LAC 42:VII.2729; IX.2729; and XIII.2729)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.2729.U, IX.2729.U, and XIII.2729.U in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming

Chapter 27. Accounting Regulations

§2729. Internal Controls; Cage, Vault and Credit

A. - T. ...

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of patron, date marker issued, date paid, method of payment (if combination, i.e., chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence.

V. - NN.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:759 (April 2000), amended LR 35:

Part IX. Landbased Casino Gaming

Chapter 27. Accounting Regulations

§2729. Internal Controls; Cage, Vault and Credit

A. - T. ...

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of patron, date marker issued, date paid, method of payment (if combination, i.e., chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence.

V. - NN.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1944 (October 1999), amended LR 35:

Part XIII. Riverboat Gaming

Chapter 27. Accounting Regulations

§2729. Internal Controls; Cage, Vault and Credit

A. - T. ...

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of patron, date marker issued, date paid, method of payment (if combination, i.e., chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence.

V. - NN.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1896 (October 1999), repromulgated LR 25:2251 (November 1999), amended LR 35:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953.A, the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:VII.2729.U, 42:IX.2729.U, and 42:XIII.2729.U.

It is accordingly concluded that amending LAC 42:VII.2729.U, IX.2729.U, and XIII.2729.U. would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on 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.

Small Business Impact Statement

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that there will be no adverse impact on small business if LAC 42:VII.2729.U, 42:IX.2729.U, and 42:XIII.2729.U are amended as they will not apply to small businesses.

All interested persons may contact Jonathon Wagner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to this proposed Rule, through May 11, 2009, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

NOTICE OF INTENT

Department of Revenue Policy Services Division

Electronic Filing Requirements—Dedicated Funds Distribution (LAC 61:III.1513-1523)

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.1513, 1515, 1517, 1519, 1521, and 1523 to mandate electronic filing for certain taxes that are dedicated and require distribution to specific state and local funds.

R.S. 47:1520(A)(1)(d) authorizes the secretary to require electronic filing if a report is required for dedicated fund distribution. Paragraph A.2 requires that the electronic filing requirements be implemented by administrative rule in accordance with the Administrative Procedure Act. R.S. 47:1520(B) provides for penalties if the taxpayer fails to comply with the electronic filing requirement.

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous Chapter 15. Electronic Filing and Payments— Dedicated Funds Distribution

§1513. Automobile Rental Tax Return, Form R-1329—Electronic Filing Requirement

A. R.S. 47:551 imposes a state tax of 2 1/2 percent and a local tax of 1/2 of 1 percent on the gross proceeds from automobile rental contracts.

B. The Department of Revenue is required to collect the 3 percent automobile rental tax and to provide the 1/2 percent local tax collection amount for distribution to the local tax authorities.

C. Effective with the July 2009 filing period, dealers who collect the automobile rental tax will be required to file the automobile rental tax return, form R-1329, electronically with the Department of Revenue using the electronic format prescribed by the department.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and 47:551.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Operation of Video Draw Poker Devices

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

The proposed administrative rule changes will have no implementation costs to state or local governmental units.

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

The proposed administrative rule changes will have no impact on revenue collections for state or local governmental units.

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

The proposed administrative rule changes will have no costs and/or economic benefit to industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule changes will have no effect on competition or employment.

H. Charles Gaudin
Chairman
0904#052

Robert E. Hosse
Staff Director
Legislative Fiscal Office

§1515. Tax Increment Financing District Sales Tax Returns, Form R-1029—Electronic Filing Requirement

A. R.S. 33:9038.34 authorizes certain local governmental subdivisions or entities to issue revenue bonds payable from revenues generated by economic development projects with a pledge and dedication of the sales tax increments to be used as a guaranty of any shortfall, or at the option of the local governmental subdivision or tax recipient entity, payable directly from an irrevocable pledge and dedication of up to the full amount of sales tax increments, in an amount to be determined by the local governmental subdivision or tax recipient entity, to finance or refinance all or any part of an economic development project as described in R.S. 33:9038.31 et seq.

B. Effective with the July 2009 filing period, dealers located in a tax increment financing district where the state sales tax increment is dedicated to finance or refinance an economic development project as authorized by R.S. 47:9038.34 or a joint venture or cooperative endeavor for a public purpose as authorized by R.S. 33:9038.35 will be required to file the Sales Tax return, Form R-1029, electronically with the Department of Revenue using the electronic format prescribed by the department.

C. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and R.S. 33:9038.34.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

§1517. Hotel and Motel Sales Tax Return, Form R-1029DS—Electronic Filing Requirement

A. Acts 1966, No. 556; Acts 1991, No. 624; Acts 1992, No. 1099; Acts 1993, No. 640; Acts 1995, No. 1191 authorize the Louisiana Stadium and Exposition District to collect a tax of 4 percent of the gross proceeds from hotel and motel room rentals in the parishes of Orleans and Jefferson as defined in R.S. 47:301(8). Acts 1978, No. 305; Acts 1980, No. 99; Acts 1987, No. 390; Acts 2002 1st Ex. Sess., No. 72 authorize the New Orleans Exhibition Hall Authority to collect a tax of 3 percent on the gross proceeds from hotel and motel room rentals in Orleans parish as defined in R.S. 47:301(8).

B. The Department of Revenue is required to collect the 4 percent room occupancy tax and distribute it to the Louisiana Stadium and Exposition District. The Department of Revenue is also required to collect the 3 percent room occupancy tax and distribute it to the New Orleans Exhibition Hall Authority.

C. Effective with the July 2009 filing period, dealers who collect the Louisiana Stadium and Exposition District

room occupancy tax or the New Orleans Exhibition Hall Authority room occupancy tax will be required to file the Hotel and Motel Sales Tax return, Form R-1029DS, electronically with the Department of Revenue using the electronic format prescribed by the department.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and Acts 1966, No. 556; Acts 1991, No. 624; Acts 1992, No. 1099; Acts 1993, No. 640; Acts 1995, No. 1191.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

§1519. New Orleans Exhibition Hall Authority Additional Room Occupancy Tax and Food and Beverage Tax Return, Form R-1325—Electronic Filing Requirement

A. Acts 1978, No. 305; Acts 1980, No. 99; Acts 1987, No. 390; Acts 2002 1st Ex. Sess., No. 72 authorize the New Orleans Exhibition Hall Authority to collect an additional tax of varying rates, depending on the capacity of the establishment, on hotel and motel room rentals in Orleans parish as defined in R.S. 47:301(8). Acts 1987, No. 390 authorizes the New Orleans Exhibition Hall Authority to collect a tax of varying rates, depending on the gross sales of food and beverages of the establishment during the preceding calendar year, on the sales of food and beverages sold or served in Orleans parish or at any airport or air transportation facility owned by the City of New Orleans.

B. The Department of Revenue is required to collect the additional room occupancy tax and the food and beverage tax and distribute it to the New Orleans Exhibition Hall Authority.

C. Effective with the July 2009 filing period, dealers who collect the New Orleans Exhibition Hall Authority additional room occupancy tax or the food and beverage tax will be required to file the New Orleans Exhibition Hall Authority Additional Hotel Room Occupancy Tax and Food and Beverage Tax return, Form R-1325, electronically with the Department of Revenue using the electronic format prescribed by the department.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and Acts 1978, No. 305; Acts 1980, No. 99; Acts 1987, No. 390; Acts 2002 1st Ex. Sess., No. 72.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

§1521. Louisiana State and Parish and Municipalities Beer Tax Return, Form R-5621—Electronic Filing Requirement

A. R.S. 26:492 authorizes parishes and municipalities to impose a tax on beverages of low alcoholic content of not more than \$1.50 per standard barrel of 31 gallons.

B. The Department of Revenue is required to collect the parish and municipalities beer tax and distribute it to the local tax authorities.

C. Effective with the July 2009 filing period, dealers who collect the parish and municipalities beer tax will be required to file the Louisiana State and Parish and Municipalities Beer Tax return, Form R-5621, electronically with the Department of Revenue using the electronic format prescribed by the department.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and R.S. 26:492.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

§1523. Hotel/Motel Sales Tax Return, Form R-1029H/M—Electronic Filing Requirement

A. R.S. 47:302, 321, 331 and R.S. 51:1286, collectively, impose a 4 percent tax on the gross receipts from hotel and motel room rentals.

B. The Department of Revenue is required to collect the sales tax on hotel and motel room rentals and distribute it to various funds as indicated by R.S. 47:302.2 et seq., R.S. 47:322.1 et seq. and R.S. 47:332.1 et seq.

C. Effective with the July 2009 filing period, dealers who collect the state sales tax on hotel and motel room rentals will be required to file the Hotel/Motel Sales Tax return, Form R-1029H/M electronically with the Department of Revenue using the electronic format prescribed by the department.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of \$100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds \$25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, R.S. 47:302.2 et seq., R.S. 47:322.1 et seq. and R.S. 47:332.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

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 Raymond Tangney, 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 May 26, 2009. A public hearing will be held on May 27, 2009 at 10 a.m. in the Magnolia Room on the Seventh Floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Electronic Filing Requirements Dedicated Funds Distribution

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

This proposed rule requires dealers who remit certain taxes to electronically submit their tax returns to the Louisiana Department of Revenue beginning with the July, 2009, filing period. The taxes affected by the rule include:

- Automobile Rental Tax
- Louisiana General Sales and Use Tax Generated in a Tax Increment Financing District
- Louisiana Stadium and Exposition District Room Rental Tax
- New Orleans Exhibition Hall Authority Room Occupancy Tax
- New Orleans Exhibition Hall Authority Additional Room Occupancy Tax
- New Orleans Exhibition Hall Authority Food and Beverage Tax
- Parish and Municipality Beer Tax
- State Sales Tax on Hotel and Motel Rooms

Electronic filing of these returns is necessary to facilitate proper identification and dedication of tax revenues from these sources. Since the electronic filing applications already exist, the department's implementation costs should be minimal and will be absorbed within the department's existing budget allocation. Ongoing system maintenance costs will be offset by a corresponding reduction in tax return printing, postage, and paper processing costs.

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

This proposed rule, which requires dealers to electronically submit certain tax returns, 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)

The costs for businesses that will be required to electronically file returns should be negligible because 20 percent of the taxpayers already file electronically, and the newly mandated taxpayers typically own a computer and have Internet access, which is all that is required to submit the electronic returns as required by this proposed rule. In addition, regional offices of the Department of Revenue offer kiosks and on-site customer support to assist in electronic filing. This practice should also benefit taxpayers by eliminating paper return preparation and mailing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
0904#046

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Jobs for America's Graduates TANF (LAC 67:III.5591)

The Department of Social Services, Office of Family Support, in accordance with the Administrative Procedure Act, proposes to amend LAC 67:III.5591, Jobs for America's Graduates Louisiana (JAG-LA) Program a TANF Initiative.

The Department of Social Services proposes to expand the age range of participants and the scope of services of the JAG-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.

The authorization for emergency action in this matter is contained in Act 19 of the 2008 Regular Session of the Louisiana Legislature. This Rule was effective February 3, 2009, by a Declaration of Emergency published in the February 2009 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 (JAG-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 (JAG-LA) Program to help 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.

B. These services meet TANF Goal 3 to prevent and reduce the incidence of out-of-wedlock pregnancies 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, and/or other undesirable outcomes which may lead to the detriment and impoverishment of youth.

C. Eligible participants in the JAG-LA Program shall be 12-22 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 18, 2007 Reg. Session. Act 19, 2008 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2468 (November 2007), amended LR 34:698 (April 2008), LR 35:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The broadening of the eligible participant age range and expanding the program scope of services is expected to have a positive effect on the stability of more families by helping to keep in school a greater number of students who are 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? This Rule is not expected to have an effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? Families are expected to experience positive outcomes characterized by participants' improved self esteem, increased community involvement, and a greater sense of security and self-value due to students 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? Participants completing all required JAG-LA competencies improve their families' earning and budget potentials 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? Participants gain valuable insight regarding personal, family and community responsibility and graduate high school or complete the equivalent credential at a greater rate than if the program was not available to them.

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 May 27, 2009, to Alison Neustrom, Ph.D, 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 May 28, 2009, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Kristy H. Nichols
Secretary

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

RULE TITLE: Jobs for America's Graduates TANF

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

The purpose of this rule is to amend the Louisiana Administrative Code Title 67:III.5591, Jobs for America's Graduates Louisiana (JAG-LA). JAG-LA is a TANF Initiative that currently serves participants ages 15-21. The mission of this program is to keep in school those students who are at risk

of failing in school and to ultimately assist these students in earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce. This rule proposes to expand the age range of participants to also include ages 12-14 and age 22. This rule also makes some technical language changes to clarify the rule.

The proposed rule will cost \$2,550,000 in SFY 09, which will bring the total funding for JAG-LA to \$3,950,000. This funding will allow the program to serve an additional 1,750 participants. The increase will be funded with existing TANF funds that were de-obligated in the current fiscal year from TANF contracts that were terminated. This level of funding is anticipated to continue in FY 09-10 and FY 10-11 subject to appropriation.

In addition, it will cost approximately \$1,000 (\$500 State; \$500 Federal) for publishing rulemaking and printing policy in SFY 09. This is a one-time cost that is routinely included in the agency's budget.

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)

This rule will provide a long-term goal of improving the economic situations of the targeted program participants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Alison Neustrom
Assistant Secretary
0904#067

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: JANUARY – MARCH 2009

LAC Title	Part.Section	Effect	Location LR 35 Month Page	LAC Title	Part.Section	Effect	Location LR 35 Month Page	
7	V.2501,2503,2505	Adopted	Mar 406	43	I.Chapter 41	Adopted	Jan 73	
	XXI.507	Amended	Mar 406		VI.101,103,301,303,305	Amended	Feb 249	
	XXV.101,103,109,113,141	Amended	Feb 205		VI.307,309,501,505,507	Amended	Feb 249	
	XLV.Chapter 1	Adopted	Feb 204		VI.701,703,705	Amended	Feb 249	
					VI.105	Adopted	Feb 249	
13	III.Chapter 19	Adopted	Jan 54	46	I.701	Amended	Jan 64	
22	I.101	Amended	Jan 85		I.1107	Adopted	Jan 64	
	I.303	Amended	Mar 487		XI.102,108	Amended	Jan 53	
	I.315	Amended	Jan 87		XI.737	Adopted	Jan 53	
	I.403	Amended	Feb 252		XIX.1503	Amended	Feb 236	
	III.4723	Amended	Feb 238		XXI.301,311	Amended	Jan 64	
	XIII.301,503	Amended	Jan 65		XXXIII.306,415,419,420,706	Repromulgated	Jan 67	
28	I.501	Amended	Feb 223		XLV.411	Amended	Mar 464	
	IV.103,301,504,701,703,803,1001	Amended	Feb 227		XLV.1303,1305	Amended	Feb 240	
	IV.1401-1409,1413-1417	Amended	Feb 227		XLV.1304,1307,1319,1321	Adopted	Feb 240	
	IV.1705,1901	Amended	Feb 227	XLV.1323,1325,1327,1357	Adopted	Feb 240		
	IV. Chapter 16	Adopted	Feb 224	XLV.1365,1367,1369	Adopted	Feb 240		
	VI.305,309,311	Amended	Feb 235	LXXXV.700,711	Amended	Feb 244		
	CXI.305,307,309,311,312,313	Amended	Feb 216	48	I. Chapter 60	Adopted	Mar 466	
	CXI.309	Amended	Mar 443		I.9335	Amended	Feb 245	
	CXI.315,501,701,2011,2701	Amended	Feb 216		I.9729	Amended	Feb 248	
	CXI.501,511,1801,2007,2011	Repromulgated	Jan 57	50	III.2303	Amended	Jan 69	
	CXI.2015,2305,2311,3505	Repromulgated	Jan 57		III.20301-20305	Adopted	Jan 72	
	CXI. Chapter 18	Adopted	Feb 214		IX.8301,8305	Adopted	Jan 70	
	CXI.1901,1903,1907,1909	Amended	Feb 208		XV.7107	Amended	Jan 69	
	CXI.1911,1913,1915,1917	Amended	Feb 208		XV.10701	Amended	Jan 73	
	CXI.1905	Repromulgated	Feb 208		XV.10703	Adopted	Jan 73	
	CXI.1919,1921,1923,1925	Adopted	Feb 208		XV. Chapters 251-257	Adopted	Feb 245	
	CXV.501,502	Repromulgated	Mar 443		XVII.301,303,501	Repromulgated	Jan 71	
	CXV.2321	Amended	Mar 443		XXI.14301	Amended	Mar 482	
	CXXXI.239	Amended	Feb 222		XXVII.351,353	Adopted	Jan 70	
	CXXXI.305,309	Amended	Feb 222	51	II.117	Amended	Feb 249	
CXXXI.313	Amended	Feb 221	XIII.101,913,1139,1507,1509		Amended	Mar 483		
CXXXI.348	Adopted	Feb 220	XIII.313		Repealed	Mar 483		
CXXXI.629	Amended	Feb 221	XIII. Chapter 19		Adopted	Mar 483		
32	III.601	Amended	Jan 66	52	I.1318-1321	Adopted	Mar 407	
	V.601	Amended	Jan 66		55	I.1505,1543	Amended	Mar 491
33	I.807	Amended	Jan 62	VI.703,705		Amended	Mar 490	
	I.2701,2703,2705,2707,2709,2711	Adopted	Mar 449	VII.317		Amended	Jan 89	
	I.2713,2715,2717,2719,2721	Adopted	Mar 449	58		I.305	Amended	Feb 271
	III.301,303,305,307,309,311,313	Adopted	Mar 456		61	I.1501	Amended	Feb 255
	III.501	Amended	Mar 456			III.501	Adopted	Feb 254
	III.1432,1434	Amended	Mar 461			V.101,303,703,705,901,907	Amended	Mar 491
	III.1435,1437	Adopted	Mar 461	V.1103,1301,1305,1307,1503	Amended	Mar 491		
	IX.1105,1113,1123	Amended	Mar 445	V.2101,2501,2503,3101,3501	Amended	Mar 491		
35	I.1721	Amended	Mar 463	67	III.2303,2547	Amended	Feb 270	
	V.6359	Amended	Mar 463		70	III.115	Amended	Feb 271
42	VII.2159,3311,	Amended	Jan 84	76		I.318	Adopted	Mar 501
	VII.2711	Repromulgated	Jan 82		VII.527	Adopted	Mar 503	
	IX.2159,3311	Amended	Jan 84		VII.529	Adopted	Mar 503	
	XI.2405	Amended	Jan 82		XIX.113	Amended	Jan 91	
	XI.2405	Repromulgated	Mar 490		XIX.115	Amended	Jan 90	
	XI.2731	Repromulgated	Jan 83					
	XIII.2159,3311	Amended	Jan 84					

Potpourri

POTPOURRI

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Annual Quarantine Listing for 2009

In accordance with LAC 7:XV.107 and 109, we are hereby publishing the annual quarantine.

1.0 Sweetpotato Weevil (*Cylas formicarius elegantulus* Sum)

(a) In the United States: the states of Alabama, California, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas and any other state found to have the sweetpotato weevil.

(b) In the State of Louisiana:

1) The entire parishes of: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, DeSoto, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Feliciana.

2.0 Pink Bollworm (*Pectinophora gossypiella* Saunders)

Pink bollworm quarantined areas are divided into generally infested and/or suppressive areas as described by USDA-PPQ.

Arizona

(1) Generally infested area: the entire state.

California

(1) Generally infested area: The entire counties of: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

(2) Suppressive area: The entire counties of: Fresno, Kern, Kings, Madera, Merced, San Benito, and Tulare.

New Mexico

(1) Generally infested area: The entire state.

Texas

(1) Generally infested area: The entire state.

3.0 Phytophagous Snails

The states of Arizona and California.

4.0 Sugarcane Pests and Diseases

All states outside of Louisiana.

5.0 Lethal Yellowing

The state of Florida.

6.0 Texas Phoenix Decline

The state of Texas and Florida.

7.0 Tristeza, Xyloporosis, Psorosis, Exocortis.

All citrus growing areas of the United States.

8.0 Burrowing Nematode (*Radopholus similis*)

The States of Florida and Hawaii and the Commonwealth of Puerto Rico.

9.0 Oak Wilt (*Ceratocystis fagacearum*)

Arkansas

Infected counties: Baxter, Benton, Boone, Carroll, Clay, Craighead, Crawford, Franklin, Fulton, Independence, Izard, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Nevada, Newton, Poinsett, Pope, Randolph, Scott, Searcy, Sharp, Stone, Washington, and Yell.

Illinois

Entire state.

Indiana

Entire state.

Iowa

Entire state.

Kansas

Infected counties: Anderson, Atchison, Cherokee, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Shawnee, and Wyandotte.

Kentucky

Infected counties: Adair, Allen, Ballard, Bath, Bell, Boyd, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carter, Casey, Christian, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Hart, Henderson,

Hopkins, Jefferson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Logan, McCracken, McLean, Magoffin, Marshall, Martin, Menifee, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Rowan, Russell, Taylor, Todd, Trigg, Union, Warren, Wayne, and Webster.

Maryland

Infected Counties: Allegany, Frederick, Garrett, and Washington.

Michigan

Infected counties: Barry, Barrien, Calhoun, Cass, Clare, Clinton, Grand Traverse, Kalamazoo, Kent, Lake, Livingston, Manistee, Missaukee, Muskegon, Oakland, Roscommon, St. Joseph, Van Buren, Washtenaw, Wyne, and Menominee.

Minnesota

Infected counties: Anoka, Aitkin, Blue Earth, Carver, Cass, Chicago, Crow Wing, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Le Sueur, McLeod, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona, and Wright.

Missouri

Entire state.

Nebraska

Infected counties: Cass, Douglas, Nemaha, Otoe, Richardson, and Sarpy.

North Carolina

Infected counties: Buncombe, Burke, Haywood, Jackson, Lenoir, Macon, Madison, and Swain.

Ohio

Entire state.

Oklahoma

Infected counties: Adair, Cherokee, Craig, Delaware, Haskell, Latimer, LeFlore, Mayes, McCurtain, McIntosh, Ottawa, Pittsburg, Rogers, Sequoyah, and Wagoner.

Pennsylvania

Infected counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Centre, Clarion, Clinton, Cumberland, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mifflin, Perry, Somerset, Venango, Washington, and Westmoreland.

South Carolina

Infected counties: Chesterfield, Kershaw, Lancaster, Lee, and Richland.

Tennessee

Infected Counties: Blount, Carter, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hardeman, Hawkins, Jefferson, Knox, Lincoln, Loudon, Montgomery, Rhea, Roane, Robertson, Sevier, Sullivan, Union, Washington, and White.

Texas

Infected counties: Bandera, Bastrop, Bexar, Blanco, Basque, Burnett, Dallas, Erath, Fayette, Gillespie, Hamilton, Kendall, Kerr, Lampasas, Lavaca, McLennan, Midland, Tarrant, Travis, Williamson.

Virginia

Infected counties: Aleghany, Augusta, Bath, Botetoust, Clarke, Frederick, Giles, Highland, Lee, Loudoun, Montgomery, Page, Rockbridge, Rockingham, Scott, Shenandoah, Smyth, Warren, Washington, Wise, and Wythe.

West Virginia

Infected counties: all counties except Tucker and Webster.

Wisconsin

Infected counties: Adams, Brown, Buffalo, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Racine, Richland, Rock, St. Croix, Sauk, Shawano, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

10.0 Phony Peach

Alabama

Entire state.

Arkansas

Counties of Arkansas, Ashley, Bradley, Chicot, Columbia, Crittendon, Cross, Desha, Drew, Hempstead, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Miller, Monroe, Nevada, Phillips, Pike, Poinsett, St. Francis, Sevier, Union, and Woodruff.

Florida

Entire state.

Georgia

Entire state.

Kentucky

County of McCracken.

Louisiana

Parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Morehouse, Natchitoches, Ouachita, Red River and Union.

Mississippi

Entire state.

Missouri

County of Dunklin.

North Carolina

Counties of Anson, Cumberland, Gaston, Hoke, Polk and Rutherford.

South Carolina

Counties of Aiken, Allendale, Bamberg, Barnwell, Cherokee, Chesterfield, Edgefield, Greenville, Lancaster, Laurens, Lexington, Marlboro, Orangeburg, Richland, Saluda, Spartanburg, Sumter, and York.

Tennessee

Counties of Chester, Crockett, Dyer, Fayette, Hardman, Hardin, Lake, Lauderdale, McNairy, Madison, and Weakley.

Texas

Counties of Anderson, Bexar, Brazos, Cherokee, Freestone, Limestone, McLennan, Milan, Rusk, San Augustine, Smith, and Upshur.

11.0 Citrus Canker [*Xanthomonas axonopodis* pv. *citri*]

Any areas designated as quarantined under the Federal Citrus Canker quarantine 7 CFR 301.75 et seq.

12.0 Pine Shoot Beetle [*Tomicus piniperda* (L.)]

Any areas designated as quarantined under the Federal Pine Shoot Beetle quarantine 7 CFR 301.50 et seq.

13.0 Citrus Greening [*Candidatus Liberibacter asiaticus*]

Louisiana

Infested parishes: Orleans and Washington.

14.0 Asian Citrus Psyllid [*Diaphorina citri* Kuwayama]

Louisiana

Infested parishes: Jefferson, Orleans, Lafourche, Plaquemines, St. Charles, St. James, St. Tammany and Terrebonne.

Date: April 3, 2009

Approved by: Mike Strain DVM
Commissioner

0904#045

POTPOURRI

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

Public Hearing—Substantive Changes to Proposed Rules; Consultation or Collaboration with Medical Psychologists (LAC 46:XLV.7203, 7207, 7209, 7211, and 7213)

A Notice of Intent concerning the above referenced proposed Rules was published by the Louisiana State Board of Medical Examiners on December 20, 2008, in the *Louisiana Register* (See LR 34:2714-2717), relative to consultation or collaboration between physicians and medical psychologists ("MPs"). Written comments were invited, received and considered, as were oral comments, views, arguments and information at a public hearing held by the board on January 26, 2009. Certain of those comments suggested substantive changes. In consideration of such comments the board proposes to amend several provisions of the proposed Rules by: modifying the definition of "Discussion" to include written and other appropriate means of communication between a physician and an MP (§7203, Definition of *Discussion*); adding

Subsection 7207.B so as not to inhibit practitioners from sharing call or providing coverage with/for their respective colleagues, or from consulting with specialists; removing the necessity of a physician to verify a known MP's prescriptive authority (§7209.A.2); clarifying that physician documentation of consultation with an MP need reflect an MP's psychological evaluation only if known (§7209.A.4); deleting the requirement for physician documentation of the MP's intended role of medication within treatment plan (§7209.A.6); amending Paragraph 7211.A.2 and deleting Paragraph 7211.A.5 (and renumbering Paragraphs 7211.A.6-9 to reflect the deletion), to permit continued concurrence in an MP's psychopharmacological management of a patient in instances where the patient's non-compliance with medication instructions or medication misuse can be satisfactorily explained; clarifying the method and manner for obtaining a patient authorization for physician consultation and collaboration with an MP (§7413.B.6). Accordingly, the board proposes to amend the proposed Rules as follows.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Profession

Subpart 3. Practice

Chapter 72. Consultation or Collaboration with
Medical Psychologists

Subchapter A. General Provisions

§7203. Definitions

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

* * *

Discussion—a communication between a physician and a medical psychologist conducted in person, by telephone, in writing or by some other appropriate means.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7207. General Prohibitions

A. - A.9.b. ...

B. Physicians and MPs providing coverage call for a colleague, those providing rotating coverage for a patient in the same clinical setting, and those consulted by a physician or MP with respect to a given patient, are exempt from the limitations provided in Paragraphs A.2, 4 and 5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7209. Authority, Responsibility and Limitations

A. Consultation and Collaboration. Consultation and collaboration shall include discussion of any item the physician considers relevant to the coordination of the patient's medical care or evaluation of the psychopharmacologic management planned by the MP. The physician's consultation shall be documented in the patient's medical record and include, at a minimum:

1. ...

2. Patient Identity, Date and Parties. The patient's name, current addresses and telephone number; the date of

the consult; and the MP's name and telephone number shall be clearly identified. If the physician is unfamiliar with the MP, the physician shall also verify that the MP holds a current certificate of prescriptive authority;

3. ...

4. Psychological Evaluation and Diagnosis. If known, the MP's psychological evaluation of the patient, including any relevant psychological history, laboratory or diagnostic studies; the MP's psychological diagnosis; and any other information the physician may deem necessary for the coordination of medical care of the patient;

5. ...

6. Treatment Plan. The MP's treatment and/or management plan for the patient;

A.7. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7211. Withdrawal or Termination of Concurrence

A. A physician shall notify an MP and his patient in a timely manner that he or she has withdrawn or terminated concurrence if:

1. ...

2. the physician receives information indicating that the patient is non-compliant with the treatment prescribed and questions relating to such non compliance cannot be addressed satisfactorily upon further consultation with the MP;

3. - 4. ...

5. the physician becomes aware of information that would prohibit consultation and collaboration under Section 7207 of this Chapter;

6. the physician is advised of the patient's election to withdraw from psychopharmacologic management by an MP, or to withdraw his or her authority for the physician or the MP to consult and collaborate;

7. the physician retires or withdraws from clinical practice in this state or relocates his or her practice to a location that would render continuing care of the patient impractical; or

8. the physician's license is suspended, revoked or restricted in a manner that would prohibit consulting and collaborating with an MP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7213. Informed Consent

A. A physician shall not consult and collaborate with an MP without the patient's written authorization as set forth in Subparagraph 7209.A.1.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

As such changes may be considered substantive by parties affected by the proposed Rules, notice is hereby given in accordance with the Administrative Procedure Act, specifically R.S. 49:968H(2), that a public hearing on the substantive changes will be held by the Board on Monday, June 15, 2009, at 4 p.m. at the offices of the Louisiana State

Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. All interested persons are invited to attend and present data, views, comments or arguments orally. All interested persons are invited to submit written comments concerning the proposed substantive changes to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, P.O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA 70130), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., May 21, 2009.

Robert L. Marier, M.D.
Executive Director

0904#060

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
Energy Self-Service Oils, Inc.	Barataria, West	L	Rathborne Swd	005	182469
Energy Self-Service Oils, Inc.	Barataria, West	L	Rathborne Land Co Inc	002	211325
Energy Self-Service Oils, Inc.	Napoleonville	L	6200 Ra Sua; Hooker Chemicals	001	202913
Energy Self-Service Oils, Inc.	Napoleonville	L	M Ra Sua; Dugas & Leblanc Ltd	002	221177
Energy Self-Service Oils, Inc.	Napoleonville	L	Dugas & Leblanc Ltd Swd	001	221315
Energy Self-Service Oils, Inc.	Sherburne	L	Vua; Meraux	001	225682
Eagle Oil & Gas Co.	Grand Cheniere, South	L	Plan Ra Sua; Fawvor Clara G Fontenot et al	001	231729
Grubb & Hawkins	Port Barre	L	Claris	001	27451
Atlas Oil Company	Elm Grove	S	Hunter	002	1484
Atlas Oil Company	Elm Grove	S	Hunter	002	3385
Dyxoco, inc.	Erath	L	U Richard	002	208263(30)
Dyxoco, Inc.	Erath	L	U Richard	002-D	208945(30)
Muttontown Oil Company Inc.	Alligator Lake	L	Kirby Lumber Co	001	990463

Operator	Field	District	Well Name	Well Number	Serial Number
King W. Lanoux	Frenier	L	Lutcher Moore Cyp Lbr Co Ltd	002	77551
Pioneer Oil & Gas Co., Inc.	Point Chicot	L	W Alton Jones	002	79942

James H. Welsh
Commissioner

0904#061

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 4 claims in the amount of \$13,757.70 were received for payment during the period March 1, 2009-March 31, 2009.

There were 4 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2917.453	8943.290
2920.428	9014.713
2946.367	892.401
2949.141	9154.025

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Scott A. Angelle
Secretary

0904#079

POTPOURRI

**Department of Revenue
Policy Services Division**

Natural Gas Severance Tax Rate

The natural gas severance tax rate effective July 1, 2009, through June 30, 2010, has been set at 33.1 cents per thousand cubic feet (MCF) measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit.

This tax rate is set each year by multiplying the natural gas severance tax base rate of 7 cents per MCF by the "gas base rate adjustment" determined by the Secretary of the Department of Natural Resources in accordance with R.S. 47:633(9)(d)(i). The "gas base rate adjustment" is a fraction, of which the numerator is the average of the New York Mercantile Exchange (NYMEX) Henry Hub settled price on

the last trading day for the month, as reported in the Wall Street Journal for the previous 12-month period ending on March 31, and the denominator is the average of the monthly average spot market prices of gas fuels delivered into the pipelines in Louisiana as reported by the Natural Gas Clearing House for the 12-month period ending March 31, 1990 (1.7446 \$/MMBTU).

Based on this computation, the Secretary of the Department of Natural Resources has determined the natural gas severance "gas base rate adjustment" for April 1, 2008, through March 31, 2009, to be 472.82 percent. Applying this gas base rate adjustment to the base tax rate of 7 cents per MCF produces a tax rate of 33.1 cents per MCF effective July 1, 2009, through June 30, 2010. The reduced natural gas severance tax rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

The "gas base rate adjustment" and the "gas tax rate" are being published as required by R.S. 47:633(9)(d)(i). Questions concerning the natural gas severance tax rate should be directed to the Taxpayer Services Division, Severance Tax Section at 225-219-7656, Option 3.

Cynthia Bridges
Secretary

0904#019

POTPOURRI

Department of Social Services Office of Community Services

Social Services Block Grant—Intended Use Report

The Department of Social Services (DSS) announces opportunities for public review of the state's pre-expenditure report on intended uses of Social Services Block Grant (SSBG) funds for the state fiscal year (SFY) beginning July 1, 2009, and ending June 30, 2010. The proposed SFY 2009-2010 SSBG Intended Use Report has been developed in compliance with the requirements of Section 2004 of the Social Security Act (SSA), as amended and includes information on the types of activities to be supported and the categories or characteristics of individuals to be served through use of the state's allocation of SSBG funds. Section 2004 of the SSA further requires that the SSBG pre-expenditure report shall be "made public within the state in such manner as to facilitate comment by any person." The DSS as the designated state services agency will continue to administer programs funded under the SSBG in accordance with applicable statutory requirements and federal regulations. The DSS/Office of Community Services (OCS) will be responsible for provision of social services, by direct delivery and vendor purchase, through use of SFY 2009-2010 SSBG expenditures for adoption, child protection, daycare for children, family services, and foster care/residential habilitation services.

Additionally, and, separate and apart from the traditional SSBG funding priorities, the Intended Use Report describes the uses of Supplemental Appropriations for hurricane and disaster relief. These are federal funds from the Department of Defense Act (HR 2863 and HR 2638) for states most severely affected and for expenses related to the consequences of hurricanes in the calendar years 2005 and 2008. The use of these supplemental funds has previously been addressed in separate public hearings with funding allocated to the sources named in this document.

For non-supplemental funds, Louisiana, through DSS/OCS, will utilize its allotted funds to provide comprehensive social services on behalf of children and families in fulfillment of legislative mandates for child protection and child welfare programs. These mandated services, and certain other essential social services, are provided without regard to income (WRI) to individuals in need. Individuals to be served also include low-income persons as defined in the Intended Use Report who meet eligibility criteria for services provided through SSBG funding.

Services designated for provision through SSBG non-supplemental funding for SFY 2009-2010 are:

A. Adoption (pre-placement to termination of parental rights)

B. Child Protection (investigation of child abuse/neglect reports, assessment, evaluation, social work intervention, shelter care, counseling, referrals)

C. Daycare for Children (direct care for portion of the 24-hour day as follow-up to investigations of child abuse/neglect)

D. Family Services (social work intervention subsequent to validation of a report of child abuse/neglect, counseling to high risk groups)

E. Foster Care/Residential Habilitation Services (foster, residential care, and treatment on a 24-hour basis)

Definitions for the proposed services are set forth in the Intended Use Report.

Persons eligible for non-supplemental SSBG funded services include:

A. Persons WRI, who are in need of adoption services, child protection, family services, and foster care/residential habilitation services.

B. Individuals WRI who are recipients of Title IV-E adoption assistance.

C. Recipients of Supplemental Security Income and Recipients of Temporary Assistance for Needy Families (TANF) and those persons whose needs were taken into account in determining the needs of TANF recipients.

D. Low-income persons (income eligible) whose gross monthly income is not more than 125 percent of the poverty level. A family of four with gross monthly income of not more than \$2297 would qualify as income eligible for services.

E. Persons receiving Title XIX (Medicaid) benefits and certain Medicaid applicants identified in the proposed plan as group eligibles.

Post expenditure reports for the SSBG program for SFY 2005-2006 and SFY 2006-2007 are included in the previous year's SSBG Final Intended Use Report for SFY 2008-2009. The report is available for public review on line at: www.dss.state.la.us Free copies are available by telephone request to (225) 342-3910 or by writing to the Assistant Secretary, Attention: Planning and Accreditation Section, P.O. Box 3318, Baton Rouge, LA 70821.

Interested persons will have the opportunity to provide recommendations on the proposed SFY 2009-2010 SSBG Intended Use Report, at a public hearing scheduled for 10 a.m., May 6, 2009 at the Department of Social Services, 627 North Fourth Street, Baton Rouge, LA. Written comments must be received by the close of business Friday, May 1, 2009.

Kristy H. Nichols
Secretary

0904#065

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