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Executive Orders

EXECUTIVE ORDER BJ 11-23

Supplemental Mandatory Reporting Requirements of Child Abuse and Neglect

WHEREAS, we must always be vigilant in protecting our children and creating a safe environment for them;

WHEREAS, certain persons currently are required to report incidents of child abuse or neglect, including health practitioners, social workers, law enforcement officers, film and photographic print processors, child care providers and certain teachers and school staff members who provide training and supervision of children;

WHEREAS, current mandatory reporting laws do not require college or university professors, administrators, coaches or school staff members to report cases of child abuse or neglect when they have cause to believe that a child's physical or mental health or welfare is endangered as a result of the abuse or neglect;

WHEREAS, More than 11,000 high school students in Louisiana are enrolled in dual enrollment courses for credit, many of which are taught on postsecondary campuses and by postsecondary faculty and, therefore, it is highly likely that Louisiana technical or vocational school, community college, college and university professors, administrators, coaches and other school employees will have contact with or be responsible for the supervision of children through these and other cross-curricular, athletic, and cultural activities; and

WHEREAS, the health, safety and best interests of our children is of paramount concern for all Louisianians and it is appropriate and necessary that the State do everything within its means to ensure that suspected cases of abuse and neglect of our children are reported to the proper authorities;

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: All public technical or vocational school, community college, college, or university professors, administrators, coaches and other school employees shall report child abuse or neglect as soon as possible once observing an incident of child abuse or neglect or learning of an incident of child abuse or neglect and that person has cause to believe that child abuse or neglect actually occurred.

SECTION 2: The report shall be made to the local child protection unit of the Louisiana Department of Children and Family Services and a local or state law enforcement agency. The report shall contain the information, if known, required by Ch. C. Art. 610 (B) and (C).

SECTION 3: "Child" shall be defined as in Ch. C. Art. 603 (5), and "abuse" and "neglect" shall be defined as in Ch. C. Art. 603 (1) and (16).

SECTION 4: 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 16th day of November, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1112#112

EXECUTIVE ORDER BJ 11-24

Bond Allocation—Local Government Environmental Facilities and Community Development Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. BJ 2008-47 was issued to establish:

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

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

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

WHEREAS, The Louisiana Local Government Environmental Facilities and Community Development Authority has applied for an allocation of the 2011 Ceiling to be used in connection with the financing of the acquisition, construction, rehabilitation and equipping of one or more distributive sewer systems;

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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2011 Ceiling in the amount shown.

Amount of Allocation	Name of Issuer	Name of Project
\$5,720,000	Local Government Environmental Facilities and Community Development Authority	Density Utilities of Louisiana, LLC

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for

Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2011, provided that such bonds are delivered to the initial purchasers thereof on or before December 22, 2011.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 8th day of December, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1112#113

Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Economic Stability and Self-Sufficiency Section

KCSP Grant Reduction and Termination of Post-FITAP
Transitional Services (LAC 67:III.5329 and 5729)

The Department of Children and Family Services (DCFS), Economic Stability and Self-Sufficiency Section, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 13 Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, and Section 5329, and Subpart 16 Strategies to Empower People (STEP) Program, Chapter 57, Subchapter C, Section 5729. This Emergency Rule shall remain in effect for a period of 120 days and is effective December 1, 2011.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, adjustments to KCSP eligibility criteria will reduce the Income after Pretest limit and Payment Amount from \$280 to \$222. The department is terminating the STEP Program's transitional support service benefits, which are commonly known as Post-FITAP Supportive Services.

Emergency action is required in this matter as funding is no longer available and the department is required to maintain fiscal responsibility by reducing expenditures to reconcile with available funding. These changes have been born of necessity to maximize available funding while minimizing the impact to clients. The adjustments to KCSP will result in minimal reductions in the number of children served and payment amounts. Transitional supportive services are approved at the discretion of the secretary and are subject to available funding.

The authorization for emergency action in this matter is the emergency provision of the Administrative Procedure Act, R.S. 49:953(B). If the department fails to timely reduce expenditures, the reduction in federal funding will result in the requirement of additional state general funds to maintain these programs.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 13. Kinship Care Subsidy Program

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

A. - B. ...

C. Income After Pretest. The child is determined eligible for KCSP if the child's monthly countable income is, effective December 1, 2011, less than \$222. If the child's monthly countable income is, effective December 1, 2011, \$222 or more, the child is ineligible.

D. Payment Amount. Effective December 1, 2011, payment amount is \$222 per month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:1617 (September 2006), LR 32:1913 (October 2006), Repromulgated LR 32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2537 (November 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 38:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. STEP Program Process

§5729. Support Services

A. Clients may be provided support services that include but are not limited to:

1. a full range of case maintenance and case management services designed to lead to self-sufficiency;
2. transportation assistance;
3. Supplemental Nutrition Assistance Program (SNAP) benefits;
4. Medicaid benefits;
5. child care;
6. TANF-funded services; and
7. other services necessary to accept or maintain employment.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR.32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 38:

Ruth Johnson
Secretary

1112#016

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.1415)

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

and repromulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).

This rulemaking will amend LASFAC's Scholarship/Grants rules for the Early Start Program to provide that the Board of Regents will approve courses taught by LAICU institutions and which are approved for use in the Early Start Program on a semester by semester basis and clarifies that the Statewide General Education Course Articulation Matrix is for participating public postsecondary institutions.

This Emergency Rule is necessary to implement changes to the scholarship/grant programs to allow the Louisiana Office of Student Financial Assistance to effectively administer the programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible candidates. LASFAC has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected recipients.

This Declaration of Emergency is effective November 21, 2011, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG12135NI)

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance—Higher
Education**

Scholarship and Grant Programs

Chapter 14. Early Start Program

§1415. General Provisions

A. ...

B. The Board of Regents shall maintain a Statewide General Education Course Articulation Matrix for participating public postsecondary institutions.

C. The Board of Regents shall approve on a semester by semester basis the courses offered by LAICU postsecondary institutions that are approved for use in the Early Start Program.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2611 (December 2007), amended LR 34:242 (February 2008), LR 35:234 (February 2009), LR 38:

George Badge Eldredge
General Counsel

1112#014

DECLARATION OF EMERGENCY

**Department of Environmental Quality
Office of Environmental Services**

Solid Waste Permitting

(LAC 33:VII.Chapters 1-7, 13, 15, 30 and 103) (SW053E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality (department) to use emergency procedures to establish rules, and R.S. 30:2011, the secretary of the department hereby

finds an emergency action is necessary in order to ensure that adequate permitting capabilities exist for solid waste facilities, and accordingly adopts the following Emergency Rule effective November 21, 2011.

This Emergency Rule will allow the department to change the effective date of SW053 from October 20, 2011 as it was published in the November *Louisiana Register*; to November 20, 2011, its actual day of publication.

The solid waste regulations are being updated. The November publication of SW053 in the *Louisiana Register* will change the way solid waste permits are issued along with the application process for solid waste permits. Other changes will include definition changes, additional exemptions, and the establishment of a new annual compliance certification requirement.

The department has determined that the current solid waste permit system is not efficient. The current system has resulted in a unacceptable backlog of pending solid waste permit applications. The regulation changes will allow for a more direct permitting approach that will limit the need for the issuance of notices of deficiencies to permit applicants and will also enable department surveillance personnel to inspect permitted facilities more efficiently by ensuring a permit that is written with clearly established conditions. The Rule will also provide additional clarification with respect to definitions and exemptions. The basis of this Rule is to make necessary revisions to the solid waste regulations and to provide an improved permitting process. SW053 was intended to be effective on the day of publication. This Emergency Rule will correct only the effective date of the Rule to properly effectuate the purposes of SW053. This Emergency Rule is being promulgated to make clear that SW053 is only effective from publication, November 20, 2011, by changing all references in that Rule to an effective date of November 20, 2011.

The Emergency Rule is effective on November 21, 2011, and shall remain in effect for 120 days. For more information concerning SW053E, you may contact the Waste Permits Division at (225) 219-3393.

Adopted this 21st day of November, 2011.

Peggy M. Hatch
Secretary

1112#012

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Louisiana Tax Commission**

Ad Valorem Taxation

(LAC 61:V.101, 303, 304, 703, 907, 1101, 1103, 1307, 1503, 2503, 2713, 2717, 3101, 3103, 3105, 3106 and 3107)

The Louisiana Tax Commission exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 47:1837, adopted the following additions, deletions and amendments to the Real/Personal Property Rules and Regulations. The adoption date for this Emergency Rule is December 9, 2011.

This Emergency Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners

and local tax assessors no later than the statutory valuation date of record of January 1, 2012. Cost indexes required to finalize these assessment tables are not available to this office until late October 2011. The effective date of this Emergency Rule is January 1, 2012.

Pursuant to the Administrative Procedure Act, this Emergency Rule shall be in effect for a maximum of 120 days or until adoption of the Final Rule or another Emergency Rule, whichever occurs first.

**Title 61
REVENUE AND TAXATION
Part V. Ad Valorem Taxation**

Chapter 1. Constitutional and Statutory Guides to Property Taxation

§101. Constitutional Principles for Property Taxation

A. - E.1. ...

F. Homestead Exemptions

1. General Provisions

a. The Louisiana Constitution permits no other property tax exemptions except those provided in the Constitution.

b. The Constitution exempts to the extent of \$7,500 of assessed value, except in those parishes whereby voters approved that the next \$7,500 of the assessed valuation on property receiving the homestead exemption which is owned and occupied by a veteran with a service connected disability rating of one hundred percent (100%) by the United States Department of Veterans Affairs shall be exempt from ad valorem taxation. (See Louisiana Constitutional Article 7, §21(K)(1)(2)(3) regarding the additional exemption):

1.b.i. - 3.h.

G. Special Assessment Level

1. - 1.d...

2. Any person or persons shall be prohibited from receiving the special assessment as provided in this Section if such person's or persons' adjusted gross income, for the year prior to the application for the special assessment, exceeds \$67,670 for tax year 2012 (2013 Orleans Parish). For persons applying for the special assessment whose filing status is married filing separately, the adjusted gross income for purposes of this Section shall be determined by combining the adjusted gross income on both federal tax returns.

3. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 15:1097 (December 1989), amended by the Department of Revenue, Tax Commission, LR 24:477 (March 1998), LR 26:506 (March 2000), LR 31:700 (March 2005), LR 32:425 (March 2006), LR 33:489 (March 2007), LR 34:673 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:

Chapter 3. Real and Personal Property

§303. Real Property

A. - C.2.a. ...

D. The Louisiana Tax Commission has ordered all property to be reappraised for the 2012 tax year in all parishes. All property is to be valued as of January 1, 2011.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), LR 38:

§304. Electronic Change Order Specifications, Property Classifications Standards and Electronic Tax Roll Export Specifications

A. Electronic Change Order Specifications

* * *

B. Property Classifications Standards

* * *

1. Beginning with tax year 2012 (2013 Orleans Parish), all parishes must adhere to the Property Classifications Standards and PC codes listed in §304.B. This will do away with the PC_CODES.TXT file for those parishes currently submitting.

C. Electronic Tax Roll Export Specifications

* * *

Parish Information (Parish.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Gov_name	Character	30	Yes	Parish name (Example: St. Tammany Parish)
Gov_agency	Character	40	Yes	Agency name (Example: Assessor's Office)
Address1	Character	30	Yes	Agency address line 1.
Address2	Character	30	Yes	Agency address line 2.
Tax_year	Numeric	4	Yes	Tax year submitting (Format: 1999, 2000,2001,2002,2003,2004, etc.)
City	Character	20	Yes	City name (Example: Covington)
State	Character	2	Yes	State name (Example: LA)
Zip	Numeric	5	Yes	Zip code (Example 70433).
Zip4	Character	4	Yes	Extended zip code (9999).

Assessment Information (Assmt.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Parcel_no	Character	20	Yes	Parcel Identification Number (PIN). (If your system currently does not support PINs use the assessment number as the PIN.)
Assessment_type	Character	2	Yes	"RE" = Real Estate, "PP" = Personal Property, "PS" = Public Service
Assessment_status	Character	2	Yes	"AC" = Active, "AJ" = Adjudicated, "EX" = Exempt/Tax Free
Homestead_exempt	Numeric	1	Yes	0 = None (Default), 1 = Homestead Exemption, 2 = Over 65 Freeze
homestead_percent	Numeric	6.2	Yes	Homestead Exemption percentage to be applied to assessment. (Format: 100.00 (Default) = 100%)
Restoration_tax_expmt	Character	1	Yes	Restoration Tax Abatements on historical property. "N" = No (Default), "Y" = Yes
Tax_acct	Numeric	6	No	Tax account or tax bill number for grouping assessments together.
Place_FIPS	Numeric	5	Yes	FIPS Place Code of Ward or Municipality. (See FIPS Table)
Taxpayer_id	Numeric	10	No	Taxpayer's identification number. (Social Security or Federal ID numbers.)
Taxpayer_name	Character	50	Yes	Taxpayer's name.
Contact_name	Character	50	No	Contact's name for company taxpayers or for in care of (C/O) contacts.
Taxpayer_addr1	Character	40	Yes	Taxpayer's address line 1.
Taxpayer_addr2	Character	40	Yes	Taxpayer's address line 2.
Taxpayer_addr3	Character	40	No	Taxpayer's address line 3.
Transfer_date	Character	10	No	Date of purchase. (Sample: ~01/01/1999~)

Assessment Value Information (Avalue.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax Year Submitting (Format: 1999, 2000,2001,2002,2003,2004, Etc.)
FIPS_code	Numeric	5	Yes	Parish identification number (PIN). (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Market_value	Numeric	12	Yes	Fair Market Value of the real estate property class or the original cost of the personal property class.
Total_value	Numeric	10	Yes	Total assessed value of the property. (Total of the Taxpayer's (Taxable) share and Homestead credit added together.)
Homestead_credit	Numeric	4	Yes	Assessed value to be credited by Homestead exemption. (Not to exceed 7,500 of Assessed Value)
Taxpayer_value	Numeric	10	Yes	Assessed value to be paid by Taxpayer (Taxable amount).
Quantity	Numeric	6	Yes	Quantity units in the number of Front Feet, Square Feet, Lot(s), Acre(s), Improvement(s) or Year(s) for Personal Property.
Units	Character	1	Yes	Unit of Measure (Format: "F" = Front Feet, "S" = Square Feet, "L" = Lots, "A" = Acres, "I" = Improvements and "Y" = Year.)
LTC_sub-class_code	Character	4	Yes	LTC Property Sub-Class Code. (See LTC Property Class Code Listings.) Assessor's property classification codes can be used in lieu of the Tax Commission's Property Classification Codes until Tax Year 2006 [Orleans 2007].)
Other_exempt	Numeric	1	Yes	Old status of any special exemptions to be applied to item 1. 0 = None (Default), 1 = Commerce/Industry (Ten Year Exemption), 2 = Agricultural, 3 = Institutional

Property Class Code Information (PC_Codes.txt) (Required If Not Using LTC Standard Codes)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessor_class_code	Character	4	Yes	Assessor's property classification code to be used in lieu of the Tax Commission's Property Classification Codes until Tax Year 2006 [Orleans 2007].)
Class_code_description	Character	30	Yes	Assessor's property class code description.

Assessment Millage Information (Amillage.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Group_description	Character	35	Yes	Millage description if not part of a group or the group name of a millage.
Millage	Numeric	6.2	Yes	Millage (Format: 999.99)
Mill_type	Character	1	Yes	M = millage, f = flat/ltc/variable fees, a = acreage, o = overlay/partial
Place_FIPS	Numeric	5	Yes	Federal place code of taxing authority levying millage. (see FIPS table)
Parish_city	Character	1	Yes	Millage type indicator. "p" = parish tax, "c" = city tax (this field indicates which tax collector is collecting the millage.)
Percent	Numeric	6.2	Yes	Percent of assessed value applicable to the millage. (Applies to split district millages, use 100.00 as default value if percent is not applied.)

Assessment Millage Information (Amillage.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Total_tax	Numeric	11.2	Yes	Total taxes assessed to the property. (format: 99999999.99)
Homestead_credit	Numeric	11.2	Yes	Homestead exemption share of taxes credited. (Format: 99999999.99)
Taxpayer_tax	Numeric	11.2	Yes	Taxpayer's share of taxes owed. (format: 99999999.99)

Millage Group Information (Tgroup.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Group_description	Character	35	Yes	Group description or name of millage.
Millage_description	Character	35	Yes	Description or name of millage.
Millage	Numeric	6.2	Yes	Millage (Format: 999.99)
Flat_mill	Numeric	1	Yes	Indicates flat fee (0=no flat fee, 1=flat fee used)
Flat_fee	Numeric	6.2	Yes	Flat fee amount (format 999.99)

Parcel Information (Parcel.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (Format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Parcel_no	Character	20	Yes	Parcel Identification Number (PIN). (If your system currently does not support PINs use the assessment number as the PIN.)
Town_range	Character	7	No	Township/Range. (Format: T7S-R8E)
Section_no	Numeric	3	No	Section number parcel is located.
Ward_no	Character	3	Yes	Ward identification number.
Subd_name	Character	30	No	Subdivision name if available of parcel location.
Block_no	Character	4	No	Subdivision or city block/square number.
Lot_no	Character	4	No	First subdivision or city lot number owned by a particular owner.
Place_FIPS	Numeric	5	Yes	Federal Place Code of Taxing Authority. (See FIPS table)
Tax_dist	Numeric	3	No	Tax district number if available.
Par_address	Character	50	No	Parcel address. (E911 address)
Occupancy	Character	50	No	What the structure is being used for. (Residence, Office, Retail, etc.)
Vacant_lot	Character	1	No	"Y" = Yes, "N" = No (Default)
Transfer_date	Character	10	No	Date of purchase. (Format: ~01/01/1999~)
Purchase_price	Numeric	12.2	Yes	Purchase price of the real property only. (Format: 999999999.99) (Sales price required on all recent sales of real estate only.)
Verified	Character	1	Yes	Sale has been confirmed by the Assessor's office as being arms length. "Y" = Yes, "N" = No (Default)
Conv_book	Character	4	Yes	Conveyance book number. (Conveyance book/page or instrument number required on all recent real estate sales.)
Conv_folio	Character	4	Yes	Conveyance page (folio) number. (Conveyance book/page or instrument number required on all recent real estate sales.)
Instr_no	Numeric	8	Yes	Conveyance instrument number. (Conveyance book/page or instrument number required on all recent real estate sales.)
Instr_type	Character	20	Yes	Type of instrument. (Cash, Mortgage, Bond for Deed, etc.)
Lender_id	Character	8	No	Lender of Mortgage Company's identification number supplied by Tax Commission.

Legal Description Information (Legal.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Legal_description	Character	unlimited	Yes	Full legal description

Additional Owner Information (Owners.txt) (Optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Taxpayer_id	Numeric	10	No	Taxpayer's identification number.
Own_percent	Numeric	6.2	No	Percent of ownership. (format: 999.99)
Taxpayer_name	Character	50	Yes	Taxpayer's name.
Contact_name	Character	50	No	Contact's name.
Taxpayer_addr1	Character	40	No	Taxpayer's address line 1.
Taxpayer_addr2	Character	40	No	Taxpayer's address line 2.
Taxpayer_addr3	Character	40	No	Taxpayer's address line 3.

Document Information (Document.txt) (Optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Path	Character	Variable length	Yes	Full path of document and file name (includes file extension). (jpg format)
Description	Character	Variable length	Yes	Description of the document.

Improvement Information (Improve.txt) (optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Building_use	Character	1	Yes	"C" = commercial, "r" = residential
Structure_no	Character	12	No	Structure number of improvement.
Imp_asqft	Numeric	9.2	No	Square footage of detached auxiliary building. (Format: 999999.99)
Imp_gsqft	Numeric	9.2	Yes	Square footage of carports or garages. (Format: 999999.99)
Imp_lsqft	Numeric	9.2	Yes	Square footage of living, heated or useable area. (Format: 999999.99)
Imp_nsqft	Numeric	9.2	Yes	Square footage of porches, non-living areas, etc. (Format: 999999.99)
Imp_tsqft	Numeric	9.2	Yes	Total square footage of all structures assessed. (Format: 999999.99)
No_baths	Numeric	3.1	Yes	Number of bathrooms.
No_bedrooms	Numeric	2	Yes	Number of bedrooms.
Year_built	Numeric	4	Yes	Year built. (Format: 9999)
Year_renov	Numeric	4	No	Year renovated. (Format: 9999)
Life_expectancy	Numeric	2	Yes	Life expectancy of structure or improvement.
Fact_cond	Numeric	4	No	Condition of improvement.
Fact_qual	Numeric	4	No	Quality of construction.
Fact_wall	Numeric	4	No	Wall construction.
Fact_roof	Numeric	4	No	Roof construction.

Place FIPS Information (FIPS.txt)				
Field Name	Field Type	Field Length	Required	Comments
Parish_name	Character	35	Yes	Parish name
FIPS_code	Numeric	5	Yes	Parish FIPS code
Place_name	Character	30	Yes	Place name
Place_FIPS	Numeric	5	Yes	Place FIPS code
Zipcode	Numeric	5	Yes	Place zip code
Class_code	Character	2	Yes	Place classification code – See FIPS class code definitions
Ward_no	Character	3	If applicable	Place ward number if applicable
Tax_name	Character	45	Yes	Taxing entity name
Tax_addr1	Character	30	Yes	Taxing entity address
Tax_addr2	Character	30	No	Taxing entity address line 2
Tax_city	Character	20	Yes	Taxing entity city
Tax_state	Character	2	Yes	Taxing entity state
Tax_zip	Numeric	5	Yes	Taxing entity zip

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18 and R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 31:703 (March 2005), amended LR 32:427 (March 2006), LR 36:765 (April 2010).

Chapter 7. Watercraft

§703. Tables—Watercraft

A. Floating Equipment—Motor Vessels

Table 703.A Floating Equipment—Motor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	0.982	1	94	.92
2010	1.013	2	87	.88
2009	1.006	3	80	.80
2008	1.035	4	73	.76
2007	1.075	5	66	.71
2006	1.134	6	58	.66
2005	1.187	7	50	.59
2004	1.276	8	43	.55
2003	1.320	9	36	.48
2002	1.342	10	29	.39
2001	1.351	11	24	.32
2000	1.362	12	22	.30
1999	1.387	13	20	.28

B. Floating Equipment—Barges (Non-Motorized)

Table 703.B Floating Equipment—Barges (Non-Motorized)				
Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	0.982	1	97	.95
2010	1.013	2	93	.94
2009	1.006	3	90	.91
2008	1.035	4	86	.89
2007	1.075	5	82	.88
2006	1.134	6	78	.88
2005	1.187	7	74	.88
2004	1.276	8	70	.87
2003	1.320	9	65	.86
2002	1.342	10	60	.81
2001	1.351	11	55	.74
2000	1.362	12	50	.68
1999	1.387	13	45	.62
1998	1.391	14	40	.56
1997	1.403	15	35	.49
1996	1.425	16	31	.44
1995	1.447	17	27	.39
1994	1.499	18	24	.36
1993	1.541	19	22	.34
1992	1.571	20	21	.33
1991	1.590	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004), LR 31:715 (March 2005), LR 32:430 (March 2006), LR 33:490 (March 2007),

LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:772 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:

Chapter 9. Oil and Gas Properties

§907. Valuation of Oil, Gas, and Other Wells

A. - A.7. ...

1. Oil, Gas and Associated Wells; Region 1—North Louisiana

Table 907.A.1 Oil, Gas and Associated Wells; Region 1—North Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	35.72	124.98	5.36	18.75
1,250-2,499 ft.	32.24	91.90	4.84	13.79
2,500-3,749 ft.	25.34	60.86	3.80	9.13
3,750-4,999 ft.	35.04	60.64	5.26	9.10
5,000-7,499 ft.	41.21	59.19	6.18	8.88
7,500-9,999 ft.	90.35	79.78	13.55	11.97
10,000-12,499 ft.	263.47	96.79	39.52	14.52
12,500-14,999 ft.	N/A	146.14	N/A	21.92
15,000-Deeper ft.	N/A	166.65	N/A	25.00

2. Oil, Gas and Associated Wells; Region 2—South Louisiana

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	274.56	124.16	41.18	18.62
1,250-2,499 ft.	94.81	206.37	14.22	30.96
2,500-3,749 ft.	92.58	164.53	13.89	24.68
3,750-4,999 ft.	81.61	131.62	12.24	19.74
5,000-7,499 ft.	111.49	149.50	16.72	22.43
7,500-9,999 ft.	152.09	156.53	22.81	23.48
10,000-12,499 ft.	207.40	204.61	31.11	30.69
12,500-14,999 ft.	272.06	264.72	40.81	39.71
15,000-17,499 ft.	440.68	354.42	66.10	53.16
17,500-19,999 ft.	538.06	502.02	80.71	75.30
20,000-Deeper ft.	287.31	753.69	43.10	113.05

3. Oil, Gas and Associated Wells; Region 3—Offshore State Waters

Table 907.A.3 Oil, Gas and Associated Wells; Region 3—Offshore State Waters*				
Producing Depths	Cost—New By Depth, Per Foot		15% Of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 -1,249 ft.	N/A	N/A	N/A	N/A
1,250 -2,499 ft.	1,376.27	1,005.62	206.44	150.84
2,500 -3,749 ft.	707.69	772.86	106.15	115.93
3,750 -4,999 ft.	1,010.16	708.68	151.52	106.30
5,000 -7,499 ft.	502.69	656.39	75.40	98.46
7,500 -9,999 ft.	637.33	621.14	95.60	93.17
10,000 -12,499 ft.	721.51	629.62	108.23	94.44
12,500 -14,999 ft.	627.51	612.73	94.13	91.91
15,000 -17,499 ft.	432.51	635.77	64.88	95.37
17,500 -19,999 ft.	N/A	607.81	N/A	91.17
20,000 - Deeper ft.	N/A	955.42	N/A	143.31

B. The determination of whether a well is a Region 2 or Region 3 well is ascertained from its onshore/offshore status as designated on the Permit to Drill or Amended Permit to

Drill form (Location of Wells Section), located at the Department of Natural Resources as of January 1 of each tax year. Each assessor is required to confirm the onshore/offshore status of wells located within their parish by referring to the Permit to Drill or Amended Permit to Drill form on file at the Department of Natural Resources.

1. Parishes Considered to be Located in Region 1

Bienville	DeSoto	Madison	Tensas
Bossier	East Carroll	Morehouse	Union
Caddo	Franklin	Natchitoches	Webster
Caldwell	Grant	Ouachita	West Carroll
Catahoula	Jackson	Red River	Winn
Claiborne	LaSalle	Richland	
Concordia	Lincoln	Sabine	

NOTE: All wells in parishes not listed above are located in Region 2 or Region 3.

2. Serial Number to Percent Good Conversion Chart

Year	Beginning Serial Number	Ending Serial Number	17 Year Life Percent Good
2011	242592	Higher	96
2010	240636	242591	91
2009	239277	240635	87
2008	236927	239276	82
2007	234780	236926	77
2006	232639	234779	73
2005	230643	232638	68
2004	229010	230642	62
2003	227742	229009	57
2002	226717	227741	51
2001	225352	226716	46
2000	223899	225351	40
1999	222882	223898	35
1998	221596	222881	31
1997	220034	221595	28
1996	218653	220033	25
1995	217588	218652	21
1994	Lower	217587	20 *
VAR.	900000	Higher	50

*Reflects residual or floor rate.

NOTE: For any serial number categories not listed above, use year well completed to determine appropriate percent good. If spud date is later than year indicated by serial number; or, if serial number is unknown, use spud date to determine appropriate percent good.

C. Surface Equipment

1. Listed below is the cost-new of major items used in the production, storage, transmission and sale of oil and gas. Any equipment not shown shall be assessed on an individual basis.

2. All surface equipment, including other property associated or used in connection with the oil and gas industry in the field of operation, must be rendered in accordance with guidelines established by the Tax Commission and in accordance with requirements set forth on LAT Form 12-Personal Property Tax Report—Oil and Gas Property.

3. Oil and gas personal property will be assessed in seven major categories, as follows:

- a. oil, gas and associated wells;
- b. oil and gas equipment (surface equipment);

- c. tanks (surface equipment);
- d. lines (oil and gas lease lines);
- e. inventories (material and supplies);
- f. field improvements (docks, buildings, etc.);
- g. other property (not included above).

4. The cost-new values listed below are to be adjusted to allow depreciation by use of the appropriate percent good listed in Table 907.B.2. The average age of the well/lease/field will determine the appropriate year to be used for this purpose.

5. Functional and/or economic obsolescence shall be considered in the analysis of fair market value as substantiated by the taxpayer in writing. Consistent with Louisiana R.S. 47:1957, the assessor may request additional documentation.

6. Sales, properly documented, should be considered by the assessor as fair market value, provided the sale meets all tests relative to it being a valid sale.

Property Description	\$ Cost New
Actuators—(see Metering Equipment)	
Automatic Control Equipment—(see Safety Systems)	
Automatic Tank Switch Unit—(see Metering Equipment)	
Barges - Concrete—(assessed on an individual basis)	
Barges - Storage—(assessed on an individual basis)	
Barges - Utility—(assessed on an individual basis)	
Barges - Work—(assessed on an individual basis)	
Communication Equipment—(see Telecommunications)	
Compressors (Gas Rental)	620
1 – 49 HP	1,240
50 – 99 HP	1,010
100 – 999 HP	775
1,000 – 1,499 HP	680
1,500 HP and Up	
Dampeners—(see Metering Equipment—"Recorders")	
DESORBERS—(no metering equipment included):	107,580
125#	118,620
300#	134,980
500#	
Destroilets—(see Metering Equipment—"Regulators")	
Desurgers—(see Metering Equipment—"Regulators")	
Desilters—(see Metering Equipment—"Regulators")	
Diatrollers—(see Metering Equipment—"Regulators")	
Docks, Platforms, Buildings—(assessed on an individual basis)	
Dry Dehydrators (Driers)—(see Scrubbers)	
Engines-Unattached—(only includes engine and skids):	340
Per Horsepower	
Evaporators—(assessed on an individual basis)	
Expander Unit—(no metering equipment included):	39,460
Per Unit	
Flow Splitters—(no metering equipment included):	19,220
48 In. Diameter Vessel	25,450
72 In. Diameter Vessel	39,010
96 In. Diameter Vessel	55,420
120 In. Diameter Vessel	
Fire Control System—(assessed on an individual basis)	
Furniture and Fixtures—(assessed on an individual basis) (Field operations only, according to location.)	
Gas Compressors-Package Unit—(Skids, scrubbers, cooling system, and power controls. No metering or regulating equipment.):	1,460
50 HP and less—Per HP	1,260
51 HP to 100 HP—Per HP	920
101 HP and higher—Per HP	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Gas Coolers—(no metering equipment); 5,000 MCF/D 10,000 MCF/D 20,000 MCF/D 50,000 MCF/D 100,000 MCF/D	30,310 34,140 106,210 240,950 394,630
Generators—Package Unit only -(no special installation) Per K. W.	230
Glycol Dehydration-Package Unit—(Including pressure gauge, relief valve and regulator. No other metering equipment.): Up to 4.0 MMCF/D 4.1 to 5.0 MMCF/D 5.1 to 10.0 MMCF/D 10.1 to 15.0 MMCF/D 15.1 to 20.0 MMCF/D 20.1 to 25.0 MMCF/D 25.1 to 30.0 MMCF/D 30.1 to 50.0 MMCF/D 50.1 to 75.0 MMCF/D 75.1 & Up MMCF/D	21,280 23,740 45,750 63,660 86,650 112,670 214,020 239,070 297,400 343,160
Heaters—(Includes unit, safety valves, regulators and automatic shut-down. No metering equipment.): Steam Bath—Direct Heater: 24 In. Diameter Vessel - 250,000 BTU/HR Rate 30 In. Diameter Vessel - 500,000 BTU/HR Rate 36 In. Diameter Vessel - 750,000 BTU/HR Rate 48 In. Diameter Vessel - 1,000,000 BTU/HR Rate 60 In. Diameter Vessel - 1,500,000 BTU/HR Rate Water Bath—Indirect Heater: 24 In. Diameter Vessel - 250,000 BTU/HR Rate 30 In. Diameter Vessel - 500,000 BTU/HR Rate 36 In. Diameter Vessel - 750,000 BTU/HR Rate 48 In. Diameter Vessel - 1,000,000 BTU/HR Rate 60 In. Diameter Vessel - 1,500,000 BTU/HR Rate Steam—(Steam Generators): 24 In. Diameter Vessel - 250,000 BTU/HR Rate 30 In. Diameter Vessel - 450,000 BTU/HR Rate 36 In. Diameter Vessel - 500 to 750,000 BTU/HR Rate 48 In. Diameter Vessel - 1 to 2,000,000 BTU/HR Rate 60 In. Diameter Vessel - 2 to 3,000,000 BTU/HR Rate 72 In. Diameter Vessel - 3 to 6,000,000 BTU/HR Rate 96 In. Diameter Vessel - 6 to 8,000,000 BTU/HR Rate	7,380 9,270 11,210 16,590 20,480 6,290 8,640 11,270 15,960 20,420 8,060 10,070 15,100 17,330 19,620 31,000 37,230 36 In. Diameter Vessel - 500 to 750,000 BTU/HR Rate 48 In. Diameter Vessel - 1 to 2,000,000 BTU/HR Rate 60 In. Diameter Vessel - 2 to 3,000,000 BTU/HR Rate 72 In. Diameter Vessel - 3 to 6,000,000 BTU/HR Rate 96 In. Diameter Vessel - 6 to 8,000,000 BTU/HR Rate
Heat Exchange Units-Skid Mounted—(see Production Units)	
Heater Treaters—(Necessary controls, gauges, valves and piping. No metering equipment included.): Heater - Treaters - (non-metering): 4 x 20 ft. 4 x 27 ft. 6 x 20 ft. 6 x 27 ft. 8 x 20 ft. 8 x 27 ft. 10 x 20 ft. 10 x 27 ft.	16,130 20,760 21,730 27,340 34,830 40,780 46,040 54,160
L.A.C.T. (Lease Automatic Custody Transfer)—see Metering Equipment)	
JT Skid (Low Temperature Extraction)—(includes safety valves, temperature controllers, chokes, regulators, metering equipment, etc.—complete unit.): Up to 2 MMCF/D Up to 5 MMCF/D Up to 10 MMCF/D Up to 20 MMCF/D	40,040 57,190 137,260 228,770
Liqua Meter Units—(see Metering Equipment)	
Manifolds—(see Metering Equipment)	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Material & Supplies-Inventories—(assessed on an individual basis)	
Meter Calibrating Vessels—(see Metering Equipment)	
Meter Prover Tanks—(see Metering Equipment)	
Meter Runs—(see Metering Equipment)	
Meter Control Stations—(not considered Communication Equipment) - (assessed on an individual basis)	
Metering Equipment Actuators—hydraulic, pneumatic & electric valves Controllers—time cycle valve - valve controlling device (also known as Intermitter) Fluid Meters: 1 Level Control 24 In. Diameter Vessel - 1/2 bbl. Dump 30 In. Diameter Vessel - 1 bbl. Dump 36 In. Diameter Vessel - 2 bbl. Dump 2 Level Control 20 In. Diameter Vessel - 1/2 bbl. Dump 24 In. Diameter Vessel - 1/2 bbl. Dump 30 In. Diameter Vessel - 1 bbl. Dump 36 In. Diameter Vessel - 2 bbl. Dump	6,230 1,940 4,750 6,120 8,460 4,460 5,380 6,750 9,090
L.A.C.T. and A.T.S. Units: 30 lb. Discharge 60 lb. Discharge Manifolds—Manual Operated: High Pressure per well per valve Low Pressure per well per valve	29,970 34,140 23,510 7,950 11,380 3,770
Manifolds—Automatic Operated: High Pressure per well per valve Low Pressure per well per valve NOTE: Automatic Operated System includes gas hydraulic and pneumatic valve actuators, (or motorized valves), block valves, flow monitors-in addition to normal equipment found on manual operated system. No Metering Equipment Included.	42,490 14,010 30,310 10,240
Meter Runs—piping, valves & supports—no meters: 2 In. piping and valve 3 In. piping and valve 4 In. piping and valve 6 In. piping and valve 8 In. piping and valve 10 In. piping and valve 12 In. piping and valve 14 In. piping and valve 16 In. piping and valve 18 In. piping and valve 20 In. piping and valve 22 In. piping and valve 24 In. piping and valve Metering Vessels (Accumulators): 1 bbl. calibration plate (20 x 9) 5 bbl. calibration plate (24 x 10) 7.5 bbl. calibration plate (30 x 10) 10 bbl. calibration plate (36 x 10) Recorders (Meters)—Includes both static element and tube drive pulsation dampener-also one and two pen operations. per meter Solar Panel (also see Telecommunications) per unit (10' x 10')	6,410 7,210 8,690 12,120 18,210 24,250 30,310 41,290 53,930 66,800 86,820 109,410 133,950 3,720 4,000 5,600 6,980 2,570 340

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Pipe Lines—Lease Lines	
Steel	18,640
2 In. nominal size - per mile	25,110
2 1/2 In. nominal size - per mile	32,030
3 & 3 1/2 In. nominal size - per mile	55,080
4, 4 1/2 & 5 In. nominal size - per mile	80,870
6 In. nominal size - per mile	10,240
Poly Pipe	13,780
2 In. nominal size - per mile	17,620
2 1/2 In. nominal size - per mile	30,260
3 In. nominal size - per mile	44,440
4 In. nominal size - per mile	
6 In. nominal size - per mile	
Plastic-Fiberglass	
2 In. nominal size - per mile	15,900
3 In. nominal size - per mile	27,220
4 In. nominal size - per mile	46,780
6 In. nominal size - per mile	68,690
NOTE: Allow 90% obsolescence credit for lines that are inactive, idle, open on both ends and dormant, which are being carried on corporate records solely for the purpose of retaining right of ways on the land and/or due to excessive capital outlay to refurbish or remove the lines.	
Pipe Stock—(assessed on an individual basis)	
Pipe Stock - Exempt—Under La. Const., Art. X, §4 (19-C)	
Production Units:	
Class I - per unit—separator & 1 heater—500 MCF/D	20,130
Class II - per unit—separator & 1 heater—750 MCF/D	26,820
Production Process Units—These units are by specific design and not in the same category as gas compressors, liquid and gas production units or pump-motor units. (Assessed on an individual basis.)	
Pumps—In Line	
per horsepower rating of motor	290
Pump-Motor Unit—pump and motor only	
Class I - (water flood, s/w disposal, p/l, etc.)	340
Up to 300 HP - per HP of motor	400
Class II - (high pressure injection, etc.)	
301 HP and up per HP of motor	
Pumping Units-Conventional and Beam Balance—(unit value includes motor) - assessed according to API designation.	6,580
16 D	12,350
25 D	15,440
40 D	20,590
57 D	34,370
80 D	35,750
114 D	48,100
160 D	52,220
228 D	66,000
320 D	78,350
456 D	94,880
640 D	100,370
912 D	
NOTE: For "Air Balance" and "Heavy Duty" units, multiply the above values by 1.30.	
Regenerators (Accumulator)—(see Metering Equipment)	
Regulators:	
per unit	2,630

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Safety Systems	
Onshore And Marsh Area	5,260
Basic Case:	6,060
well only	9,090
well & production equipment	15,160
with surface op. ssv, add	37,920
Offshore 0 - 3 Miles	22,760
Wellhead safety system (excludes wellhead actuators)	53,080
per well	33,340
production train	3,770
glycol dehydration system	5,660
P/L pumps and LACT	
Compressors	
Wellhead Actuators (does not include price of the valve)	
5,000 psi	
10,000 psi and over	
NOTE: For installation costs - add 25%	
Sampler—(see Metering Equipment—"Fluid Meters")	
Scrubbers—Two Classes	
Class I - Manufactured for use with other major equipment and, at times, included with such equipment as part of a package unit.	3,200
8 In. Diameter Vessel	4,580
10 In. Diameter Vessel	5,200
12 In. Diameter Vessel	1,490
Class II - Small "in-line" scrubber used in flow system usually direct from gas well. Much of this type is "shop-made" and not considered as major scrubbing equipment.	1,940
8 In. Diameter Vessel	
12 In. Diameter Vessel	
NOTE: No metering or regulating equipment included in the above.	
Separators—(no metering equipment included)	
Horizontal—Filter /1,440 psi (High Pressure)	4,690
6-5/8" OD x 5'-6"	5,090
8-5/8" OD x 7'-6"	7,150
10-3/4" OD x 8'-0"	9,610
12-3/4" OD x 8'-0"	15,440
16" OD x 8'-6"	22,820
20" OD x 8'-6"	24,020
20" OD x 12'-0"	32,370
24" OD x 12'-6"	47,240
30" OD x 12'-6"	56,160
36" OD x 12'-6"	
Separators—(no metering equipment included)	
Vertical 2—Phase /125 psi (Low Pressure)	5,320
24" OD x 7'-6"	5,720
30" OD x 10'-0"	11,950
36" OD x 10'-0"	5,600
Vertical 3—Phase /125 psi (Low Pressure)	6,350
24" OD x 7'-6"	8,810
24" OD x 10'-0"	12,530
30" OD x 10'-0"	14,530
36" OD x 10'-0"	8,290
42" OD x 10'-0"	10,640
Horizontal 3—Phase /125 psi (Low Pressure)	11,610
24" OD x 10'-0"	18,530
30" OD x 10'-0"	
36" OD x 10'-0"	
42" OD x 10'-0"	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Vertical 2—Phase /1440 psi (High Pressure)	
12-3/4" OD x 5'-0"	3,150
16" OD x 5'-6"	4,690
20" OD x 7'-6"	8,920
24" OD x 7'-6"	10,810
30" OD x 10'-0"	16,470
36" OD x 10'-0"	21,330
42" OD x 10'-0"	34,140
48" OD x 10'-0"	40,260
54" OD x 10'-0"	60,970
60" OD x 10'-0"	76,240
Vertical 3 - Phase /1440 psi (High Pressure)	5,490
16" OD x 7'-6"	9,610
20" OD x 7'-6"	11,150
24" OD x 7'-6"	17,220
30" OD x 10'-0"	22,020
36" OD x 10'-0"	35,500
42" OD x 10'-0"	41,640
48" OD x 10'-0"	5,380
Horizontal 2—Phase /1440 psi (High Pressure)	8,640
16" OD x 7'-6"	11,780
20" OD x 7'-6"	18,130
24" OD x 10'-0"	22,990
30" OD x 10'-0"	46,670
36" OD x 10'-0"	53,820
42" OD x 15'-0"	8,290
48" OD x 15'-0"	9,270
Separators—(No metering equipment included)	13,500
Horizontal 3—Phase /1440 psi (High Pressure)	19,220
16" OD x 7'-6"	27,680
20" OD x 7'-6"	30,940
24" OD x 10'-0"	39,860
30" OD x 10'-0"	38,030
36" OD x 10'-0"	55,190
36" OD x 15'-0"	57,590
Offshore Horizontal 3—Phase /1440 psi (High Pressure)	89,390
30" OD x 10'-0"	
36" OD x 10'-0"	
36" OD x 12'-0"	
36" OD x 15'-0"	
42" OD x 15'-0"	
Skimmer Tanks—(see Flow Tanks in Tanks section)	
Stabilizers—per unit	5,890
Sump/Dump Tanks—(See Metering Equipment -"Fluid Tanks")	
Tanks—no metering equipment	Per Barrel*
Flow Tanks (receiver or gunbarrel)	
50 to 548 bbl. Range (average tank size - 250 bbl.)	36.80
Stock Tanks (lease tanks)	28.60
100 to 750 bbl. Range (average tank size - 300 bbl.)	
Storage Tanks (Closed Top)	
1,000 barrel	24.40
1,500 barrel	21.50
2,000 barrel	20.90
2,001 - 5,000 barrel	19.20
5,001 - 10,000 barrel	18.10
10,001 - 15,000 barrel	16.90
15,001 - 55,000 barrel	11.80
55,001 - 150,000 barrel	8.90
Internal Floating Roof	34.80
10,000 barrel	23.60
20,000 barrel	17.50
30,000 barrel	15.60
50,000 barrel	15.00
55,000 barrel	13.30
80,000 barrel	11.60
100,000 barrel	
*I.E.: (tanks size bbls.) X (no. of bbls.) X (cost-new factor.)	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Telecommunications Equipment	
Microwave System	45,750
Telephone & data transmission	3,430
Radio telephone	9,780
Supervisory controls:	22,310
remote terminal unit, well	570
master station	50
towers (installed):	580
heavy duty, guyed, per foot	130
light duty, guyed, per foot	170
heavy duty, self supporting, per foot	60
light duty, self supporting, per foot	
equipment building, per sq. ft.	
solar panels, per sq. ft.	
Utility Compressors	
per horsepower - rated on motor	750
Vapor Recovery Unit—no Metering Equipment	
60 MCF/D or less	20,020
105 MCF/D max	28,600
250 MCF/D max	37,750
Waterknockouts—Includes unit, backpressure valve and regulator, but, no metering equipment.	5,430
2' diam. x 16'	8,120
3' diam. x 10'	11,210
3' diam. x 10'	18,360
4' diam. x 10'	21,220
6' diam. x 10'	26,590
6' diam. x 15'	30,540
8' diam. x 10'	33,860
8' diam. x 15'	37,690
8' diam. x 20'	44,320
8' diam. x 25'	
10' diam. x 20'	

Table 907.C.2 Service Stations Marketing Personal Property *Alternative Procedure	
Property Description	\$ Cost New
Air and Water Units:	
Above ground	1,280
Below ground	540
Air Compressors:	
1/3 to 1 H.P.	1,720
1/2 to 5 H.P.	2,890
Car Wash Equipment:	
In Bay (roll over brushes)	46,040
In Bay (pull through)	71,470
Tunnel (40 to 50 ft.)	155,570
Tunnel (60 to 75 ft.)	208,180
Drive On Lifts:	
Single Post	8,410
Dual Post	9,470
Lights:	
Light Poles (each)	860
Lights - per pole unit	950
Pumps:	
Non-Electronic - self contained and/or remote controlled computer	3,640
Single	5,410
Dual	6,150
Computerized - non-self service, post pay, pre/post pay. self contained and/or remote controlled dispensers	8,290
Single	
Dual	
Read-Out Equipment (at operator of self service)	
Per Hose Outlet	1,350

Table 907.C.2 Service Stations Marketing Personal Property *Alternative Procedure	
Property Description	\$ Cost New
Signs:	
Station Signs	4,060
6 ft. lighted - installed on 12 ft. pole	7,440
10 ft. lighted - installed on 16 ft. pole	3,390
Attachment Signs (for station signs)	3,470
Lighted "self-serve" (4 x 11 ft.)	12,310
Lighted "pricing" (5 x 9 ft.)	16,110
High Rise Signs - 16 ft. lighted - installed on:	18,020
1 pole	6,540
2 poles	3,470
3 poles	
Attachment Signs (for high rise signs)	
Lighted "self-serve" (5 x 17 ft.)	
Lighted "pricing" (5 x 9 ft.)	
Submerged Pumps—(used with remote control equipment, according to number used - per unit)	3,630
Tanks—(average for all tank sizes)	
Underground - per gallon	2.10

NOTE: The above represents the cost-new value of modern stations and self-service marketing equipment. Other costs associated with such equipment are included in improvements. Old style stations and equipment should be assessed on an individual basis, at the discretion of the tax assessor, when evidence is furnished to substantiate such action.

*This alternative assessment procedure should be used only when acquisition cost and age are unknown or unavailable. Otherwise, see general business section (Chapter 25) for normal assessment procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004), LR 31:717 (March 2005), LR 32:431 (March 2006), LR 33:492 (March 2007), LR 34:679 (April 2008), LR 35:495 (March 2009), LR 36:773 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1395 (May 2011), LR 38:

Chapter 11. Drilling Rigs and Related Equipment
§1101. Guidelines for Ascertaining the Fair Market Value of Drilling Rigs and Related Equipment

A. ...

B. Discovery. Each assessor is to assess those drilling rigs located in his parish as of January 1, each year. Discovery of drilling rigs operating in a parish is the responsibility of the parish tax assessor. Personnel of each parish assessor's office should use a visual survey or other method to establish the name and location of drilling rigs operating in a particular parish on the first of the year. The parish assessor should then contact the drilling contractor to determine if a drilling rig is currently located on the site. The drilling contractor should then be provided a notification of the assessor's intent to assess the drilling rig and a copy of LAT Form 13. The drilling contractor should also be provided a copy of LAT Form 5 on which to record the name

and address of owners of leased equipment and inventories located on the drill site such as equipment buildings, cement, etc.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998).

§1103. Drilling Rigs and Related Equipment Tables

A. Land Rigs

Table 1103.A Land Rigs		
Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	779,600	116,900
4,000	856,600	128,500
5,000	1,128,500	169,300
6,000	1,504,400	225,700
7,000	2,105,300	315,800
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	2,763,700	414,600
9,000	3,424,000	513,600
10,000	4,042,500	606,400
Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	4,587,100	688,100
12,000	5,037,300	755,600
13,000	5,384,800	807,700
14,000	5,632,600	844,900
15,000	5,795,600	869,300
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	5,900,700	885,100
17,000	5,986,200	897,900
18,000	6,102,300	915,300
19,000	6,311,000	946,700
20,000	6,686,100	1,002,900
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	7,313,000	1,097,000
25,000 +	8,288,900	1,243,300

A.1. - A.2.

B. Jack-Ups

C. Semisubmersible Rigs

C.1. - C.3.b.i. ...

D. Well Service Rigs Land Only

Table 1103.D Well Service Rigs Land Only				
Class	Mast	Engine	Fair Market Value (RCNLD)	Assessment
I	72' X 125M# 75' X 150M#	6V71	206,000	30,900

Table 1103.D Well Service Rigs Land Only				
Class	Mast	Engine	Fair Market Value (RCNLD)	Assessment
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	8V71	278,100	41,700
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	8V92	339,900	51,000
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	12V71	463,500	69,500
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	12V71 12V92	535,600	80,300
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	12V71 (2) 8V92	607,700	91,200
VII	117' X 215M#	(2) 8V92 (2) 12V71	618,000	92,700

D.1. - E.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

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Chapter 13. Pipelines

§1307. Pipeline Transportation Tables

A. Current Costs for Other Pipelines (Onshore)

Table 1307.A Current Costs for Other Pipelines (Onshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 147,060	\$ 22,060
4	173,060	25,960
6	203,660	30,550
8	239,670	35,950
10	282,040	42,310
12	331,910	49,790
14	390,590	58,590
16	459,640	68,950
18	540,910	81,140
20	636,540	95,480

Table 1307.A Current Costs for Other Pipelines (Onshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
22	749,080	112,360
24	881,520	132,230
26	1,037,380	155,610
28	1,220,790	183,120
30	1,436,620	215,490
32	1,690,620	253,590
34	1,989,520	298,430
36	2,341,270	351,190
38	2,755,210	413,280
40	3,242,340	486,350
42	3,815,590	572,340
44	4,490,190	673,530
46	5,284,060	792,610
48	6,218,290	932,740

NOTE: Excludes river and canal crossings

B. Current Costs for Other Pipelines (Offshore)

Table 1307.B Current Costs for Other Pipelines (Offshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
6	\$ 894,510	\$ 134,180
8	896,450	134,470
10	905,840	135,880
12	922,660	138,400
14	946,920	142,040
16	978,620	146,790
18	1,017,760	152,660
20	1,064,340	159,650
22	1,118,360	167,750
24	1,179,810	176,970
26	1,248,700	187,310
28	1,325,030	198,750
30	1,408,800	211,320
32	1,500,010	225,000
34	1,598,660	239,800
36	1,704,740	255,710
38	1,818,270	272,740
40	1,939,230	290,880
42	2,067,630	310,140
44	2,203,470	330,520
46	2,346,750	352,010
48	2,497,460	374,620

C. Pipeline Transportation Allowance for Physical Deterioration (Depreciation)

Table 1307.C Pipeline Transportation Allowance for Physical Deterioration (Depreciation)	
Actual Age	26.5 Year Life Percent Good
1	98
2	96
3	94
4	91
5	88
6	86
7	83
8	80
9	77
10	73
11	70
12	67
13	63
14	60

Table 1307.C Pipeline Transportation Allowance for Physical Deterioration (Depreciation)	
Actual Age	26.5 Year Life Percent Good
15	56
16	52
17	48
18	44
19	39
20	35
21	33
22	30
23	28
24	26
25	25
26	23
27 and older	20 *

* Reflects residual or floor rate.

NOTE: See §1305.G (page PL-3) for method of recognizing economic obsolescence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:941 (November 1984), LR 12:36 (January 1986), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 24:489 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:426 (March 2001), LR 31:719 (March 2005), LR 32:432 (March 2006), LR 33:494 (March 2007), LR 34:684 (April 2008), LR 35:499 (March 2009), LR 36:778 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:

Chapter 15. Aircraft

§1503. Aircraft (Including Helicopters) Table

A. Aircraft (Including Helicopters)

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	0.982	1	97	.95
2010	1.013	2	93	.94
2009	1.006	3	90	.91
2008	1.035	4	86	.89
2007	1.075	5	82	.88
2006	1.134	6	78	.88
2005	1.187	7	74	.88
2004	1.276	8	70	.87
2003	1.320	9	65	.86
2002	1.342	10	60	.81
2001	1.351	11	55	.74
2000	1.362	12	50	.68
1999	1.387	13	45	.62
1998	1.391	14	40	.56
1997	1.403	15	35	.49
1996	1.425	16	31	.44
1995	1.447	17	27	.39
1994	1.499	18	24	.36
1993	1.541	19	22	.34
1992	1.571	20	21	.33
1991	1.590	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February

1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:495 (March 2007), LR 34:685 (April 2008), LR 35:499 (March 2009), LR 36:779 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:

Chapter 25. General Business Assets

§2503. Tables Ascertain Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

A. Suggested Guideline For Ascertain Economic Lives of Business and Industrial Personal Property. The following alphabetical list includes most of the principal activities and types of machinery and equipment used in business throughout this state. The years shown represent an estimate of the average economic life of the equipment as experienced by the particular business or industry. The actual economic life of the assets of the business under appraisal may be more or less than the guidelines shown. The assessor must use his best judgment in consultation with the property owner in establishing the economic life of the property under appraisal.

1. Suggested Guidelines for Ascertain Economic Lives of Business and Industrial Personal Property

Table 2503.A Business Activity/Type of Equipment	Average Economic Life in Years
Agricultural Machinery and Equipment	10
Feed Mill Equipment (Production Line)	20
Air Conditioning and Heat Repair	10
***	***
Cellular/PCS	
Antennas	5
Cellular/PCS Telephone Handsets	3
Electronics	5
Leasehold Improvements	15
Power and Batteries	5
Software	3
Switching	5
Towers—Cellular/PCS and Microwave	20
Transmission	5
Cement, Clay and Brick Prods. Mfg. M and E	20
***	***
*If acquisition cost and age of service station equipment are not available, see Chapter 9, Table 907.B-2 for alternative assessment procedure.	

B. Cost Indices

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2011 = 100*
2011	1	1503.2	0.982
2010	2	1457.4	1.013
2009	3	1468.6	1.006
2008	4	1427.3	1.035
2007	5	1373.3	1.075

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2011 = 100*
2006	6	1302.3	1.134
2005	7	1244.5	1.187
2004	8	1157.3	1.276
2003	9	1118.6	1.320
2002	10	1100.0	1.342
2001	11	1093.4	1.351
2000	12	1084.3	1.362
1999	13	1065.0	1.387
1998	14	1061.8	1.391
1997	15	1052.7	1.403
1996	16	1036.0	1.425
1995	17	1020.4	1.447
1994	18	985.0	1.499
1993	19	958.0	1.541
1992	20	939.8	1.571
1991	21	928.5	1.590
1990	22	910.2	1.622
1989	23	886.5	1.666
1988	24	841.4	1.755
1987	25	806.9	1.830
1986	26	795.4	1.857

*Reappraisal Date: January 1, 2011 – 1476.7 (Base Year)

C. ...

D. Composite Multipliers 2012 (2013 Orleans Parish)

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:496 (March 2007), LR 34:686 (April 2008), LR 35:500 (March 2009), LR 36:780 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1402 (May 2011), LR 38:

Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible to be Assessed at Use Value

§2713. Assessment of Timberland

A. - D. ...

E. Gross Returns of Timberland. The gross value per cubic foot of timber production is hereby established to be \$0.66/cubic/foot.

F. Capitalization Rate for Timberland. The capitalization rate for determining use value of timberlands is hereby established to be as follows.

Timberland	Class 1, 2, and 3	Class 4
Risk Rate	2.30%	5.30%
Illiquidity Rate	-0.09%	0.85%
Safe Rate	4.16%	5.16%
Other Factors	3.63%	4.69%
Capitalization Rate	10.00%	16.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 14:872 (December 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:492 (March 2004), LR 38:

§2717. Tables—Use Value

A. ...

B. Average Assessed Value per Acre of Timberland, by Class

Table 2717.B Average Assessed Value per Acre of Timberland, by Class	
Class	Assessed Value Per Acre
Class 1	\$38.67
Class 2	\$27.47
Class 3	\$12.05
Class 4	\$ 7.53

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 13:764 (December 1987), LR

Table 2503.D Composite Multipliers 2012 (2013 Orleans Parish)									
Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
1	.69	.83	.85	.88	.90	.92	.93	.95	.96
2	.50	.70	.74	.80	.85	.88	.91	.94	.96
3	.34	.52	.57	.67	.76	.80	.86	.91	.94
4	.17	.35	.42	.56	.69	.76	.82	.89	.93
5		.25	.32	.46	.62	.71	.78	.88	.92
6		.20	.22	.37	.56	.66	.77	.88	.91
7			.21	.31	.46	.59	.74	.88	.90
8				.28	.38	.55	.70	.87	.89
9				.26	.32	.48	.65	.86	.89
10					.28	.39	.58	.81	.89
11					.27	.32	.50	.74	.89
12						.30	.42	.68	.87
13						.28	.36	.62	.83
14							.32	.56	.78
15							.29	.49	.73
16							.29	.44	.68
17								.39	.64
18								.36	.58
19								.34	.52
20								.33	.47
21								.32	.45
22									.42
23									.40
24									.35
25									.34
26									.34

1. Data sources for tables are:

- a. Cost Index—Marshall and Swift Publication Co.;
- b. Percent Good—Marshall and Swift Publication Co.;

c. Average Economic Life—various.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

14:110 (February 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:491 (March 1998), LR 26:511 (March 2000), LR 30:492 (March 2004), LR 38:

Chapter 31. Public Exposure of Assessments; Appeals

§3101. Public Exposure of Assessments, Appeals to the Board of Review and Board of Review Hearings

A. Assessment lists shall be open for public inspection each year for a period of 15 days, beginning no earlier than August 15 and ending no later than September 15, except in Jefferson Parish, where the lists shall be open for public inspection no earlier than August 1 and ending no later than September 15 and in Orleans Parish, where the lists shall be open for public inspection August 1-August 15.

B.1. - K. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with LSA-Constitution of 1974, Article VII, §18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:512 (March 2000), LR 30:492 (March 2004), LR 32:435 (March 2006), LR 33:498 (March 2007), LR 34:688 (April 2008), LR 35:501 (March 2009), LR 36:781 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1403 (May 2011), LR 38:

§3103. Appeals to the Louisiana Tax Commission

A. - L. ...

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified within three (3) business days, prior to the scheduled hearing that an official reporter will be in attendance.

N. - X. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:1989 and R.S. 47:1992.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:492 (March 1998), LR 25:319 (February 1999), LR 26:512 (March 2000), LR 28:521 (March 2002), LR 31:721 (March 2005), LR 32:436 (March 2006), LR 33:498 (March 2007), LR 34:688 (April 2008), LR 36:782 (April 2010), LR 38:

§3105. Practice and Procedure for Public Service Properties Hearings

A. The Tax Commission or its designated representative, as provided by law, shall conduct hearings to consider the written protest of an appellant taxpayer. The appeal shall be filed within 30 days after receipt of the Public Service Section's Certificate of Value. In order to institute a proceeding before the commission, the taxpayer shall file Form 3105.A and, if applicable Form 3103.B.

B.1. - S. ...

LTC Docket No. _____
Form 3105.A
Exhibit A
Appeal to Louisiana Tax Commission
by Taxpayer
La. Tax Commission
P.O. Box 66788
Baton Rouge, LA 70896
(225) 925-7830

Taxpayer Name: _____

Address: _____

City, State, Zip: _____

Circle one Industry:

Airline Boat/Barge Co-op Electric Pipeline Railcar Railroad Telephone

The Fair Market Value as determined by the Public Service Section of the Louisiana Tax Commission is:

Total \$ _____

I am requesting that the Fair Market Value be fixed at:

Total \$ _____

I understand that property is assessed at a percentage of fair market value which means the price for the property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances, the highest price the property would bring on the open market if exposed for sale for a reasonable time.

Appellant

Address: _____

Telephone No.: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:1856.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 23:209 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:493 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 30:492 (March 2004), LR 31:723 (March 2005), LR 32:438 (March 2006), LR 33:499 (March 2007), LR 34:689 (April 2008), LR 36:782 (April 2010), LR 38:

§3106. Practice and Procedure for the Appeal of Bank Assessments

A. - L.

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified within three business days, prior to the scheduled hearing that an official reporter will be in attendance.

N. - T. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 33:499 (March 2007), LR 34:690 (April 2008), LR 36:782 (April 2010), LR 38:

§3107. Practice and Procedure for the Appeal of Insurance Credit Assessments

A. - L. ...

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified within three business days, prior to the scheduled hearing that an official reporter will be in attendance.

N. - T.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 33:501 (March 2007), amended LR 34:690 (April 2008), LR 36:782 (April 2010), LR 38:

James D. "Pete" Peters
Chairman

1112#070

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Daily Doubles (LAC 35:XIII.10501)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective November 14, 2011 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The proposed amendment will allow more than two daily doubles to be permitted during any single race card for the Fair Grounds thoroughbred meet opening on November 24, 2011, and all other licensed race tracks conducting live racing beginning on November 14, 2001. The Fair Grounds Race Track predicts that by allowing wagers on additional daily doubles, the handle will increase and therefore the revenue to the state of Louisiana will also increase for this meet. If this is not done by emergency procedure, the following Rule will not be enacted for the use of the Fair Grounds in 2011.

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Title 35

HORSE RACING

Part XIII. Wagering

Chapter 105. Daily Double

§10501. Daily Doubles

A. Daily doubles shall be permitted during any single race card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:441 (December 1976), amended LR 3:37

(January 1977), LR 4:282 (August 1978), LR 6:542 (September 1980), LR 12:289 (May 1986), LR 38:

Charles A. Gardiner III
Executive Director

1112#030

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Mandatory Health Screening (LAC 35:I.1304)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective November 14, 2011 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The equine medical director of the Louisiana State Racing Commission has advised that the concern regarding Equine Piroplasmiasis remains, but has been narrowed to the strain, *Theileria equi*. The need for a negative test for *Babesia caballi* is no longer required due to the extremely low incidence of *Babesia caballi*. This will significantly reduce the cost of the testing for the owners of the racehorses requiring testing for Equine Piroplasmiasis.

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 13. Health Rules

§1304. Mandatory Health Screening

A. ...

B. No horse shall be allowed to enter the confines of a racetrack of any association holding a license to conduct a race meeting or race in Louisiana unless it has had an Equine Piroplasmiasis (EP) test taken within 12 months of the date of entry upon the racetrack and/or race, with a negative result for *Theileria equi*. Record of the negative test shall be attached to registration papers of the horse upon entry to the racetrack. The trainer of the horse is responsible for insuring that a negative Piroplasmiasis test result is in the racing secretary's office as required by this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by Department of Commerce, Racing Commission, LR 14:226 (April 1988), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 37:1393 (May 2011), LR 38:

Charles A. Gardiner III
Executive Director

1112#023

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Nonsteroidal and/or Anti-Inflammatory Medication (LAC 35:I.1505)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective January 1, 2012 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The proposed amendment serves to bring Louisiana into compliance with the requirements of the Thoroughbred Owners and Breeders Association "TOBA" effective January 1, 2012. These requirements implemented by TOBA require that in order to maintain graded stakes race accreditation in Louisiana, for all horses entered in a graded stakes race, the maximum post-race analytical test result levels of the blood of such horse, regardless of time of administration, for drug, phenylbutazone shall be 2.0 micrograms per milliliter.

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Title 35 HORSE RACING

Part I. General Provisions

Chapter 15. Permitted Medication

§1505. Nonsteroidal and/or Anti-Inflammatory Medication

A. No nonsteroidal and/or anti-inflammatory medication may be administered to or used on a horse in training and eligible to be raced at a race meeting in this state except by a licensed veterinarian or a licensed trainer, or under his or her personal order; provided, however, that any such medication given hypodermically may only be administered by a licensed veterinarian. The nonsteroidal, anti-inflammatory medications designated below may be used in training but may not be administered within 24 hours of a race in which a horse is entered. The maximum analytical test result levels of the urine and blood of such horse, regardless of time of administration, shall be as follows, unless otherwise specified herein.

1. Urine Levels

Post-Race Urine Levels	Total of Drug and/or Metabolite
Phenylbutazone	165 micrograms per milliliter
Oxyphenylbutazone	165 micrograms per milliliter

2. Blood Levels

Post-Race Blood Levels	Total of Drug and/or Metabolite
Phenylbutazone	5.0 micrograms per milliliter
Oxyphenylbutazone	5.0 micrograms per milliliter

B. In addition to any other urine or blood specimens required to be tested and analyzed, the stewards may order

the taking of a blood specimen from any horse from which a urine specimen has been taken or will be taken while the horse is at the special barn and/or test barn as provided in §5761 which blood specimen shall be delivered to the state chemist for testing and analysis.

C. For all horses entered in a graded stakes race, the maximum analytical test result levels of the blood of such horse, regardless of time of administration, shall be as follows.

Post-Race Blood Level	Total of Drug and/or Metabolite
Phenylbutazone	2.0 micrograms per milliliter

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 9:547 (August 1983), amended LR 38:

Charles A. Gardiner III
Executive Director

1112#021

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Pick Five (LAC 35:XIII.11001)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective November 14, 2011 and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The proposed Rule allows for an exotic wager which has a carryover of 50 percent of the betting pool when there is not a single ticket winner to the next day's wagering pool for The Fair Grounds Thoroughbred meet opening on November 24, 2011, and all other licensed race tracks conducting live racing beginning on November 14, 2011. The Fair Grounds Race Track predicts that the Pick-5 wager will increase the handle, and therefore the revenue to the state of Louisiana. The approximate amount of increase in handle is predicted by the Fair Grounds to be \$23,000 for the entire meet. If this is not done by emergency procedure, the following Rule will not be enacted for the use of the Fair Grounds in 2011.

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Title 35 HORSE RACING Part XIII. Wagering

Chapter 110. Pick Five

§11001. Pick Five

A. The pick five pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator, nor to the rules governing the distribution of such other pools.

B. A pick five pari-mutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the pick five provisions and rules.

C. A pick five may be given a distinctive name by the association conducting the meeting, subject to approval of the commission.

D. The pick five pari-mutuel pool consists of amounts contributed for a selection for win only in each of five races designated by the association with the approval of the commission. Each person purchasing a pick five ticket shall designate the winning horse in each of the five races comprising the pick five.

E. Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the pick five shall race as a single wagering interest for the purpose of the pick five pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the pick five calculation and the selection shall not be deemed a scratch.

F. The pick five pari-mutuel pool shall be calculated as follows.

1. The net amount in the pari-mutuel pool referred to in this Section is defined as the pari-mutuel pool created by pick five wagering on that particular day and does not include any amounts carried over from previous days' betting as provided by in Subparagraph F.3.a and Subparagraph F.4.a below.

2. One hundred percent of the net amount in the pari-mutuel pool is subject to distribution to a single unique winning ticket holder, plus any carryover resulting from provisions of Paragraph F.3 and Paragraph F.4 shall be distributed to the unique winning ticket holder of the single pari-mutuel ticket which correctly designates the official winner in each of the five races comprising the pick five.

3. In the event there is more than one pari-mutuel ticket properly issued which correctly designates the official winner in each of the five races comprising the pick five, the net pari-mutuel pool shall be distributed as follows.

a. Fifty percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the five races comprising the pick five.

4. In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner in each of the five races comprising the pick five, the net pari-mutuel pool shall be distributed as follows.

a. Fifty percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the most official winners, but less than five, in each of the five races comprising the pick five.

5. Should no distribution be made pursuant to Paragraph F.1 on the last day of the association meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the five races comprising the pick five for that day or night; the provisions of Subsections I and J have no application on said last day.

G. In the event a pick five ticket designates a selection in any one or more of the races comprising the pick and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the amount wagered in the win pool on two or more favorites is identical, the favorite with the lowest number on the program will be designated as the actual favorite.

H. In the event of a dead heat for win between two or more horses in any pick five race, all such horses in the dead heat for win shall be considered as winning horses in that race for the purpose of calculating the pool.

I. No pick five shall be refunded except when all of the races comprising the pick five are canceled or declared as "no contest." The refund shall apply only to the pick five pool established on that racing card. Any net pool carryover accrued from a previous pick five feature shall be further carried over to the next scheduled pick five feature operated by the association.

J. In the event that any number of races less than five comprising the pick five are completed, 100 percent of the net pool for the pick five shall be distributed among holders of pari-mutuel tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick five pool in which less than five races have been completed. Any net pool carryover accrued from a previous pick five feature shall be further carried over to the next scheduled pick five pool operated by the association.

K. No pari-mutuel ticket for the pick five pool shall be sold, exchanged or canceled after the time of the closing of wagering in the first of the five races comprising the pick five, except for such refunds on pick five tickets as required by this regulation, and no person shall disclose the number of tickets sold in the pick five pool or the number or amount of tickets selecting winners of pick five races until such time as the stewards have determined the last race comprising the pick five each day to be official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

Charles A. Gardiner III
Executive Director

1112#017

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Super Six (LAC 35:XIII.10901)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective November 14, 2011 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The proposed amendment serves to correct the language of the Rule to properly state that 70 percent of the net amount in the pari-mutuel pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six. The Rule currently incorrectly provides that 30 percent of the net amount shall be distributed.

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Title 35 HORSE RACING Part XIII. Wagering

Chapter 109. Super Six

§10901. Super Six

A. The super six pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator, nor to the rules governing the distribution of such other pools.

B. A super six pari-mutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the super six provisions and rules.

C. A super six may be given a distinctive name by the association conducting the meeting, subject to approval of the commission.

D. The super six pari-mutuel pool consists of amounts contributed for a selection for win only in each of six races designated by the association with the approval of the commission. Each person purchasing a super six ticket shall designate the winning horse in each of the six races comprising the super six.

E. Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the super six shall race as a single wagering interest for the purpose of the super six pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the super six calculation and the selection shall not be deemed a scratch.

F. The super six pari-mutuel pool shall be calculated as follows.

1. The net amount in the pari-mutuel pool referred to in this Section is defined as the pari-mutuel pool created by super six wagering on that particular day and does not

include any amounts carried over from previous days' betting as provided by in Subparagraph F.4.a below.

2. Seventy percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders, plus any carryover resulting from provisions of Paragraph F.4, shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six.

3. Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the second most official winners, but less than six, in each of the six races comprising the super six.

4. In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner in each of the six races comprising the super six, the net pari-mutuel pool shall be distributed as follows.

a. Seventy percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the most official winners, but less than six, in each of the six races comprising the super six.

5. Should no distribution be made pursuant to Paragraph F.1 on the last day of the association meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the super six for that day or night; the provisions of Subsections I and J have no application on said last day.

G. In the event a super six ticket designates a selection in any one or more of the races comprising the super six and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the amount wagered in the win pool on two or more favorites is identical, the favorite with the lowest number on the program will be designated as the actual favorite.

H. In the event of a dead heat for win between two or more horses in any super six race, all such horses in the dead heat for win shall be considered as winning horses in that race for the purpose of calculating the pool.

I. No super six shall be refunded except when all of the races comprising the super six are canceled or declared as "no contest." The refund shall apply only to the super six pool established on that racing card. Any net pool carryover accrued from a previous super six feature shall be further carried over to the next scheduled super six feature operated by the association.

J. In the event that any number of races less than six comprising the super six are completed, 100 percent of the net pool for the super six shall be distributed among holders

of pari-mutuel tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the super six pool in which less than six races have been completed. Any net pool carryover accrued from a previous super six feature shall be further carried over to the next scheduled super six pool operated by the association.

K. No pari-mutuel ticket for the super six pool shall be sold, exchanged or canceled after the time of the closing of wagering in the first of the six races comprising the super six, except for such refunds on super six tickets as required by this regulation, and no person shall disclose the number of tickets sold in the super six pool or the number or amount of tickets selecting winners of super six races until such time as the stewards have determined the last race comprising the super six each day to be official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:542 (September 1980), amended LR 12:11 (January 1986), amended by the Department of Economic Development, Racing Commission, LR 15:8 (January 1989), LR 38:

Charles A. Gardiner III
Executive Director

1112#019

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Low Income and Needy Care Collaboration
(LAC 50:V.2503 and 2713)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2503 and adopts §2713 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 all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department amended the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the provisions of the January 20, 2010 Emergency Rule to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal

funding and to promote the public health and welfare of uninsured individuals by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective December 30, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 25. Disproportionate Share Hospital Payment Methodologies

§2503. Disproportionate Share Hospital Qualifications

A. - A.5. ...

6. effective September 15, 2006, be a non-rural community hospital as defined in §2701.A.;

7. effective January 20, 2010, be a hospital participating in the Low Income and Needy Care Collaboration as defined in §2713.A.; and

8. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 27. Qualifying Hospitals

§2713. Low Income and Needy Care Collaboration

A. Definitions

Low Income and Needy Care Collaboration Agreement—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

B. In order to qualify under this DSH category in any period, a hospital must be party to a Low Income and Needy Care Collaboration Agreement with the Department of Health and Hospitals in that period.

C. DSH payments to Low Income and Needy Care Collaborating Hospitals shall be calculated as follows.

1. In each quarter, the department shall divide hospitals qualifying under this DSH category into two pools. The first pool shall include hospitals that, in addition to qualifying under this DSH category, also qualify for DSH payments under any other DSH category. Hospitals in the first pool shall be eligible to receive DSH payments under §2713.C.2 provisions. The second pool shall include all other hospitals qualifying under this DSH category. Hospitals in the second pool shall be eligible to receive DSH payments under §2713.C.3 provisions.

2. In each quarter, to the extent the department appropriates funding to this DSH category, hospitals that qualify under the provisions of §2713.C.2 shall receive 100 percent of the total amount appropriated by the department for this DSH category.

a. If the net uncompensated care costs of these hospitals exceed the amount appropriated for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing the hospital's net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.2 and multiplying by the amount appropriated by the department.

b. If the amount appropriated for this DSH category exceeds the net uncompensated care costs of all hospitals qualifying under §2713.C.2, payment shall be made up to each hospital's net uncompensated care costs.

c. Any amount available after all distributions are made under §2713.C.2 provisions shall be distributed subject to the provisions in §2713.C.3.

3. In each quarter, to the extent distributions are available, and after all distributions are made under §2713.C.2 provisions, distributions under §2713.C.3 provisions shall be made according to the following terms.

a. If the net uncompensated care costs of all hospitals qualifying for payment under §2713.C.3 provisions exceed the amount available for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.3.

b. If the amount available for payments under §2713.C.3 exceeds the net uncompensated care costs of all qualifying hospitals, payments shall be made up to each hospital's net uncompensated care costs and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

D. In the event it is necessary to reduce the amount of disproportionate share payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under the provisions of §2713.C.3.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.3 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department will reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. After the reduction in §2713.D has been applied, if it is necessary to further reduce the amount of DSH payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under §2713.C.2.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.2 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department shall reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

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

G. Payments shall be made on a quarterly basis, however, each hospital's eligibility for DSH and net uncompensated care costs shall be determined on an annual basis.

H. Payments to hospitals qualifying under this DSH category shall be made subsequent to any DSH payments for which a hospital is eligible under another DSH category.

I. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit. The remaining payments shall be redistributed to the other hospitals in accordance with these provisions.

J. If the amount appropriated for this DSH category exceeds the specific DSH limits of all qualifying hospitals, payment will be made up to each hospital's specific DSH limit and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

K. Effective for dates of service on or after January 1, 2011, all parties that participate in Medicaid DSH payments under this Section, either as a qualifying hospital by receipt of Medicaid DSH payments or as a state or local governmental entity funding Medicaid DSH payments, must meet the following conditions during the period of their participation:

1. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

2. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

3. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

4. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

5. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the Low Income and Needy Care Collaboration Agreement.

6. A participating hospital may not return any of the Medicaid DSH payments it receives under this Section to the governmental entity that provides the non-federal share of the Medicaid DSH payments.

7. A participating governmental entity may not receive any portion of the Medicaid DSH payments made to a participating hospital under this Section.

L. Each participant must certify that it complies with the requirements of §2713.K by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

M. Each qualifying hospital must submit a copy of its Low Income and Needy Care Collaboration Agreement to the department.

N. The Medicaid DSH payments authorized in LAC 50:V.Subpart 3 shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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

Bruce D. Greenstein
Secretary

1112#087

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment School-Based Nursing Services (LAC 50:XV.Chapter 95)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid coverage for health care services rendered to children and youth under the age of 21 through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The department proposes to amend the provisions governing the EPSDT Program in order to adopt provisions to establish reimbursement and coverage for school-based nursing services rendered to all children enrolled in Louisiana schools.

This action is being taken to promote the health and welfare of Medicaid eligible recipients and to assure a more efficient and effective delivery of health care services. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$665,925 for state fiscal year 2011-2012.

Effective January 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to provide Medicaid coverage of school-based nursing services covered under the Early and Periodic Screening, Diagnosis and Treatment Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 95. School-Based Nursing Services

§9501. General Provisions

A. EPSDT school-based nursing services are provided by a registered nurse (RN) within a local education agency (LEA). The goal of these services is to prevent or mitigate disease, enhance care coordination, and reduce costs by preventing the need for tertiary care. Providing these services in the school increases access to health care for children and youth resulting in a more efficient and effective delivery of care.

B. RNs providing school-based nursing services are required to maintain an active RN license with the state of Louisiana and comply with the Louisiana Nurse Practice Act.

C. School-based nursing services shall be covered for all recipients in the school system and not limited to those with an Individualized Education Program (IEP).

D. School boards shall collaborate with the recipient's BAYOU HEALTH provider/entity and make necessary referrals.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§9503. Covered Services

A. The following school-based nursing services shall be covered:

1. Episodic Care. This is unplanned care that occurs when children see the nurse for assessment of a health concern. Episodic care includes but is not limited to:

- a. nose bleeds;
- b. cuts;
- c. bruises; or
- d. flu symptoms.

2. Chronic Medical Condition Management and Care Coordination. This is care based on one of the following criteria:

a. The child has a chronic medical condition or disability requiring implementation of a health plan/protocol (examples would be children with asthma, diabetes, or cerebral palsy). There must be a written health care plan based on a health assessment performed by the RN. The date of the completion of the plan and the name of the person completing the plan must be included in the written plan. Each health care service required and the schedule for its provision must be described in the plan.

b. Medication Administration. This service is scheduled as part of a health care plan developed by either the treating physician or the school district LEA. Administration of medication will be at the direction of the physician and within the license of the RN and must be approved within the district LEA policies.

c. Implementation of Physician's Orders. These services shall be provided as a result of receipt of a written plan of care from the child's physician/BAYOU HEALTH provider or an IEP/Health care plan for students with disabilities.

3. Immunization Assessments. These services are nursing assessments of health status (immunizations) required by the Office of Public Health. This service requires an RN to assess the vaccination status of children in these cohorts once each year. This assessment is limited to the following children:

- a. children enrolling in a school for the first time;
- b. pre-Kindergarten children;
- c. Kindergarten children; and
- d. children entering sixth grade; or
- e. any student 11 years of age regardless of grade.

4. EPSDT Program Periodicity Schedule for Screenings. A nurse employed by a school district may perform any of these screens within their licensure if they have not yet been performed by the PCP/BAYOU HEALTH provider. The results of these screens must be made available to the BAYOU HEALTH provider as part of the care coordination plan of the district. The screens shall be performed according to the periodicity schedule including any inter-periodic screens.

a. There is no requirement for linkage to the district as their medical home.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§9505. Reimbursement Methodology

A. Payment for EPSDT school-based nursing services shall be based on the most recent school year's actual cost as determined by desk review and/or audit for each LEA provider.

1. Each LEA shall determine cost annually by using DHH's Cost Report for Nursing Service Cost form based on the Direct Services Cost Report.

2. Direct cost shall be limited to the amount of total compensation (salaries, vendor payments and fringe benefits) of current nursing service providers as allocated to nursing services for Medicaid special education recipients. The direct cost related to the electronic health record shall be added to the compensation costs to arrive at the total direct costs for nursing services. There are no additional direct costs included in the rate.

3. Indirect cost shall be derived by multiplying the cognizant agency indirect cost unrestricted rate assigned by the Department of Education to each LEA. There are no additional indirect costs included.

4. To determine the amount of nursing services cost that may be attributed to Medicaid; the ratio of total Medicaid students in the LEA to all students in the LEA is multiplied by total direct cost. Cost data is subject to certification by each LEA. This serves as the basis for obtaining Federal Medicaid funding.

B. For the nursing services, the participating LEAs' actual cost of providing the services shall be claimed for Medicaid Federal Financial Participation (FFP) based on the following methodology.

1. The state shall gather actual expenditure information for each LEA through its Payroll/Benefits and Accounts Payable System.

2. Develop Direct Cost - The Payroll Cost Base. Total annual salaries and benefits paid, as well as contracted (vendor) payments, shall be obtained initially from each LEA's Payroll/Benefits and Accounts Payable system. This data shall be reported on DHH's Nursing Services Cost Report form for all nursing service personnel (i.e. all personnel providing LEA nursing treatment services covered under the state plan).

3. Adjust the Payroll Cost Base. The payroll cost base shall be reduced for amounts reimbursed by other funding sources (e.g. Federal grants). The payroll cost base shall not include any amounts for staff whose compensation is 100 percent reimbursed by a funding source other than state/local funds. This application results in total adjusted salary cost.

4. Determine the Percentage of Time to Provide All Nursing Services. A time study which incorporates the CMS-approved Medicaid Administrative Claiming (MAC) methodology for nursing service personnel shall be used to determine the percentage of time nursing service personnel spend on nursing services and General and Administrative (G&A) time. This time study will assure that there is no duplicate claiming. The G&A percentage shall be reallocated in a manner consistent with the CMS approved Medicaid Administrative Claiming methodology. Total G&A time shall be allocated to all other activity codes based on the percentage of time spent on each respective activity. To reallocate G&A time to nursing services, the percentage of time spent on nursing services shall be divided by 100 percent minus the percentage of G&A time. This shall result in a percentage that represents the nursing services with appropriate allocation of G&A. This percentage shall be multiplied by total adjusted salary cost as determined B.4 above to allocate cost to school based services. The product represents total direct cost.

a. A sufficient number of nursing service personnel shall be sampled to ensure results that will have a confidence level of at least 95 percent with a precision of plus or minus five percent overall.

5. Determine Indirect Cost. Indirect cost shall be determined by multiplying each LEA's indirect unrestricted rate assigned by the cognizant agency (the Department of Education) by total adjusted direct cost as determined under B.3 above. No additional indirect cost shall be recognized outside of the cognizant agency indirect rate. The sum of direct cost and indirect cost shall be the total direct service cost for all students receiving nursing services.

6. Allocate Direct Service Cost to Medicaid. To determine the amount of cost that may be attributed to Medicaid, total cost as determined under B.5 above shall be multiplied by the ratio of Medicaid students in the LEA to all students in the LEA. This results in total cost that may be certified as Medicaid's portion of school-based nursing services cost.

C. Reconciliation of LEA Certified Costs and Medicaid Management Information System (MMIS) Paid Claims. Each LEA shall complete the Nursing Services Cost Report and submit the cost report(s) no later than five months after

the fiscal year period ends (June 30), and reconciliation shall be completed within 12 months from the fiscal year end. All filed nursing services cost reports shall be subject to desk review by the department's audit contractor. The department shall reconcile the total expenditures (both state and federal share) for each LEA's nursing services. The Medicaid certified cost expenditures from the nursing services cost report(s) will be reconciled against the MMIS paid claims data and the department shall issue a notice of final settlement pending audit that denotes the amount due to or from the LEA. This reconciliation is inclusive of all nursing services provided by the LEA.

D. Cost Settlement Process. As part of its financial oversight responsibilities, the department shall develop audit and review procedures to audit and process final settlements for certain LEAs. The audit plan shall include a risk assessment of the LEAs using available paid claims data to determine the appropriate level of oversight.

1. The financial oversight of all LEAs shall include reviewing the costs reported on the Nursing Services Cost Reports against the allowable costs, performing desk reviews and conducting limited reviews.

2. The department will make every effort to audit each LEA at least every four years. These activities shall be performed to ensure that audit and final settlement occurs no later than two years from the LEA's fiscal year end for the cost reporting period audited. LEAs may appeal audit findings in accordance with DHH appeal procedures.

3. The department shall adjust the affected LEA's payments no less than annually, when any reconciliation or final settlement results in significant underpayments or overpayments to any LEA. By performing the reconciliation and final settlement process, there shall be no instances where total Medicaid payments for services exceed 100 percent of actual, certified expenditures for providing LEA services for each LEA.

4. If the interim payments exceed the actual, certified costs of an LEA's Medicaid services, the department shall recoup the overpayment in one of the following methods:

- a. offset all future claim payments from the affected LEA until the amount of the overpayment is recovered;
- b. recoup an agreed upon percentage from future claims payments to the LEA to ensure recovery of the overpayment within one year; or
- c. recoup an agreed upon dollar amount from future claims payments to the LEA to ensure recovery of the overpayment within one year.

5. If the actual certified costs of an LEA's Medicaid services exceed interim Medicaid payments, the department will pay this difference to the LEA in accordance with the final actual certification agreement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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 Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#098

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Greater New Orleans Community
Health Connection Waiver
(LAC 50:XXII.Chapters 61-69)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXII.Chapters 61-69 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.

In July 2007, the Department of Health and Hospitals was awarded a \$100 million Primary Care Access Stabilization Grant (PCASG) from the Department of Health and Human Services, Centers for Medicare and Medicaid Services as a result of the disruption of primary health care service delivery in the greater New Orleans area due to Hurricanes Katrina and Rita. The PCASG was a three-year grant program designed to restore and expand access to primary care services, including behavioral health and dental services, without regard to a patient's ability to pay. The intent of the program was to restore and stabilize the provision of primary health care services in the New Orleans area by providing short-term financial relief to providers and to decrease reliance on costly emergency room services for patients who were uninsured, underinsured, or receiving Medicaid benefits. The PCASG program will end on September 30, 2010.

As a result of the termination of PCASG funds, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which implemented a demonstration program under the authority of a Section 1115 Waiver, called the Greater New Orleans Community Health Connection (GNOCHC) Waiver, to ensure continued access to primary and behavioral health care services that were restored and expanded in the greater New Orleans area (*Louisiana Register*, Volume 36, Number 10). Under this demonstration waiver, the Medicaid Program will provide coverage for primary and behavioral health care services delivered to eligible residents in Jefferson, Orleans, Plaquemines and St. Bernard parishes who have family income up to 200 percent of the federal poverty level.

The department promulgated an Emergency Rule which amended the provisions of the October 1, 2010 Emergency Rule in order to establish provisions that will allow waiver recipients in the Family Planning Waiver and the GNOCHC Waiver to receive health care services through both waiver programs simultaneously (*Louisiana Register*, Volume 37,

Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2011 Emergency Rule. This action is being taken to protect the health and welfare of uninsured individuals in the greater New Orleans area by ensuring continued access to primary care and family planning services.

Effective January 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Greater New Orleans Community Health Connection Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 7. Greater New Orleans Community Health Connection Waiver

Chapter 61. General Provisions

§6101. Purpose

A. Upon approval from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department shall implement a Section 1115 demonstration waiver called the Greater New Orleans Community Health Connection (GNOCHC) Waiver to provide primary and behavioral health care services to eligible uninsured residents in the greater New Orleans area.

B. The intent of the GNOCHC Waiver is to preserve primary and behavioral health care access that was restored and expanded in the greater New Orleans area with Primary Care Access and Stabilization Grant (PCASG) funds awarded by CMS after Hurricanes Katrina and Rita. Implementation of this waiver program is expected to reduce reliance on costlier emergency room services to meet primary care needs.

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 38:

§6103. Program Design

A. The GNOCHC Waiver is designed to transition the PCASG medical home model to a financially sustainable model utilizing other funding resources over the long-term.

B. The waiver is a 39 month demonstration project which shall be implemented in two primary phases which span four fiscal years.

C. Phase one of the GNOCHC Waiver shall focus on preserving access to primary care services and developing a CMS approved plan for transitioning the funding of the demonstration project to long-term revenue sources. Phase two focuses on implementing the transition plan, assessment, and the demonstration project phase-down.

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 38:

Chapter 63. Eligibility

§6301. General Provisions

A. The targeted population for GNOCHC Waiver services shall be uninsured adults who live in the greater New Orleans area. For purposes of these provisions, the greater New Orleans area shall consist of the following parishes:

1. Jefferson;
2. Orleans;

3. Plaquemines; and
4. St. Bernard.

B. All applicants shall be pre-screened to determine possible eligibility for coverage in other Medicaid or Children's Health Insurance Programs (CHIP) prior to determining eligibility for GNOCHC Waiver services.

C. Retroactive coverage is not available in the GNOCHC Waiver program. The effective date of coverage for eligible recipients shall be the first day of the month in which the application for services was received.

D. At the department's discretion and upon CMS approval, the following measures may be taken to manage eligibility for these services to ensure that waiver expenditures do not exceed funding allocations. The department may:

1. employ a first come, first served reservation list to manage the number of applications received;
2. limit the number of applications provided to potential recipients; or
3. impose enrollment limits;

E. Waiver recipients shall undergo an eligibility redetermination at least once every 12 months. Each redetermination shall include an assessment of the individual's eligibility for coverage in other Medicaid or CHIP programs.

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 38:

§6303. Recipient Qualifications

A. GNOCHC Waiver services shall be provided to individuals who:

1. have been uninsured for at least 6 months;
2. are not pregnant;
3. are age 19 through 64 years old;
4. are not otherwise eligible for Medicaid, CHIP or Medicare coverage, with the exception of TAKE CHARGE Family Planning Waiver participants and recipients who receive coverage through the Tuberculosis Infected Program;
5. are a resident of any one of the parishes in the greater New Orleans area as defined in §6301.A;
6. have family income up to 200 percent of the federal poverty level; and
7. meet citizenship requirements under the Deficit Reduction Act of 2008 and the Children's Health Insurance Program Reauthorization Act of 2009.

B. A waiver recipient shall be disenrolled from the program if any one of the following occurs. The recipient:

1. has family income that exceeds the income limits at redetermination;
2. voluntarily withdraws from the program;
3. no longer resides in a parish within the greater New Orleans area;
4. becomes incarcerated or becomes an inpatient in an institution for mental disorders;
5. obtains health insurance coverage;
6. turns 65 years old; or
7. dies.

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 38:

Chapter 65. Services

§6501. Covered Services

A. The following services shall be available to GNOCHC Waiver recipients:

1. care coordination;
2. immunizations and influenza vaccines;
3. laboratory and radiology;
4. behavioral health care;
5. pharmacy;
6. primary health care;
7. preventive health care;
8. substance abuse; and
9. specialty care (covered with a referral from the primary care physician).

B. Cost-sharing may be applicable to the services rendered in this waiver program. All demonstration cost-sharing shall be in compliance with federal statutes, regulations and policies. A waiver recipient's share of the cost shall be restricted to a 5 percent aggregate limit per family.

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 38:

§6503. Service Delivery

A. All of the covered services under this waiver program shall be delivered by an existing PCASG funded clinic.

B. All services shall be delivered on an outpatient basis. Reimbursement shall not be made under this waiver program for services rendered to recipients who meet inpatient status.

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 38:

Chapter 67. Provider Participation

§6701. General Provisions

A. All clinics participating in the delivery of services covered under the GNOCHC Waiver shall adhere to all of the applicable federal and state regulations, policy, Rules, manuals and laws.

B. Each participating clinic shall meet the following requirements. The clinic shall:

1. be an existing PCASG funded clinic;
2. be operational and serving waiver recipients on October 1, 2010;
 - a. if a former PCASG clinic wishes to reestablish operations as a GNOCHC participating clinic after October 1, 2010, CMS approval shall be required;
3. be a public or private not-for-profit entity that meets the following conditions:
 - a. the entity must not be an individual practitioner in private solo or group practice;
 - b. the clinic shall be currently licensed, if applicable;
 - c. either the clinic or its licensed practitioners shall be currently enrolled in the Medicaid Program; and
 - d. all health care practitioners affiliated with the clinic that provide health care treatment, behavioral health counseling, or any other type of clinical health care services to patients shall hold a current, unrestricted license to practice in the state of Louisiana within the scope of that licensure;

4. provide full disclosure of ownership and control, including but not limited to any relative contractual agreements, partnerships, etc.;

5. have a statutory, regulatory or formally established policy commitment (e.g. through corporate bylaws) to serve all people, including patients without insurance, at every income level regardless of their ability to pay for services, and be willing to accept and serve new publicly insured and uninsured individuals;

6. maintain one or more health care access points or service delivery sites for the provision of health care services which may include medical care, behavioral health care and substance abuse services, either directly on-site or through established contractual arrangements; and

7. be capable of implementing and evaluating the effectiveness of an organization-specific strategic plan to become a sustainable organizational entity by December 31, 2013 which is capable of permanently providing primary or behavioral health care services to residents in the greater New Orleans area.

a. For purposes of these provisions, a sustainable organizational entity shall be defined as an entity actively developing, implementing and evaluating the effectiveness of its organization to diversify its operating income and funding resources to include non-demonstration funding sources.

C. Participating providers/clinics shall be responsible for:

1. collection of all data on the services rendered to demonstration participants through encounter data or other methods so specified by the department; and

2. maintenance of such data at the provider level.

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 38:

§6703. Reporting Requirements

A. GNOCHC participating clinics shall be required to provide a sustainability plan to the department by March 1, 2011.

B. Semi-annual progress reports on the sustainability plan shall be submitted during the second and fourth quarter of each demonstration year. The first annual report is due in the fourth quarter of the first demonstration year.

C. Participating providers/clinics shall be required to provide encounter data in the format and frequency specified by the department.

D. Clinics that do not comply with these reporting requirements shall not be eligible to receive payments from this demonstration program and may receive financial penalties for noncompliance.

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 38:

Chapter 69. Reimbursement

§6901. General Provisions

A. Clinics shall ensure that reimbursement for services covered under the GNOCHC Waiver is requested only for those individuals who meet the program criteria.

B. Federal financial participation (FFP) for this waiver program is limited to the federal share of \$30 million

annually in demonstration expenditures in each of the first three years of the demonstration. In year four, FFP is limited to the federal share of \$7.5 million. Thus, the total FFP for this demonstration waiver program over all four years is limited to the federal share of \$97.5 million. Federal funding will not be available for expenditures in excess of these annual limits even when the expenditure limit was not reached in prior years.

1. These provisions do not preclude the department from including as allowable expenditures for a particular demonstration year any expenditures incurred after the end of a demonstration year for items or services furnished during that year.

C. The federal share of expenditures for payments to GNOCHC providers shall be calculated based upon the applicable federal medical assistance percentage rate for the year in which the expenditures were incurred.

D. The department may make an urgent sustainability payment to any eligible GNOCHC clinic that meets the criteria of this Chapter 67 and requires financial support to maintain clinical operations while the department seeks CMS approval for the funding and reimbursement protocol for this waiver program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§6903. Reimbursement Methodology

A. Urgent Sustainability Payments

1. For each clinic requiring an urgent sustainability payment, the department shall determine the average payment based upon the clinic's three-year historical grant award received under the PCASG program.

2. The sustainability payment shall be no more than 25 percent of the average annual payment determined for that clinic during the PCASG period. Prior approval from CMS shall be required for sustainability payments in excess of 25 percent of the clinic's average PCASG payment. The department may disburse the payment in the first quarter of demonstration year one.

3. Upon CMS approval of the payment methodology, the department shall reconcile the amount of sustainability payments made to clinics during the period of October 1, 2010 through December 31, 2010 against the actual payments that would have been made to the clinics under the approved payment methodology.

a. Any overpayments made to a clinic shall be recouped from the clinic's payments due in the quarter following the reconciliation.

b. Any underpayments made to a clinic shall be made in the quarter following the reconciliation.

4. The total of all sustainability payments made during the first quarter in demonstration year one shall not exceed \$7.5 million. Any sustainability payments made shall be applied to the \$30 million total computable annual allotment for demonstration year one.

B. Reimbursement for services rendered during phase one and phase two of the demonstration shall be made according to the rate methodology established by the department and approved by CMS in the funding and reimbursement protocol for this waiver program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Allocation of Waiver Opportunities
(LAC 50:XXI.11107)

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 20, 2010 Emergency Rule. This action is being taken to secure enhanced federal funding.

Effective January 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services
Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions

§11107. Allocation of Waiver Opportunities

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

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

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

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

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

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the Office for Citizens with Developmental Disabilities (OCDD) regional offices and human services authorities and districts as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. be under 18 years of age;

b. be designated by the OCDD regional office, human services authority or district as meeting priority level 1 or 2 criteria;

c. be Medicaid eligible;

d. be eligible for state developmental disability services; and

e. meet the ICF/DD level of care.

2. Each OCDD regional office and human services authority or district shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria:

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. the individual's medical care needs;

ii. documented abuse or neglect of the individual;

iii. the individual's intense or frequent challenging behavioral needs; or

iv. death or inability of the caregiver to continue care due to their own age or health; or

v. the possibility that the individual may experience a health crisis leading to death, hospitalization or placement in a nursing facility.

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of their independence or productivity.

3. Children who qualify for one of these waiver opportunities are not required to have a protected request

date on the Developmental Disabilities Request for Services Registry.

4. Each OCDD regional office, human services authority and district shall have a specific number of these opportunities designated to them for allocation to waiver recipients.

6. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular OCDD regional office, human services authority or district for another opportunity to be offered.

7. Once all of these opportunities are filled, supports and services, based on the priority determination system, will be identified and addressed through other resources currently available for individuals with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

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 Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#089

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Residential Options Waiver
(LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to

promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from institutional care (*Louisiana Register*, Volume 33, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (*Louisiana Register*, Volume 36, Number 4). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget for waiver participants and to reduce the reimbursement rates for waiver services (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 20, 2010 Emergency Rule governing the allocation of waiver opportunities in order to adopt criteria for crisis diversion, to revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions governing the Developmental Disabilities Request for Services Registry (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2011 Emergency Rule. This action is being taken to comply with the provisions of the approved waiver application and to secure enhanced federal funding.

Effective January 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the Residential Options Waiver.

Title 50

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

Subpart 13. Residential Options Waiver

Chapter 161. General Provisions

§16101. Introduction

A. The Residential Options Waiver (ROW), a 1915(c) home and community-based services (HCBS) waiver, is designed to enhance the long-term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for persons with developmental disabilities (ICF/DD) level of care.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or

community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options which best meet the individual's needs and preferences;

2. meets the highest standards of quality and national best practices in the provision of services; and

3. ensures health and safety through a comprehensive system of participant safeguards.

4. Repealed.

C. All ROW services are accessed through the support coordination agency of the participant's choice.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the participant's support coordinator.

D. All services must be prior authorized and delivered in accordance with the approved POC.

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and will not exceed the approved ICF/DD ICAP rate established for that individual.

1. When the department determines that it is necessary to adjust the ICF/DD ICAP rate, each waiver participant's annual service budget shall be adjusted to ensure that the participant's total available expenditures do not exceed the approved ICAP rate.

F. No reimbursement for ROW services shall be made for a participant who is admitted to an inpatient setting.

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16105. Participant Qualifications

A. In order to qualify for services through the ROW, an individual must be offered a ROW opportunity and meet all of the following criteria:

1. have a developmental disability as specified in the Louisiana Developmental Disability Law and determined through the developmental disabilities system entry process;

2. meet the requirements for an ICF/DD level of care which requires active treatment for developmental disabilities under the supervision of a qualified developmental disabilities professional;

3. meet the financial eligibility requirements for the Louisiana Medicaid Program;

4. be a resident of Louisiana; and

5. be a citizen of the United States or a qualified alien.

B. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

1 - 3.c. Repealed.

C. Justification must be documented in the OCDD approved POC that the ROW services are appropriate, cost

effective and represent the least restrictive environment for the individual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 37:

§16106. Money Follows the Person Rebalancing Demonstration

A. The Money Follows the Person (MFP) Rebalancing Demonstration is a federal demonstration grant awarded by the Centers for Medicare and Medicaid Services to the Department of Health and Hospitals. The MFP demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

1. For the purposes of these provisions, a qualified institution is a nursing facility, hospital, or Medicaid enrolled intermediate care facility for people with developmental disabilities (ICF/DD).

B. Participants must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Participants with a developmental disability must:

a. occupy a licensed, approved Medicaid enrolled nursing facility, hospital or ICF/DD bed for at least three consecutive months; and

b. be Medicaid eligible, eligible for state developmental disability services, and meet an ICF/DD level of care.

2. The participant or his/her responsible representative must provide informed consent for both transition and participation in the demonstration.

C. Participants in the demonstration are not required to have a protected date on the developmental disabilities request for services registry.

D. All other ROW provisions apply to the Money Follows the Person Rebalancing Demonstration.

E. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 37:

§16107. Programmatic Allocation of Waiver Opportunities

A. The Developmental Disabilities Request for Services Registry (RFSR), hereafter referred to as “the registry,” shall be used to evaluate individuals for ROW opportunities and to fill waiver opportunities for persons with developmental disabilities, except for those specific opportunities to be provided to persons who are described in Paragraph B.1-5 of this Section, who are not on the registry.

1. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and

medical certification process for the level of care determination.

a. - e. Repealed.

2. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated in Paragraph B.1 of this Section, and the process continues until an eligible individual is assigned the waiver opportunity.

3. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a ROW opportunity, this person’s name will be removed from the registry.

B. ROW opportunities will be offered to the following individuals:

1. persons who meet the ICF/DD level of care and are being serviced through the OCDD Host Home contracts;

2. persons who meet the ICF/DD level of care and who need HCBS due to a health and/or safety crisis situation (crisis diversion):

a. requests for crisis diversion shall be made through OCDD. To be considered for a crisis diversion opportunity, the individual must need long-term supports, not temporary or short-term supports;

b. determination of priority for a crisis diversion ROW opportunity will be considered by OCDD for the individual who is eligible for services and meets one of the following criteria:

i. homeless;

ii. at imminent risk of losing current residential placement;

iii. referred by the judicial system;

iv. referred by child, adult, or elderly protective authorities;

v. without a caregiver and cannot adequately care for self;

vi. with a caregiver who can no longer provide care; or

vii. whose needs cannot be met within a community living situation;

3. children who:

a. are from birth to age 18;

b. reside in a nursing facility;

c. meet the high-need requirements for a nursing facility level of care, as well as the ROW level of care requirements;

d. participate in the MFP Rebalancing Demonstration; and

e. have parents or legal guardians who wish to transition them to a home and community-based residential services waiver;

4. persons who reside in a Medicaid-enrolled ICF/DD and wish to transition to a home and community-based residential services waiver through a voluntary ICF/DD bed conversion process;

5. persons who wish to transition from a supports and services center into a ROW opportunity;

6. adults in nursing facilities (NFs) who wish to transition to home and community-based residential services and who meet the level of care (LOC) that qualifies them for ROW eligibility based on their RFSR protected date on a first come, first served basis; and

7. persons residing in ICFs/DD who wish to transition to a home and community-based residential services setting and are eligible based on their RFSR protected date on a first come, first served basis.

C. The Office for Citizens with Developmental Disabilities has the responsibility to monitor the utilization of ROW opportunities. At the discretion of OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of citizens with developmental disabilities in the State of Louisiana.

C.1. - E. 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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16109. Admission Denial or Discharge Criteria

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

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

2. The individual does not meet the requirements for an ICF/DD level of care.

3. The individual does not meet developmental disability system eligibility.

4. The individual is incarcerated or under the jurisdiction of penal authorities, courts or state juvenile authorities.

5. The individual resides in another state.

6. The health and welfare of the individual cannot be assured through the provision of ROW services.

7. The individual fails to cooperate in the eligibility determination process or in the development of the POC.

8. Repealed.

B. Participants shall be discharged from the ROW Program if any of the following conditions are determined:

1. loss of Medicaid financial eligibility as determined by the Medicaid Program;

2. loss of eligibility for an ICF/DD level of care;

3. loss of developmental disability system eligibility;

4. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;

5. change of residence to another state ;

6. admission to an ICF/DD or nursing facility with the intent to stay and not to return to waiver services;

7. the health and welfare of the participant cannot be assured through the provision of ROW services in accordance with the participant's approved POC;

8. the participant fails to cooperate in the eligibility renewal process or the implementation of the approved POC, or the responsibilities of the ROW participant; or

9. continuity of stay for consideration of Medicaid eligibility under the special income criteria is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days;

a. continuity of stay is not considered to be interrupted if the participant is admitted to a hospital, nursing facility or ICF/DD.

i. the participant shall be discharged from the ROW if the treating physician documents that the institutional stay will exceed 90 days.

10. continuity of services is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Chapter 163. Covered Services

§16301. Assistive Technology and Specialized Medical Equipment and Supplies

A. Assistive technology and specialized medical equipment and supplies (AT/SMES) are equipment, devices, controls, appliances, supplies and services which enable the participant to:

1. have life support;
2. address physical conditions;
3. increase ability to perform activities of daily living;
4. increase, maintain or improve ability to function more independently in the home and/or community; and
5. increase ability to perceive, control or communicate.

B. AT/SMES services provided through the ROW include the following services:

1. evaluation of participant needs;
2. customization of the equipment or device;
3. coordination of necessary therapies, interventions or services;
4. training or technical assistance on the use and maintenance of the equipment or device for the participant or, where appropriate, his/her family members, legal guardian or responsible representative;
5. training or technical assistance, when appropriate, for professionals, other service providers, employers, or other individuals who are substantially involved in the participant's major life functions;
6. all service contracts and warranties included in the purchase of the item by the manufacturer; and
7. equipment or device repair and replacement of batteries and other items that contribute to ongoing maintenance of the equipment or device.

a. Separate payment will be made for repairs after expiration of the warranty only when it is determined to be cost effective.

C. Approval of AT/SMES services through ROW is contingent upon the denial of a prior authorization request for the item as a Medicaid State Plan service and demonstration of the direct medical, habilitative or remedial benefit of the item to the participant.

1. Items reimbursed in the ROW may be in addition to any medical equipment and supplies furnished under the Medicaid State Plan.

a. - 7. Repealed.

D. ...

E. Service Exclusions

1. Assistive technology devices and specialized equipment and supplies that are of general utility or maintenance and have no direct medical or remedial benefit to the participant are excluded from coverage.

2. Any equipment, device, appliance or supply that is covered and has been approved under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage.

3. For adults over the age of 20 years, specialized chairs, whether mobile or travel, are not covered.

F. Provider Participation Requirements. Providers of AT/SMES services must meet the following participation requirements. The provider must:

1. be enrolled in the Medicaid Program as a assistive devices or durable medical equipment provider and must meet all applicable vendor standards and requirement for manufacturing, design and installation of technological equipment and supplies;

2. furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies; and

3. provide documentation of individual employees' training and experience with the application, use, fitting and repair of the equipment or devices which they propose to sell or repair;

a. upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16303. Community Living Supports

A. Community Living Supports (CLS) are services provided to assist participants to achieve and maintain the outcomes of increased independence, productivity and inclusion in the community by utilizing teaching and support strategies. CLS may be furnished through self-direction or through a licensed, enrolled agency.

B. Community Living Supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training;

a. Repealed.

3. cognitive, communication tasks, and adaptive skills training; and

a. Repealed.

4. development of appropriate, positive behaviors.

a. - b. Repealed.

C. ...

D. Community Living Supports may be shared by up to three recipients who may or may not live together, and who

have a common direct service provider. In order for CLS services to be shared, the following conditions must be met:

1. an agreement must be reached among all involved participants or their legal guardians regarding the provisions of shared CLS services;

2. the health and welfare of each participant must be assured through the provision of shared services;

3. services must be reflected in each participant's approved plan of care and based on an individual-by-individual determination; and

4. a shared rate must be billed.

E. - E.1. ...

2. Routine care and supervision that is normally provided by the participant's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered.

3. CLS services may not be furnished in a home that is not leased or owned by the participant or the participant's family.

4. Participants may not live in the same house as CLS staff.

5. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered.

6. Community Living Supports shall not be provided in a licensed respite care facility.

a. - d. Repealed.

7. Community Living Supports services are not available to individuals receiving the following services:

a. Shared Living;

b. Home Host; or

c. Companion Care.

8. Community Living Supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

a. Day Habilitation;

b. Prevocational;

c. Supported Employment;

d. respite-out of home services; or

e. transportation-community access.

F. - F.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 for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16305. Companion Care

A. Companion Care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion provides services in the participant's home and lives with the participant as a roommate. Companion Care services may be furnished through self-direction or through a licensed provider agency as outlined in the participant's POC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the participant's POC; and

2. community integration and coordination of transportation services, including medical appointments.

3. Repealed.

B. Companion Care services can be arranged by licensed providers who hire companions, or services can be self-directed by the participant. The companion is a principal care provider who is at least 18 years of age who lives with the participant as a roommate and provides services in the participant's home.

1. - 2. Repealed.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the participant's POC which defines all of the shared responsibilities between the companion and the participant. The written agreement shall include, but is not limited to:

a. - c. ...

2. Revisions to this agreement must be facilitated by the provider and approved by the support team. Revisions may occur at the request of the participant, the companion, the provider or other support team members.

3. The provider is responsible for performing the following functions which are included in the daily rate:

a. arranging the delivery of services and providing emergency services as needed;

b. making an initial home inspection to the participant's home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the participant's POC; and

d. providing 24-hour oversight and supervision of the Companion Care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the participant.

a. - b. Repealed.

D. Companion Responsibilities

1. The companion is responsible for:

a. participating in and abiding by the POC;

b. ...

c. purchasing his/her own food and personal care items.

E. Service Limits

1. The provider agency must provide relief staff for scheduled and unscheduled absences, available for up to 360 hours (15 days) as authorized by the POC. Relief staff for scheduled and unscheduled absences is included in the provider agency's rate.

F. Service Exclusions

1. Companion Care is not available to individuals receiving the following services:

a. Respite Care Service—Out of Home;

b. Shared Living;

c. Community Living Supports; or

d. Host Home.

2. - 2.d. Repealed.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007) , amended by the

Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16307. Day Habilitation Services

A. Day Habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the participant with developing a full life in his community. The primary focus of Day Habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the participant.

2. ...

3. As an individual develops new skills, training should progress along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day Habilitation services shall:

1. focus on enabling participants to attain maximum skills;

2. be coordinated with any physical, occupational or speech therapies included in the participant's POC;

3. - 4. ...

a. services are based on a one-half day unit of service and on time spent at the service site by the participant;

b. the one-half day unit of service requires a minimum of 2.5 hours;

c. two one-half day units may be billed if the participant spends a minimum of 5 hours at the service site;

d. any time less than 2.5 hours of services is not billable or payable; and

e. no rounding up of hours is allowed.

C. The provider is responsible for all transportation from the agency to all work sites related to the provision of service.

1. Transportation to and from the service site is offered and billable as a component of the Day Habilitation service; however, transportation is payable only when a Day Habilitation service is provided on the same day.

2. - 4.c. Repealed.

D. Participants may receive more than one type of vocational/habilitative service per day as long as the service and billing criteria are followed and as long as requirements for the minimum time spent on site are adhered to.

E. Service Exclusions

1. Time spent traveling to and from the day habilitation program site shall not be included in the calculation of the total number of day habilitation service hours provided per day.

a. Travel training for the purpose of teaching the participant to use transportation services may be included in determining the total number of service hours provided per day, but only for the period of time specified in the POC.

2. Transportation-Community Access will not be used to transport ROW participants to any day habilitation services.

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

- a. Community Living Supports;
- b. Professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan; or
- c. Respite Care Services—Out of Home.

F. Provider Qualifications. Providers must be licensed as an adult day care agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16309. Dental Services

A. Dental services are available to adult participants over the age of 21 as a component of the ROW. Covered dental services include:

1. diagnostic services;
2. preventative services;
3. restorative services;
4. endodontic services;
5. periodontal services;
6. removable prosthodontics services;
7. maxillofacial prosthetics services;
8. fixed prosthodontics services;
9. oral and maxillofacial surgery
10. orthodontic services; and
11. adjunctive general services.

B. Service Exclusion. Participants must first access dental services covered under the Medicaid State Plan before utilizing dental services through the Residential Options Waiver.

C. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the specific dental services in all specialty areas provided to the participant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16311. Environmental Accessibility Adaptations

A. Environmental Accessibility Adaptations are physical adaptations to the participant's home or vehicle which must be specified in the POC as necessary to enable the participant to integrate more fully into the community and to ensure his/her health, welfare and safety.

1. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the participant.

B. Environmental adaptation services to the home and vehicle include the following:

1. assessments to determine the types of modifications that are needed;

2. training the participant and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;

3. repair of all equipment and/or devices, including replacement of batteries and other items that contribute to the ongoing maintenance of the adaptation(s); and

4. all service contracts and warranties which the manufacturer includes in the purchase of the item.

C. In order to accommodate the medical equipment and supplies necessary to assure the welfare of the participant, home accessibility adaptations may include the following:

1. installation of ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems.

D. Home accessibility adaptations may be applied to rental or leased property only under the following conditions:

1. the participant is renting or leasing the property; and
2. written approval is obtained from the landlord and OCDD.

E. - F.4.g. ...

5. Home modifications shall not be paid for in the following residential services:

- a. Host Home; or
- b. Shared Living settings which are provider owned or leased.

G. Vehicle adaptations are modifications to an automobile or van that is the waiver participant's primary means of transportation in order to accommodate his/her special needs. .

1. The modifications may include the installation of a lift or other adaptations to make the vehicle accessible to the participant or for him/her to drive.

2. Repealed.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to:
 - a. adapt vehicles that are owned or leased by paid caregivers or providers of waiver services, or
 - b. to purchase or lease a vehicle.
2. - 4. ...

I. Provider Responsibilities

1. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the POC year in which it was approved.

a. - b. Repealed.

2. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modifications, must be obtained and submitted for prior authorization.

a. Repealed.

3. Vehicle modifications must meet all applicable standards of manufacture, design and installation for all adaptations to the vehicle.

4. Upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

J. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor.

a. In addition, these providers must:

i. meet the applicable state and/or local requirements governing their licensure or certification; and

ii. comply with the applicable state and local building or housing code standards governing home modifications.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16313. Host Home

A. Host Home services assist participants in meeting their basic adaptive living needs and offer direct support where required. Participants are afforded a welcoming, safe and nurturing family atmosphere in a family home environment in which the participant may receive supports, services and training in accordance with the POC. Host Home services take into account compatibility, including individual interests, age, needs for privacy, supervision and support needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required as a part of the participant's POC.

1. Repealed.

B. Host Home services include:

1. assistance with the activities of daily living and adaptive living needs;

2. assistance to develop leisure interests and daily activities in the home setting;

3. assistance to develop relationships with other members of the household;

4. supports in accessing community services, activities and pursuing and developing recreational and social interests outside the home; and

5. teaching community living skills to achieve participant's goals concerning community and social life as well as to maintain contacts with biological families and natural supports.

C. Host Home provider agencies oversee and monitor the Host Home contractor to ensure the availability, quality, and continuity of services as specified in the ROW manual.

Host Home provider agencies are responsible for the following functions:

1. arranging for a host home;

2. making an initial and periodic inspections of the host home; and

3. providing 24-hour oversight and supervision of Host Home services including providing emergency services and back-up for the scheduled and nonscheduled absences of the contractor;

a. Repealed.

D. Host Home contractors are responsible for:

1. assisting with the development of the participant's POC and complying with the provisions of the plan;

2. maintaining and providing data to assist in the evaluation of the participant's personal goals

3. maintaining adequate records to substantiate service delivery and producing such records upon request;

4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the Host Home setting; and

5. immediately reporting to the department and applicable authorities any major issues or concerns related to the participant's safety and well-being.

6. - 10. Repealed.

E. ...

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult participant's POC based on medical, health and behavioral needs, age, capabilities and any special needs.

1. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving Host Home services:

a. - 3. ...

J. Provider Qualifications

1. All agencies must:

a. have experience in delivering therapeutic services to persons with developmental disabilities;

b. have staff who have experience working with persons with developmental disabilities;

c. screen, train, oversee and provide technical assistance to the Host Home contractors in accordance with OCDD requirements, including the coordination of an array of medical, behavioral and other professional services appropriate for persons with developmental disabilities; and

d. provide on-going assistance to the Host Home contractors so that all HCBS requirements are met.

2. Agencies serving children must be licensed by the Department of Social Services as a Class "A" Child Placing Agency.

3. Agencies serving adults must be licensed by the Department of Health and Hospitals as a provider of Substitute Family Care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16315. Intensive Community Supports

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 for Citizens with Developmental Disabilities, LR 33:2448 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16317. Nursing Services

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the State's Nurse Practice Act. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program covered under the Medicaid State Plan.

1. The services require an individual nursing service plan and must be included in the plan of care.

2. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

3. Repealed.

B. Nursing consulting services include assessments and health related training and education for participants and caregivers.

1. - 2. ...

3. The health related training and education service is the only nursing service which can be provided to more than one participant simultaneously. The cost of the service is allocated equally among all participants.

C. Service Requirement. Participants over the age of 21 years must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or, if under the ROW Shared Living Conversion Model, be an enrolled Shared Living Services agency with a current, valid license as a Supervised Independent Living agency.

E. Staffing Requirements

1. ...

2. The RN or the LPN must possess one year of service delivery experience to persons with developmental disabilities defined under the following criteria:

a. full-time experience gained in advanced and accredited training programs (i.e. masters or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time nursing experience in specialized service/treatment settings for persons with developmental disabilities (i.e. intermediate care facilities for persons with developmental disabilities);

c. paid, full-time nursing experience in multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis – mental illness and developmental disabilities); or

d. paid, full-time nursing experience in specialized educational, vocational and therapeutic programs or settings

for persons with developmental disabilities (i.e. school special education program).

3. Two years of part-time experience with a minimum of 20 hours per week may be substituted for one year of full-time experience.

4. The following activities do not qualify for the required experience:

a. volunteer nursing experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16319. One Time Transitional Services

A. One Time Transitional Services are one-time, set-up services to assist individuals in making the transition from an ICF/DD to their own home or apartment in the community of their choice.

1. - 1.d.iii. Repealed.

B. Allowable transitional expenses may include:

1. nonrefundable security deposits that do not include rental payments;

2. set up fees for utilities;

3. essential furnishings to establish basic living arrangements, including:

a. bedroom and living room furniture;

b. table and chairs;

c. window blinds; and

d. food preparation items and eating utensils;

4. set-up/deposit fee for telephone service;

5. moving expenses; and

6. health and safety assurances including:

a. pest eradication; or

b. one-time cleaning prior to occupancy.

C. Service Limits

1. One time transitional expenses are capped at \$3,000 per person over a participant's lifetime.

D. Service Exclusions

1. One time transitional services may not be used to pay for:

a. housing, rent or refundable security deposits; or

b. furnishings or setting up living arrangements that are owned or leased by a waiver provider.

2. One time transitional services are not available to participants who are receiving Host Home services.

3. One time transitional services are not available to participants who are moving into a family member's home.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16321. Personal Emergency Response System (PERS)

A. Personal Emergency Response System (PERS) is a system connected to the participant's telephone that

incorporates an electronic device which enables the participant to secure help in an emergency. The device can be worn as a portable "help" button and when activated, a response center is contacted.

B. Participant Qualifications. PERS services are available to individuals who:

1. ...
2. are unable to use other communication systems due to experiencing difficulty in summoning emergency assistance; or
3. ...

C. PERS services includes rental of the electronic device, initial installation, training the participant to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for Shared Living Services.

E. Provider Qualifications

1. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems.

2. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2249 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16323. Prevocational Services

A. Prevocational Services are activities designed to assist participants in acquiring and maintaining basic work-related skills necessary to acquire and retain meaningful employment. Services should include real and simulated employment tasks to assist in determining their vocational potential. Overall goals include regular community inclusion and development of work skills and habits to improve the participant's employability. Services must be reflective of the participant's POC and focused toward habilitation rather than teaching a specific job skill.

1. - 2.b....

B. In the event participants are compensated while receiving prevocational services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If participants are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. - c. ...

C. The provider is responsible for all transportation from the agency to all vocational sites related to provision of services.

1. Travel training may be included in determining the number of hours of services provided per day for the period of time specified in the participant's POC.

a. Repealed.

D. Service Limits

1. Services shall be limited to no more than eight hours per day, five days per week.

2. Services are based on a one-half day unit of service and time spent at the service site by the participant.

a. the one-half day unit of service requires a minimum of 2.5 hours at the service site by the participant;

b. two one-half day units may be billed in one day if the participant spends a minimum of 5 hours at the service site;

c. any time less than 2.5 hours of service is not billable or payable; and

d. no rounding up of hours is allowed.

3. Participants may receive more than one vocational/habilitative service per day as long as the billing criteria are followed for each service and the requirements for the minimum time spent on site are adhered to.

a. - 5.a. Repealed.

E. Service Exclusions

1. Prevocational Services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

2. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

a. Community Living Supports;

b. Professional Services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan; or

c. Respite Care Services—Out of Home.

3. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

4. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

5. Transportation-Community Access shall not be used to transport ROW participants to any Prevocational Services.

F. Provider Qualifications. Providers must have a current, valid license as an adult day care center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16325. Professional Services

A. Professional Services are direct services to participants, based on need, that may be utilized to increase the individual's independence, participation and productivity in the home, work and community. Service intensity, frequency and duration will be determined by individual need. Professional services must be delivered with the participant present and in accordance with approved POC.

1. - 8.a. Repealed.

B. Professional services include the services provided by the following licensed professionals:

1. occupational therapist;
2. physical therapist;
3. speech therapist;
4. registered dietician;
5. social worker; and
6. psychologist.

C. Professional services may be utilized to:

1. perform assessments and/or re-assessments specific to professional disciplines to accomplish the desired outcomes for the participant and to provide recommendations, treatment, and follow-up;

a. - b. Repealed.

2. provide training or therapy to a participant and/or natural and formal supports necessary to either develop critical skills that may be self-managed by the participant or maintained according to the participant's needs;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

a. Repealed.

4. provide consultative services and recommendations;

5. provide necessary information to the participant, family, caregivers, and/or team to assist in planning and implementing services or treatment;

6. provide caregiver counseling for the participant's natural, adoptive, foster, or host family members in order to develop and maintain healthy, stable relationships among all caregivers, including family members, to support meeting the needs of the participant;

a. emphasis is placed on the acquisition of coping skills by building upon family strengths; and

b. services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver; and

7. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider.

a. Services are intended to maximize the individual's nutritional health.

NOTE: Psychologists and social workers will provide supports and services consistent with person-centered practices and Guidelines for Support Planning.

D. Service Exclusions

1. Professional services may only be furnished and reimbursed through ROW when the services are medically necessary, or have habilitative or remedial benefit to the participant.

a. Repealed.

2. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

a. - d. Repealed.

E. Provider Qualifications

1. Enrollment of individual practitioners. Individual practitioners who enroll as providers of professional services must:

a. have a current, valid license from the appropriate governing board of Louisiana for that profession; and

b. possess one year of service delivery experience with persons with developmental disabilities.

c. In addition, the specific service delivered must be consistent with the scope of the license held by the professional.

2. Provider agency enrollment of professional services.

a. The following provider agencies may enroll to provide professional services:

i. a Medicare certified free-standing rehabilitation center;

ii. a licensed home health agency;

iii. a supervised independent living agency licensed by the department to provide shared living services; or

iv. a substitute family care agency licensed by the department to provide host home services.

b. Enrolled provider agencies may provide professional services by one of the following methods:

i. employing the professionals; or

ii. contracting with the professionals.

c. Provider agencies are required to verify that all professionals employed by or contracted with their agency meet the same qualifications required for individual practitioners as stated in §16325.E.1.a-c.

3. All professionals delivering professional services must meet the required one year of service delivery experience as defined by the following:

a. full-time experience gained in advanced and accredited training programs (i.e. master's or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time experience in specialized service/treatment settings for persons with developmental disabilities (i.e. ICFs/DD);

c. paid, full-time experience multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis – mental illness and developmental disability); or

d. paid, full-time experience in specialized educational, vocational, and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

e. Two years of part-time experience with a minimum of 20 hours per week of the qualifying work experience activities may be substituted for one year of full-time experience.

4. The following activities do not qualify for the professional's required service delivery experience:

a. volunteer experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16327. Respite Care Services—Out of Home

A. Respite Care Services—Out of Home are supports and services provided for the relief of those unpaid caregivers

who normally provide care to participants who are unable to care for themselves. These services are furnished on a short-term basis in a licensed respite care center.

1. A licensed respite care facility shall insure that community activities are available to the participant in accordance with the approved POC, including transportation to and from these activities.

a. ...

2. While receiving respite care services, the participant's routine is maintained in order to attend school, school activities, or other community activities that he/she would typically participate in if not in the center-based respite facility.

B. Service Limits

1. Respite Care Services are limited to 720 hours per participant per POC year.

2. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

C. Service Exclusions

1. ...

2. Respite Care Services-Out of Home may not be billed for participants receiving the following services:

- a. Shared Living;
- b. Companion Care; or
- c. Host Home.
- d. Repealed.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center issued by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16329. Shared Living Services

A. Shared Living Services assist the participant in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the participant and developed in accordance with his/her goals and wishes with regard to compatibility, interests, age and privacy in the shared living setting.

1. A Shared Living services provider delivers supports which include:

- a. 24-hour staff availability;
- b. assistance with activities of daily living included in the participant's POC;
- c. a daily schedule;
- d. health and welfare needs;
- e. transportation;
- f. any non-residential ROW services delivered by the Shared Living services provider; and
- g. other responsibilities as required in each participant's POC.

2. - 3. Repealed.

B. An ICF/DD may elect to permanently relinquish its ICF/DD license and all of its Medicaid Facility Need Review approved beds from the total number of Certificate

of Need (CON) beds for that home and convert it into a shared living waiver home or in combination with other ROW residential options as deemed appropriate in the approved conversion agreement.

1. In order to convert, provider request must be approved by the department and by OCDD.

2. ICF/DD residents who choose transition to a shared living waiver home must also agree to conversion of their residence.

3. If choosing ROW services, persons may select any ROW services and provider(s) based upon freedom of choice.

C. Shared Living Options

1. Shared Living Conversion Option. The shared living conversion option is only allowed for providers of homes which were previously licensed and Medicaid certified as an ICF/DD for up to a maximum of eight licensed and Medicaid-funded beds on October 1, 2009.

a. The number of participants for the shared living conversion option shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/DD on October 1, 2009, or up to six individuals, whichever is less.

b. The ICF/DD used for the shared living conversion option must meet the department's operational, programming and quality assurances of health and safety for all participants.

c. The provider of shared living services is responsible for the overall assurances of health and safety for all participants.

d. The provider of shared living conversion option may provide nursing services and professional services to participants utilizing this residential services option.

2. Shared Living Non-Conversion (New) Option. The shared living non-conversion option is allowed only for new or existing ICF/DD providers to establish a shared living waiver home for up to a maximum of three individuals.

a. The shared living waiver home must be located separate and apart from any ICF/DD.

b. The shared living waiver home must be either a home owned or leased by the waiver participants or a home owned or leased and operated by a licensed shared living provider.

c. The shared living waiver home must meet department's operational, programming and quality assurances for home and community-based services.

d. The shared living provider is responsible for the overall assurances of health and safety for all participants.

D. Service Exclusions

1. ...

2. Payments shall not be made for environmental accessibility adaptations when the provider owns or leases the residence.

3. Participants may receive one-time transitional services only if the participant owns or leases the home and the service provider is not the owner or landlord of the home.

a. - d. Repealed.

4. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

5. Transportation-Community Access services cannot be billed or provided for participants receiving Shared

Living services, as this is a component of Shared Living services.

6. The following services are not available to participants receiving shared living services:

- a. Community Living Supports;
- b. Respite Care Services;
- c. Companion Care;
- d. Host Home; or
- e. Personal emergency response system.

E. Provider Qualifications. Providers must be approved by the department and have a current, valid license as a Supervised Independent Living agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16331. Specialized Medical Equipment and Supplies

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 for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16333. Support Coordination

A. Support Coordination services are provided to all ROW participants to assist them in gaining access to needed waiver services, Medicaid State Plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services. Support coordinators provide information and assistance to waiver participants by directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support Coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the participant's POC.

B. Support coordinators are responsible for providing assistance to participants who choose the self-direction option with their review of the Self-Direction Employer Handbook and for being available to these participants for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements for targeted case management services as set forth in LAC 50:XV.Chapter 105 and the Medicaid Targeted Case Management Manual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16335. Supported Employment

A. Supported Employment provides assistance in an integrated work setting to assist in the achievement and attainment of work related skills and includes on-going support to maintain employment.

1. - 3. Repealed.

B. Supported Employment services include:

1. ...

2. services that assist a participant to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the participant to identify potential business opportunities;

ii. ...

iii. identification of the supports that are necessary in order for the participant to operate the business; and

iv. ...

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The workers with disabilities may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business;

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor); and

5. all transportation from the agency to all work sites related to provision of the service. The provider is responsible for furnishing the transportation.

C. Service Limits

1. The required minimum number of service hours per day per participant is as follows for:

a. individual placement services, the minimum is one hour;

b. services that assist a participant to develop and operate a micro-enterprise, the minimum is one hour;

c. an enclave, the minimum is 2.5 hours; and

d. a mobile work crew, the minimum is 2.5 hours.

2. Two half-day units may be billed if the participant spends a minimum of five hours at the service site.

3. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.

4. Transportation to and from the service site is offered and billable as a component of the support employment service; however, transportation is payable only when a supported employment service is provided on the same day.

D. Service Exclusions

1. ...

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. - 3.c. ...

4. Any time less than 2.5 hours for enclaves and mobile crews is not billable or payable.

5. ...

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.

6. - 6.c. ...

7. Services are not available to individuals who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

8. No rounding up of hours is allowed.

E. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a Community Rehabilitation Program or a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16337. Transportation-Community Access

A. Transportation-community access services enable participants to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, community inclusion and to support self-directed employees benefits as outlined in the participant's POC. Transportation-community access services shall be offered as documented in the participant's approved POC.

1. The participant must be present to receive this service.

2. Whenever possible, the participant must utilize the following resources for transportation:

a. - b. ...

B. Service Limits

1. Community access trips are limited to three per day and must be arranged for geographic efficiency.

2. Greater than three trips per day require approval from the department or its designee.

a. Repealed.

C. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

a. Shared Living Services; or

b. Community Living Services.

3. Transportation-community access will not be used to transport participants to Day Habilitation, Pre-vocational, or Supported Employment services.

D. Provider Qualifications. Friends and family members who furnish Transportation-Community Access services to waiver participants must be enrolled as Medicaid Friends and Family Transportation providers.

1. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain:

a. the state minimum automobile liability insurance coverage;

b. a current state inspection sticker; and

c. a current valid driver's license.

2. No special inspection by the Medicaid agency will be conducted.

a. - b. Repealed.

3. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the signed statement of the individual enrolling for payment that all three requirements are met.

a. The statement must also have the signature of two witnesses.

4. Family and friends transportation providers are limited to transporting up to three specific waiver participants.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

1. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Chapter 165. Self-Direction Initiative

§16501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver participant to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver participants choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the participant or authorized representative include:

1. - 2. ...

a. Participants must adhere to the health and welfare safeguards identified by the support team, including:

i. ...

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver participants;

3. ...

a. This annual budget is determined by the recommended service hours listed in the participant's POC to meet his needs.

b. The participant's individual budget includes a potential amount of dollars within which the participant, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary termination. The waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary termination. The department may terminate the self-direction service option for a participant and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service option;

b. the participant is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three payment cycles in the period of a year, the participant or authorized representative:

i. ...

ii. fails to follow the Personal Purchasing Plan and the POC;

iii. - D.

E. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the participant and the primary Companion Care provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Chapter 167. Provider Participation

§16701. General Provisions

A. ...

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department;

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual;

3. comply with all of the state laws and regulations for conducting business in Louisiana, and when applicable, with the state requirements for designation as a non-profit organization; and

4. comply with all of the training requirements for providers of waiver services.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver participant and the direct service worker or professional

services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the participant is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her POC.

D. If transportation is provided as part of a waiver service, the provider must comply with all of the state laws and regulations applicable to vehicles and drivers.

E. All services rendered shall be prior approved and in accordance with the POC.

F. Providers, including direct care staff, cannot live in the same residence as the participant, except Host Home contractors and Companion Care workers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16703. Staffing Restrictions and Requirements

A. Payments shall not be made to persons who are legally responsible for the care of the waiver participants which include:

1. parents of minor children;

2. spouses for each other;

3. legal guardians for adults or children with developmental disabilities; or

4. parents for their adult child with developmental disabilities, regardless of the legal status of the adult child.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the participant.

1. Relatives must also comply with the following requirements:

a. become an employee of the participant's chosen waiver provider agency;

b. become a Medicaid enrolled provider agency; or

c. if the self-direction option is selected, relatives must:

i. become an employee of the self-direction participant; and

ii. have a Medicaid provider agreement executed by the fiscal agent as authorized by the Medicaid agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. - 3.e. ...

- f. registered dietician;
- 4. Support Coordination; or
- 5. Supported Employment:
 - a. individual placement; and
 - b. micro-enterprise.
- 6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. Environmental Accessibility Adaptations; and
 a. Upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates.

2. Assistive Technology/Specialized Medical Equipment and Supplies.

3. Repealed.

C. The following services are reimbursed at a per diem rate:

- 1. ...
- 2. Companion Cares; and
- 3. Shared Living Services;

a. Per diem rates are established based on the number of individuals sharing the living service module for both Shared Living Non-Conversion and Shared Living Conversion Services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

- 1. Day Habilitation;
- 2. Pre-vocational; and
- 3. Supported Employment:
 - a. mobile crew; and
 - b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for Residential Options Waiver services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaption services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

§16903. Direct Support Staff Wages

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher:

- 1. Community Living Supports;
- 2. Respite Services-Out of Home;
- 3. Shared Living;
- 4. Day Habilitation;
- 5. Prevocational services; and
- 6. Supported Employment.
- 7. 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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#090

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Waivers
Support Coordination Standards for Participation
(LAC 50:XXI.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopts LAC 50:XXI.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) provides Medicaid coverage for support coordination services rendered to waiver participants who receive services in home and community-based waiver programs administered by OAAS. The department proposes to adopt provisions to establish Standards for Participation for support coordination agencies that provide support coordination services to participants in OAAS-administered waiver programs.

This action is being taken to promote the health and welfare of waiver participants and to ensure that these services are rendered in an efficient and cost-effective manner. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2011-12.

Effective December 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt provisions to establish Standards for Participation for support coordination agencies that provide services to participants in waiver programs administered by the Office of Aging and Adult Services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 1. General Provisions

Chapter 5. Support Coordination Standards for Participation for Office of Aging and Adult Services Waiver Programs **Subchapter A. General Provisions**

§501. Introduction

A. The Department of Health and Hospitals (DHH) establishes these minimum Standards for Participation which provides the core requirements for support coordination services provided under home and community-based waiver programs administered by the Office of Aging and Adult Services (OAAS). OAAS must determine the adequacy of quality and protection of waiver participants in accordance with the provisions of these standards.

B. OAAS, or its designee, is responsible for setting the standards for support coordination, monitoring the provisions of this Rule, and applying administrative sanctions for failures by support coordinators to meet the minimum Standards for Participation in serving participants of OAAS-administered waiver programs.

C. Support coordination are services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing, and other services, regardless of the funding source for these services.

D. Upon promulgation of the final Rule governing these Standards for Participation, existing support coordination providers of OAAS-administered waiver programs shall be required to meet the requirements of this Chapter as soon as possible and no later than six months from the promulgation of this Rule.

E. If, in the judgment of OAAS, application of the requirements stated in these standards would be impractical in a specified case; such requirements may be modified by the OAAS Assistant Secretary to allow alternative arrangements that will secure as nearly equivalent provision of services as is practical. In no case will the modification afford less quality or protection, in the judgment of OAAS, than that which would be provided with compliance of the provisions contained in these standards.

1. Requirement modifications may be reviewed by the OAAS Assistant Secretary and either continued or cancelled.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§503. Certification Requirements

A. All agencies that provide support coordination to OAAS-administered home and community-based waivers must be certified by the Department of Health and Hospitals. It shall be unlawful to operate as a Support Coordination agency for OAAS-administered waivers without being certified by the department.

B. In order to provide support coordination services for OAAS-administered home and community-based waiver programs, the agency must:

1. be certified and meet the Standards for Participation requirements as set forth in this Rule;
2. sign a performance agreement with OAAS;
3. assure staff attends all training mandated by OAAS;
4. enroll as a Medicaid support coordination agency in all regions in which it intends to provide services for OAAS-administered home and community-based services; and
5. comply with all DHH and OAAS policies and procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§505. Certification Issuance

A. A certification shall:

1. be issued only to the entity named in the certification application;
2. be valid only for the support coordination agency to which it is issued after all applicable requirements are met;
3. enable the support coordination agency to provide support coordination for OAAS-administered home and community-based waivers within the specified DHH region; and
4. be valid for the time specified on the certification, unless revoked, suspended, modified or terminated prior to that date.

B. Provisional certification may be granted when the agency has deficiencies which are not a danger to the health and welfare of clients. Provisional licenses shall be issued for a period not to exceed 90 days.

C. Initial certification shall be issued by OAAS based on the survey report of DHH, Health Standards Section (HSS), or its designee.

D. Unless granted a waiver by OAAS, a support coordination agency shall provide such services only to waiver participants residing in the agency's designated DHH region.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§507. Certification Refusal or Revocation and Fair Hearing

A. A certification may be revoked or refused if applicable certification requirements, as determined by OAAS or its designee, have not been met. Certification decisions are subject to appeal and fair hearing, in accordance with R.S. 46:107(A)(3).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§509. Certification Inspections

A. Certification inspections are usually annual but may be conducted at any time. No advance notice is given. Surveyors must be given access to all of the areas in the facility and all relevant files and records.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

Subchapter B. Administration and Organization

§513. Governing Body

A. A support coordination agency shall have an identifiable governing body with responsibility for and authority over the policies and activities of the agency.

1. An agency shall have documents identifying all members of the governing body, their addresses, their terms of membership, officers of the governing body and terms of office of any officers.

2. The governing body shall be comprised of three or more persons and shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of a support coordination agency shall:

1. ensure the agency's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;

2. ensure that the agency is adequately funded and fiscally sound;

3. review and approve the agency's annual budget;

4. designate a person to act as administrator and delegate sufficient authority to this person to manage the agency;

5. formulate and annually review, in consultation with the administrator, written policies concerning the agency's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;

6. annually evaluate the administrator's performance;

7. have the authority to dismiss the administrator;

8. meet with designated representatives of the department whenever required to do so;

9. inform the department, or its designee, prior to initiating any substantial changes in the services provided by the agency;

10. ensure that a continuous quality improvement (CQI) process is in effect; and

11. ensure that services are provided in a culturally sensitive manner as evidenced by staff trained in cultural awareness and related policies and procedures.

C. A support coordination agency shall maintain an administrative file that includes:

1. documents identifying the governing body;

2. a list of members and officers of the governing body, along with their addresses and terms of membership;

3. minutes of formal meetings and by-laws of the governing body, if applicable;

4. documentation of the agency's authority to operate under state law;

5. an organizational chart of the agency which clearly delineates the line of authority;

6. all leases, contracts and purchases-of-service agreements to which the agency is a party;

7. insurance policies;

8. annual budgets and, if performed, audit reports;

9. the agency's policies and procedures; and

10. documentation of any corrective action taken as a result of external or internal reviews.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§515. Business Location and Operations

A. Each support coordination agency shall have a business location which shall not be in an occupied personal residence. The business location shall be in the DHH region for which the certification is issued and shall be where the agency:

1. maintains staff to perform administrative functions;

2. maintains the agency's personnel records;

3. maintains the agency's participant service records; and

4. holds itself out to the public as being a location for receipt of participant referrals.

B. The business location shall have:

1. a published nationwide toll-free telephone number answered by a person which is available and accessible 24 hours a day, seven days a week, including holidays;

2. a published local business number answered by agency staff during the posted business hours;

3. a business fax number that is operational 24 hours a day, seven days a week, including holidays;

4. internet access and a working e-mail address which shall be provided to OAAS;

5. hours of operation, which must be at least 30 hours a week, Monday through Friday, posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. at least one staff person on the premises during posted hours of operation.

C. Records and other confidential information shall not be stored in areas deemed to be common areas.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§517. Financial Management

A. The agency must establish a system of financial management and staffing to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles.

B. The agency must not permit public funds to be paid or committed to be paid, to any person who is a member of the governing board or administrative personnel who may have any direct or indirect financial interest, or in which any of

these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the agency. The agency shall have a written disclosure of any financial transaction with the agency in which a member of the governing board, administrative personnel, or his/her immediate family is involved.

C. The agency must obtain any necessary performance bonds and/or lines of credit as required by the department.

D. The agency must have adequate and appropriate general liability insurance for the protection of its participants, staff, facilities, and the general public.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§519. Policy and Procedures

A. The support coordination agency shall have written policies and procedures approved by the owner or governing body which must be implemented and followed that address at a minimum the following:

1. confidentiality and confidentiality agreements;
2. security of files;
3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation and kickbacks;
4. personnel;
5. participant rights;
6. grievance procedures;
7. emergency preparedness;
8. abuse and neglect reporting;
9. critical incident reporting;
10. worker safety;
11. documentation; and
12. admission and discharge procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§521. Organizational Communication

A. The agency must establish procedures to assure adequate communication among staff to provide continuity of services to the participant and to facilitate feedback from staff, participants, families, and when appropriate, the community at large.

B. The agency must have brochures and make them available to OAAS or its designee. The brochures must include the following information:

1. that each participant has the freedom to choose their providers and that their choice of provider does not affect their eligibility for waiver, state plan, or support coordination services;
2. that a participant receiving support coordination through OAAS may contact the OAAS Help Line for information, assistance with, or questions about OAAS programs;
3. the OAAS Help Line number along with the appropriate OAAS regional office telephone numbers;
4. information, including the HSS Complaint Line, on where to make complaints against support coordinators, support coordination agencies, and providers; and

5. a description of the agency, services provided, current address, and the agency's local and nationwide toll-free number.

C. The brochure may also include the agency's experience delivering support coordination services.

D. The support coordination agency shall be responsible for:

1. obtaining written approval of the brochure from OAAS prior to distributing to applicants/participants of OAAS-administered waiver programs;
2. providing OAAS staff or its designee with adequate supplies of the OAAS-approved brochure; and
3. timely completing revisions to the brochure, as requested by OAAS, to accurately reflect all program changes as well as other revisions OAAS deems necessary.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

Subchapter C. Provider Responsibilities

§525. General Provisions

A. Any entity wishing to provide support coordination services for any OAAS-administered home and community-based waiver program shall meet all of the Standards for Participation contained in this Rule, unless otherwise specifically noted within these provisions.

B. The support coordination agency shall also abide by and adhere to any state law, Rule, policy, procedure, performance agreement, manual or memorandum pertaining to the provision of support coordination services for OAAS-administered home and community-based waiver programs.

C. Failure to comply with the requirements of these Standards for Participation may result in sanctions including, but not limited to:

1. recoupment of funds;
2. cessation of linkages;
3. citation of deficient practice and plan of correction submission;
4. removal from the Freedom of Choice list; or
5. decertification as a support coordination agency for OAAS-administered home and community-based waiver services.

D. A support coordination agency shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to the department.

E. Designated representatives of the department, in the performance of their mandated duties, shall be allowed by a support coordination agency to:

1. inspect all aspects of a support coordination agency operations which directly or indirectly impact participants; and
2. conduct interviews with any staff member or participant of the agency.

F. A support coordination agency shall, upon request by the department, make available the legal ownership documents of the agency. G. Support coordination agencies must comply with all of the department's systems/software requirements.

H. Support coordination agencies shall, at a minimum:

1. maintain and/or have access to a resource directory containing all of the current inventory of existing formal and informal resources that identifies services within the geographic area which shall address the unique needs of the elderly and adults with physical disabilities;
2. establish linkages with those resources;
3. demonstrate knowledge of the eligibility requirements and application procedures for federal, state and local government assistance programs, which are applicable to the elderly and adults with physical disabilities;
4. employ a sufficient number of support coordinators and supervisory staff to comply with OAAS staffing, continuous quality improvement (CQI), timeline, workload, and performance requirements;
5. demonstrate administrative capacity and the financial resources to provide all core elements of support coordination services and ensure effective service delivery in accordance with programmatic requirements;
6. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations (subcontracting of individual support coordinators and/or supervisors is prohibited);
7. have appropriate agency staff attend trainings, as mandated by DHH and OAAS;
8. have a documented CQI process;
9. document and maintain records in accordance with federal and state regulations governing confidentiality and program requirements;
10. assure each participant has freedom of choice in the selection of available qualified providers and the right to change providers in accordance with program guidelines; and
11. assure that the agency and support coordinators will not provide both support coordination and Medicaid-reimbursed direct services to the same participant(s).

I. Abuse and Neglect. Support coordination agencies shall establish policies and procedures relative to the reporting of abuse and neglect of participants, pursuant to the provisions of R.S. 15:1504-1505, R.S. 40:2009.20 and any subsequently enacted laws. Providers shall ensure that staff complies with these regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§527. Support Coordination Services

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

1. intake;
2. assessment;
3. plan of care development and revision;
4. linkage to direct services and other resources;
5. coordination of multiple services among multiple providers

6. monitoring/follow-up;
7. reassessment;
8. evaluation and re-evaluation of level of care and need for waiver services;
9. ongoing assessment and mitigation of health, behavioral and personal safety risk;
10. responding to participant crisis;
11. critical incident management; and
12. transition/discharge and closure.

B. The support coordination agency shall also be responsible for assessing, addressing and documenting delivery of services, including remediation of difficulties encountered by participants in receiving direct services.

C. A support coordination agency shall not refuse to serve, or refuse to continue to serve, any individual who chooses/has chosen its agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. OAAS must be immediately notified of the circumstances surrounding a refusal by a support coordination agency to provide/continue to provide services.

2. This requirement can only be waived by OAAS.

D. Support coordination agencies must establish and maintain effective communication and good working relationships with providers of services to participants served by the agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§529. Transfers and Discharges

A. All participants of OAAS-administered waiver programs must receive support coordination services. However, a participant has the right to choose a support coordination agency. This right includes the right to be discharged from his/her current support coordination agency and be transferred to another support coordination agency.

B. Upon notice by the participant or his/her authorized representative that the participant has selected another support coordination agency or the participant has decided to discontinue participation in the waiver program, the agency shall have the responsibility of planning for the participant's transfer or discharge.

C. The support coordination agency shall also have the responsibility of planning for a participant's transfer when the support coordination agency ceases to operate or when the participant moves from the geographical region serviced by the support coordination agency.

D. The transfer or discharge responsibilities of the support coordinator shall include:

1. holding a transfer or discharge planning conference with the participant, his/her family, providers, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge, unless the participant declines such a meeting;
2. providing a current plan of care to the receiving support coordination agency (if applicable); and
3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary

on the health, behavioral, and social issues of the client and shall be provided to the receiving support coordination agency (if applicable).

E. The written discharge summary shall be completed within five working days of any of the following:

1. notice by the participant or authorized representative that the participant has selected another support coordination agency;

2. notice by the participant or authorized representative that the participant has decided to discontinue participation in the waiver program;

3. notice by the participant or authorized representative that the participant will be transferring to a DHH geographic region not serviced by his/her current support coordination agency; or

4. notice from OAAS or its designee that "good cause" has been established by the support coordination agency to discontinue services.

F. The support coordination agency shall not coerce the participant to stay with the support coordination agency or interfere in any way with the participant's decision to transfer. Failure to cooperate with the participant's decision to transfer to another support coordination agency will result in adverse action by department.

G. If a support coordination agency closes, the agency must give OAAS at least 30 days written notice of its intent to close. Where transfer of participants is necessary due to the support coordination agency closing, the written discharge summary for all participants served by the agency shall be completed within 10 working days of the notice to OAAS of the agency's intent to close.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§531. Staffing Requirements

A. Agencies must maintain sufficient staff to comply with OAAS staffing, timeline, workload, and performance requirements. This includes, but is not limited to, including sufficient support coordinators and support coordinator supervisors that have passed all of the OAAS training and certification requirements. In no case may an agency have less than one certified support coordination supervisor and less than one certified support coordinator. Agencies may employ staff who are not certified to perform services or requirements other than assessment and care planning.

B. Agencies must maintain sufficient supervisory staff to comply with OAAS supervision and CQI requirements. Support coordination supervisors must be continuously available to support coordinators by telephone.

1. Each Support Coordination agency must have and implement a written plan for supervision of all support coordination staff.

2. Each supervisor must maintain a file on each support coordinator supervised and hold supervisory sessions and evaluate each support coordinator at least annually.

C. Agencies shall employ or contract a licensed registered nurse to serve as a consultant. The nurse consultant shall be available a minimum of 16 hours per month.

D. Agencies shall ensure that staff is available at times which are convenient and responsive to the needs of participants and their families.

E. Support coordinators, whether part-time or full-time, may only carry caseloads that are composed exclusively of OAAS participants. Support coordination supervisors, whether part-time or full-time, may only supervise support coordinators that carry caseloads that are composed exclusively of OAAS participants. AUTHORITY NOTE:

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§533. Personnel Standards

A. Support coordinators must meet one of the following requirements:

1. a bachelor's or masters degree in social work from a program accredited by the Council on Social Work Education;

2. a bachelor's or masters degree in nursing (RN) currently licensed in Louisiana (one year of paid experience as a licensed RN will substitute for the degree);

3. a bachelor's or masters degree in a human service related field which includes:

- a. psychology;
- b. education;
- c. counseling;
- d. social services;
- e. sociology;
- f. philosophy;
- g. family and participant sciences;
- h. criminal justice;
- i. rehabilitation services;
- j. substance abuse treatment;
- k. gerontology; and
- l. vocational rehabilitation; or

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the fields in §529A.3.a-l.

B. Support coordination supervisors must meet the following requirements:

1. a bachelor's or masters degree in social work from a program accredited by the Council on Social Work Education and two years of paid post degree experience in providing support coordination services;

2. a bachelor's or masters degree in nursing (RN)(one year of experience as a licensed RN will substitute for the degree) and two years of paid post degree experience in providing support coordination services;

3. a bachelor's or masters degree in a human service related field which includes: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehabilitation services, child development, substance abuse, gerontology, and vocational rehabilitation and two years of paid post degree experience in providing support coordination services; or

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the following fields: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehab services, child development,

substance abuse, gerontology, and vocational rehabilitation and two years of paid post degree experience in providing support coordination services.

C. Documentation showing that personnel standards have been met must be placed in the individual's personnel file.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§535. Employment and Recruitment Practices

A. A support coordination agency shall have written personnel policies, which must be implemented and followed, that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members;
2. a policy to prevent discrimination and comply with all state and federal employment practices and laws;
3. a policy to recruit, wherever possible, qualified persons of both sexes representative of cultural and racial groups served by the agency, including the hiring of qualified persons with disabilities;
4. written job descriptions for each staff position, including volunteers;
5. an employee grievance procedure that allows employees to make complaints without fear of retaliation; and
6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment, whether that abuse or mistreatment is done by another staff member, a family member, a participant or any other person.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§537. Orientation and Training

A. Support coordinators must receive necessary orientation and periodic training on the provision of support coordination services arranged or provided through their agency at the agency's expense.

B. Orientation of at least 16 hours shall be provided by the agency to all staff, volunteers and students within five working days of employment which shall include, at a minimum:

1. core OAAS support coordination requirements;
2. policies and procedures of the agency;
3. confidentiality;
4. documentation of case records;
5. participant rights protection and reporting of violations;
6. abuse and neglect policies and procedures;
7. professional ethics;
8. emergency and safety procedures;
9. infection control, including universal precautions;
- and
10. critical incident reporting.

C. In addition to the minimum 16 hours of orientation, all newly hired support coordinators must receive a minimum of 16 hours of training during the first 90 calendar days of employment which is related to the specific

population served and knowledge, skills and techniques necessary to provide support coordination to the specific population. This training must be provided by an individual or organization with demonstrated knowledge of the training topic and the target population. Such resources may be identified and/or mandated by OAAS. These 16 hours of training must include, at a minimum:

1. fundamentals of support coordination;
2. interviewing techniques;
3. data management and record keeping;
4. communication skills;
5. risk assessment and mitigation;
6. person centered planning;
7. emergency preparedness planning;
8. resource identification;
9. back-up staff planning;
10. critical incident reporting; and
11. continuous quality improvement.

D. In addition to the agency-provided training requirements set forth above, support coordinators and support coordination supervisors must successfully complete all OAAS Assessment and Care Planning Training.

E. No support coordinator shall be given sole responsibility for a participant until all of the required training is satisfactorily completed and the employee possesses adequate abilities, skills, and knowledge of support coordination.

F. All support coordinators and support coordination supervisors must complete a minimum of 40 hours of training per calendar year. For new employees, the orientation cannot be counted toward the 40 hour minimum annual training requirement. The 16 hours of initial training for support coordinators required in the first 90 days of employment may be counted toward the 40 hour minimum annual training requirement. Routine supervision shall not be considered training.

G. A newly hired or promoted support coordination supervisor must, in addition to satisfactorily completing the orientation and training set forth above, also complete a minimum of 24 hours on all of the following topics prior to assuming support coordination supervisory responsibilities:

1. professional identification/ethics;
2. process for interviewing, screening and hiring staff;
3. orientation/in-service training of staff;
4. evaluating staff;
5. approaches to supervision;
6. managing workload and performance requirements;
7. conflict resolution;
8. documentation;
9. population specific service needs and resources;
10. participant evacuation tracking; and
11. the support coordination supervisor's role in CQI systems.

H. Documentation of all orientation and training must be placed in the individual's personnel file. Documentation must include an agenda and the name, title, agency affiliation of the training presenter(s) and other sources of training.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§539. Participant Rights

A. Unless adjudicated by a court of competent jurisdiction, participants served by a support coordination agency shall have the same rights, benefits, and privileges guaranteed by the constitution and the laws of the United States and Louisiana.

B. There shall be written policies and procedures that protect the participant's welfare, including the means by which the protections will be implemented and enforced.

C. Each Support Coordination agency's written policies and procedures, at a minimum, shall ensure the participant's right to:

1. human dignity;
2. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
3. cultural access as evidenced by:
 - a. interpretive services;
 - b. translated materials;
 - c. the use of native language when possible; and
 - d. staff trained in cultural awareness;
4. have sign language interpretation;
5. utilize service animals and/or mechanical aids and devices that assist those persons with special needs to achieve maximum service benefits;
6. privacy;
7. confidentiality;
8. access his/her records upon the participant's written consent for release of information;
9. a complete explanation of the nature of services and procedures to be received, including:
 - a. risks;
 - b. benefits; and
 - c. available alternative services;
10. actively participate in services, including:
 - a. assessment/reassessment;
 - b. plan of care development/revision; and
 - c. discharge;
11. refuse specific services or participate in any activity that is against their will and for which they have not given consent;
12. obtain copies of the support coordination agency's complaint or grievance procedures;
13. file a complaint or grievance without retribution, retaliation or discharge;
14. be informed of the financial aspect of services;
15. be informed of any third-party consent for treatment of services, if appropriate;
16. personally manage financial affairs, unless legally determined otherwise;
17. give informed written consent prior to being involved in research projects;
18. refuse to participate in any research project without compromising access to services;
19. be free from mental, emotional and physical abuse and neglect;
20. be free from chemical or physical restraints;
21. receive services that are delivered in a professional manner and are respectful of the participant's wishes concerning their home environment;
22. receive services in the least intrusive manner appropriate to their needs;

23. contact any advocacy resources as needed, especially during grievance procedures; and

24. discontinue services with one provider and freely choose the services of another provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§541. Grievances

A. The support coordination agency shall establish and follow a written grievance procedure to be used to process complaints by participants, their family member(s), or a legal representative that is designed to allow participants to make complaints without fear of retaliation. The written grievance procedure shall be provided to the participant.

B. Grievances must be periodically reviewed by the governing board in an effort to promote improvement in these areas.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§543. Critical Incident Reporting

A. Support coordination agencies shall report critical incidents according to established OAAS policy including timely entries into the designated DHH Critical Incident Database.

B. Support coordination agencies shall perform the following critical incident management actions:

1. coordinate immediate action to assure the participant is protected from further harm and respond to any emergency needs of the participant;

2. continue to follow up with the direct services provider agency, the participant, and others, as necessary, and update the Critical Incident Database follow-up notes until the incident is closed by OAAS;

3. convene any planning meetings that may be needed to resolve the critical incident or develop strategies to prevent or mitigate the likelihood of similar critical incidents from occurring in the future and revise the plan of care accordingly;

4. send the participant and direct services provider a copy of the Incident Participant Summary within 15 days after final supervisory review and closure by the regional office; and

5. during the plan of care review process, perform an annual Critical Incident Analysis and Risk Assessment and document within the plan of care strategies to prevent or mitigate the likelihood of similar future critical incidents.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§545. Participant Records

A. Participant records shall be maintained in the support coordinator's office. The support coordinator shall have a current written record for each participant which shall include:

1. identifying data including:
 - a. name;

- b. date of birth;
- c. address;
- d. telephone number;
- e. social security number; and
- f. legal status;

2. a copy of the participant's plan of care, as well as any revisions or updates to the plan of care;

3. required assessment(s) and any additional assessments that the agency may have performed, received, or are otherwise privy to;

4. written monthly, interim, and quarterly documentation according to current policy and reports of the services delivered for each participant for each visit and contact;

5. current Emergency Planning and Agreement Form; and

6. current Back-up Staffing and Agreement Form.

B. Support Coordination agencies shall maintain participant records for a period of five years.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§547. Emergency Preparedness

A. Support coordination agencies shall ensure that each participant has an individual plan for dealing with emergencies and disasters and shall assist participants in identifying the specific resources available through family, friends, the neighborhood, and the community. The support coordinator shall assess monthly whether the emergency plan information is current and effective and shall make changes accordingly.

B. A disaster or emergency may be a local, community-wide, regional, or statewide event. Disasters or emergencies may include, but are not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

C. Support Coordination agencies shall update participant evacuation tracking information and submit such to OAAS in the required format and timelines as described in the current OAAS policy for evacuation preparedness.

D. Continuity of Operations. The support coordination agency shall have an emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during, and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the agency's ability to render services.

E. The support coordination agency shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

F. The support coordinator shall cooperate with the department and with the local or parish Office of Homeland Security and Emergency Preparedness in the event of an

emergency or disaster and shall provide information as requested.

G. The support coordinator shall monitor weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials.

H. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training, and participation in planned drills for all personnel.

I. Upon request by the department, the support coordination agency shall submit a copy of its emergency preparedness plan and a written summary attesting to how the plan was followed and executed. The summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;

2. plan provisions that were not followed;

3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

4. contingency arrangements made for those plan provisions not followed; and

5. a list of all injuries and deaths of participants that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes, and circumstances of the injuries and deaths

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§549. Continuous Quality Improvement Plan

A. Support coordination agencies shall have a Continuous Quality Improvement Plan which governs the agency's internal quality management activities.

B. The CQI plan shall demonstrate a process of continuous cyclical improvement and should utilize the Centers for Medicare and Medicaid Services' "DDRI" operative framework for quality reporting of the Medicaid home and community-based services (HCBS) waivers. "DDRI" is comprised of the following four components which are a common vocabulary linking CMS' expectations and state quality efforts:

1. design;

2. discovery;

3. remediation; and

4. improvement.

C. The CQI plan shall follow an evidence-based approach to quality monitoring with an emphasis on the assurances which the state must make to CMS. The assurances falling under the responsibility of support coordination are those of participant health and welfare, level of care determination, plan of care development, and qualified agency staff.

D. CQI plans shall include, at a minimum:

1. internal quality performance measures and valid sampling techniques to measure all of the OAAS support coordination monitoring review elements;

2. strategies and actions which remediate findings of less than 100 percent compliance and demonstrate ongoing improvement in response to internal and OAAS quality monitoring findings;

3. a process to review, resolve and redesign in order to address all systemic issues identified;

4. a process for obtaining input annually from the participant/guardian/authorized representatives and possibly family members to include, but not be limited to:

- a. satisfaction surveys done by mail or phone; or
- b. other processes for receiving input regarding the quality of services received;

5. a process for identifying on a quarterly basis the risk factors that affects or may affect the health, safety and/or welfare of individuals being supported which includes, but is not limited to:

- a. review and resolution of complaints;
- b. review and resolution of incidents; and
- c. the respective Protective Services' agency's investigations of abuse, neglect and exploitation;

6. a process to review and resolve individual participant issues that are identified; and

7. a process to actively engage all agency staff in the CQI Plan.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

§551. Support Coordination Monitoring

A. Support coordination agencies shall offer full cooperation with the OAAS during the monitoring process. Responsibilities of the Support Coordination agency in the monitoring process include, but are not limited to:

1. providing policy and procedure manuals, personnel records, case records, and other documentation;
2. providing space for documentation review and support coordinator interviews;
3. coordinating agency support coordinator interviews; and
4. assisting with scheduling participant interviews.

B. There shall be an annual OAAS support coordination monitoring of each support coordination agency and the results of this monitoring will be reported to the support coordination agency along with required follow-up actions and timelines. All individual findings of noncompliance must be addressed, resolved and reported to OAAS within specified timelines. All recurrent problems shall be addressed through systemic changes resulting in improvement. Agencies which do not perform all of the required follow-up actions according to the timelines will be subject to sanctions of increasing severity as described in §525.C.1-5.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

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 Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#099

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Free-Standing Psychiatric Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.959)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.959 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.

Due to a continuing budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals, including free-standing psychiatric hospitals (*Louisiana Register*, Volume 37, Number 7).

The department now proposes to amend the provisions of the July 2011 final Rule in order to provide for a supplemental Medicaid payment to non-rural, non-state free-standing psychiatric hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program for inpatient hospital services by approximately \$27,145,493 for state fiscal year 2011-12.

Effective January 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state free-standing psychiatric hospitals.

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

§959. Inpatient Psychiatric Hospital Services

A. - J. ...

K. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2012, quarterly supplemental payments shall be issued to qualifying non-rural, non-state free-standing psychiatric hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state free-standing psychiatric hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state free-standing psychiatric hospital is defined as a free-standing psychiatric hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient psychiatric services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, 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 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 37:

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 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 Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1112#100

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.953)

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

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates and to provide for a supplemental Medicaid payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective December 30, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services.

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. - N.2.b. ...

3. Effective for dates of service on or after January 1, 2011, all parties that participate in supplemental payments under this Section, either as a qualifying hospital by receipt of supplemental payments or as a state or local governmental entity funding supplemental payments, must meet the following conditions during the period of their participation:

a. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

b. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

c. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

d. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

e. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the Low Income and Needy Care Collaboration Agreement.

f. A participating hospital may not return any of the supplemental payments it receives under this Section to the governmental entity that provides the non-federal share of the supplemental payments.

g. A participating governmental entity may not receive any portion of the supplemental payments made to a participating hospital under this Section.

4. Each participant must certify that it complies with the requirements of §953.N.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

5. Each qualifying hospital must submit a copy of its Low Income and Needy Care Collaboration Agreement to the department.

6. The supplemental payments authorized in this Section shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

O. - Q.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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:

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 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 Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A

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

Bruce D. Greenstein
Secretary

1112#091

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Public Hospitals
Reimbursement Methodology
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V. 953 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.

As a result of a budgetary shortfall in state fiscal year (SFY) 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 11). The November 20, 2010 Rule also amended the reimbursement methodology for inpatient hospital services to establish a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients.

The department promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to revise the reimbursement methodology for non-rural, non-state public hospitals (*Louisiana Register*, Volume 37, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 15, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the hospital services program and to ensure recipient access to services.

Effective January 11, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state public hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - Q. ...

R. Effective for dates of service on or after May 15, 2011, non-rural, non-state public hospitals shall be reimbursed up to the Medicare inpatient upper payment limits as determined in accordance with 42 CFR §447.272.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November, 2010), LR 37:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#092

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—State Hospitals Supplemental Payments (LAC 50:V.551)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.551 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 a Rule in June of 1983 that established the reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 6). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles utilizing a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 29, 1982. In October 1984, the department established separate per diem limitations for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation (*Louisiana Register*, Volume 10, Number 10). In October 1992, the department promulgated a Rule which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services (*Louisiana Register*, Volume 18, Number 10). The department subsequently amended the reimbursement methodology for inpatient hospital services to establish a prospective payment methodology for non-state hospitals

(*Louisiana Register*, Volume 20, Number 6). The per discharge and per diem limitations in state acute care hospitals were rebased by a Rule promulgated in December of 2003 (*Louisiana Register*, Volume 29, Number 12). The Bureau subsequently amended the reimbursement methodology for inpatient services provided in state acute hospitals (*Louisiana Register*, Volume 32, Number 2).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to state-owned acute care hospitals that meet the qualifying criteria, and to adjust the reimbursement paid to non-qualifying state-owned acute care hospitals (*Louisiana Register*, Volume 36, Number 11). The department amended the provisions of the October 16, 2010 Emergency Rule in order to clarify the provisions governing the reimbursement methodology for those state-owned acute care hospitals that do not meet the qualifying criteria for the supplemental payment (*Louisiana Register*, Volume 37, Number 2). For the purpose of clarity, the January 20, 2011 Emergency Rule also incorporated the provisions of the February 20, 2006 Rule in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule is being promulgated to continue the provisions of the January 20, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective January 18, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by state-owned acute care hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 5. State Hospitals

Subchapter B. Reimbursement Methodology

§551. Acute Care Hospitals

A. Inpatient hospital services rendered by state-owned acute care hospitals shall be reimbursed at allowable costs and shall not be subject to per discharge or per diem limits.

B. Effective for dates of service on or after October 16, 2010, a quarterly supplemental payment up to the Medicare upper payment limits will be issued to qualifying state-owned hospitals for inpatient acute care services rendered.

1. - 2. Repealed.

C. Qualifying Criteria for Supplemental Payment. The state-owned acute care hospitals must be located in DHH Administrative Region 8 (Monroe).

D. Effective for dates of service on or after October 16, 2010, Medicaid rates paid to state-owned acute care hospitals that do not meet the qualifying criteria for the supplemental payment shall be adjusted to 60 percent of allowable Medicaid costs.

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 38:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#093

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Developmental Disabilities Non-State Facilities—Reimbursement Methodology (LAC 50:VII.32903)

Editor's Note: This Emergency Rule is being reprinted because of a printing error. The originally Emergency Rule can be viewed in the November 20, 2011 edition of the *Louisiana Register* on page 3177.

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*, Volume 36, Number 7). As a result of a budgetary shortfall in state fiscal year 2011, the department determined that it was necessary to amend the provisions governing the reimbursement methodology for non-state ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state ICFs/DD to restore the per diem rates paid to private providers who have downsized large facilities to less than 35 beds and incurred unusually high capital costs as a result of the downsizing (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to protect the health and welfare of Medicaid recipients and to insure continued provider participation in the Medicaid Program.

Effective November 28, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - J. ...

K. Effective for dates of service on or after August 1, 2010, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

L. Effective for dates of service on or after August 1, 2010, the per diem rates for ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be restored to the rates in effect on January 1, 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 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 37:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#108

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.327 and §355 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. The department promulgated an Emergency Rule which

established supplemental payments for governmental ambulance providers who render emergency medical transportation services to low income and needy patients in the state of Louisiana (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2011 Emergency Rule to allow supplemental payments for all ambulance providers who render emergency medical transportation services to low income and needy patients (*Louisiana Register*, Volume 37, Number 7). The July 20, 2011 Emergency Rule was amended to allow supplemental payments to providers of air ambulance transportation services (*Louisiana Register*, Volume 37, Number 8). The department promulgated an Emergency Rule which rescinded and replaced the July 1, 2011, the July 20, 2011, and the August 20, 2011 Emergency Rules in order to promulgate clear and concise provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 9). The department now proposes to amend the September 20, 2011 Emergency Rule to clarify the provisions governing supplemental payments for emergency ambulance services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ambulance services.

Effective December 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the September 20, 2011 Emergency Rule governing supplemental payments for emergency medical transportation services rendered by ambulance providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§327. Supplemental Payments for Ambulance Providers

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

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

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider;
3. provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170; and
4. be affiliated with the Statewide Ambulance Service District.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of:

1. the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate; and
2. the difference between the payments made to these qualifying providers for emergency medical transportation

and air ambulance services provided to uninsured patients and the average amount that would have been paid at the equivalent community rate.

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

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

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

2. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

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

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

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

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

7. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services which the Medicaid ambulance service providers provided to uninsured patients.

8. For each Medicaid ambulance service provider described in E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under E.7.

9. For each Medicaid ambulance service provider described in E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under E.7.

10. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under E.8 from an amount equal to the amount

calculated for each of the emergency medical transportation and air ambulance services under E.9.

11. For each Medicaid ambulance service provider described in E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under E.10.

12. For each Medicaid ambulance service provider described in E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from E.6 and total uninsured payment differential from E.11., provided that, if otherwise required by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the upper payment limit shall be the provider's total Medicaid payment differential from D.6.

13. The department will establish the following two pools from which supplemental payments will be made:

a. Pool One for ambulance service providers identified in E.1 who are located in large urban areas and owned by governmental entities; and

b. Pool Two for all other ambulance service providers identified in E.1.

14. The department will fund the two pools by contributing the appropriate amount as designated.

15. Each Medicaid ambulance service provider described in E.1 will share in the appropriate pool funding in proportion to its emergency medical transportation and air ambulance services utilization, not to exceed the Medicaid ambulance service provider's upper payment limit as described in E.12.

16. Any amount which would have been payable to a qualified Medicaid ambulance service provider because of its utilization, but which exceeds its upper payment limit, shall instead be distributed among the other qualifying Medicaid ambulance service providers in that pool.

17. Any amount which cannot be distributed from Pool One will be transferred to Pool Two for distribution according to E.15 and E.16.

F. Community Rate Calculations. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Subchapter C. Air Transportation

§355. Supplemental Payments for Ambulance Providers

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

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

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider;
3. provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170; and
4. be affiliated with the Statewide Ambulance Service District.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of:

1. the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate; and

2. the difference between the payments made to these qualifying providers for emergency medical transportation and air ambulance services provided to uninsured patients and the average amount that would have been paid at the equivalent community rate.

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

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

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

2. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

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

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

5. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount

equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under E.4.

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

7. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services which the Medicaid ambulance service providers provided to uninsured patients.

8. For each Medicaid ambulance service provider described in E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under E.7.

9. For each Medicaid ambulance service provider described in E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under E.7.

10. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under E.8 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under E.9.

11. For each Medicaid ambulance service provider described in E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under E.10.

12. For each Medicaid ambulance service provider described in E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from E.6 and total uninsured payment differential from E.11, provided that, if otherwise required by CMS, the upper payment limit shall be the provider's total Medicaid payment differential from D.6.

13. The department will establish the following two pools from which supplemental payments will be made:

a. Pool One for ambulance service providers identified in E.1 who are located in large urban areas and owned by governmental entities; and

b. Pool Two for all other ambulance service providers identified in E.1.

14. The department will fund the two pools by contributing the appropriate amount as designated.

15. Each Medicaid ambulance service provider described in E.1 will share in the appropriate pool funding in proportion to its emergency medical transportation and air ambulance services utilization, not to exceed the Medicaid ambulance service provider's upper payment limit as described in E.12.

16. Any amount which would have been payable to a qualified Medicaid ambulance service provider because of its utilization, but which exceeds its upper payment limit,

shall instead be distributed among the other qualifying Medicaid ambulance service providers in that pool.

17. Any amount which cannot be distributed from Pool One will be transferred to Pool Two for distribution according to E.15 and E.16.

F. Community Rate Calculations. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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 Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#101

DECLARATION OF EMERGENCY

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

Medical Transportation Program
Non-Emergency Medical Transportation
Public Transit Services
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 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. Due to a continuing budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the reimbursement methodology governing non-emergency medical transportation (NEMT) services in order to reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 10).

The department now proposes to amend the provisions governing the reimbursement methodology for the Medical Transportation Program in order to provide Medicaid reimbursement for NEMT services rendered by public transit providers. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring continued access to non-emergency medical transportation services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program for non-emergency medical transportation services by \$270,270 for state fiscal year 2011-12.

Effective December 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§573. Non-Emergency, Non-Ambulance Transportation

A. - E.1. ...

F. Public Transit Services

1. Effective for dates of service on or after December 20, 2011, the Medicaid Program shall provide reimbursement for non-emergency medical transportation services rendered by public transit providers.

2. Qualifying providers shall be reimbursed their cost through a certified public expenditure (CPE) program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

a. Only public transit providers with local funding available to use for the CPE program shall qualify to receive payments.

3. Public transit providers shall be required to submit a DHH-approved cost report to the department outlining their costs in order to determine payment amounts.

4. Exclusions. Payments shall not be made to public transit providers for NEMT services rendered to Medicaid recipients enrolled in a BAYOU HEALTH prepaid health plan.

5. It is the responsibility of the public transit provider to verify a Medicaid recipient's eligibility status and to determine whether the recipient is enrolled in a BAYOU HEALTH prepaid health plan.

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 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3030 (October 2011), amended LR 37:

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 Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#102

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services

Small Rural Hospitals

Low Income and Needy Care Collaboration

(LAC 50:V.5311, 5511, 5711, 5911 and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, 5511, 5711, 5911, and 6113 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.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for outpatient hospital services (*Louisiana Register*, Volume 35, Number 5). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to provide for a supplemental Medicaid payment to small rural hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 10). The department now proposes to amend the provisions of the October 20, 2011 Emergency Rule in order to clarify the qualifying criteria. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective December 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the October 20, 2011 Emergency Rule governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient hospital clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital

and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on the Medicaid paid claims for services rendered during the quarter. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year. .

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6113. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient facility fees during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the

previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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 Don Gregory, 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.

Bruce D. Greenstein
Secretary

1112#103

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program
Medication Administration
Influenza Vaccinations
(LAC 50:XXIX.123, 991 and 993)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.123 and §991 and adopts §993 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to allow payment for the administration of the influenza vaccine for all Medicaid recipients, and to provide reimbursement for the cost of the influenza vaccine for Medicaid recipients 19 years of age and older (*Louisiana Register*, Volume 36, Number 12). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to promote the health and

welfare of Medicaid recipients by facilitating access to the influenza vaccine.

Effective December 29, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Pharmacy Benefits Management Program to allow reimbursement for the influenza vaccine and administration of the vaccine.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§123. Medication Administration

A. Influenza Vaccine Administration. The department shall provide coverage for administration of the influenza vaccine by a qualified pharmacist when:

1. the pharmacist has been credentialed by the Louisiana Board of Pharmacy to administer medications; and

2. the pharmacist is Medicaid enrolled.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 37:

Chapter 9. Methods of Payment

Subchapter H. Vaccines

§991. Vaccine Administration Fees

A. ...

B. Effective for dates of service on or after January 1, 2011, the reimbursement for administration of the influenza vaccine for all recipients shall be reimbursed at \$15.22 for subcutaneous or intramuscular injection, \$10.90 for nasal/oral administration or billed charges, whichever is the lesser amount. This fee includes counseling, when performed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 37:

§993. Vaccine Reimbursement

A. Effective for dates of service on or after January 1, 2011, the influenza vaccine for recipients aged 19 and over shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Average Sales Price (ASP) allowable or billed charges, whichever is the lesser amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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

Bruce D. Greenstein
Secretary

1112#094

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Partial Closure of State Outside Waters to Shrimping

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close state outside waters to shrimping by zone each year as it deems appropriate, the Wildlife and Fisheries Commission hereby orders a closure to shrimping in that portion of state outside waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude 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. This closure is effective at official sunset, Tuesday, December 20, 2011.

R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) count per pound except during the time period from October fifteenth through the third Monday in December. Current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that average white shrimp size in this portion of state outside waters is slightly larger than 100 count per pound; however, historical data indicate that significant numbers of smaller size white shrimp occupying coastal lakes and bays migrate into these waters as water temperatures drop in conjunction with the onset of winter. This action is being taken to protect these small white shrimp and provide them the opportunity to grow to a larger and more valuable size.

The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to delay the closing date if marketable quantities of shrimp are available for harvest, and to close to shrimping, if necessary, to protect small white shrimp, any part of remaining state outside waters, if biological and technical data indicate the need to do so or if enforcement problems develop, and to reopen any area closed to shrimping when the closure is no longer necessary following notification to the chairman of the Wildlife and Fisheries Commission; and hereby authorizes the secretary of the Department of Wildlife and Fisheries to open and close special shrimp seasons in any portion of state inside waters where such a season would not detrimentally impact developing brown shrimp populations following notification to the chairman of the Wildlife and Fisheries Commission.

Stephen W. Sagera
Chairman

1112#001

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Seed Oyster Harvest Closure—Oyster Seed Grounds East of the Mississippi River

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on September 1, 2011 which authorized the secretary of the Department of Wildlife and Fisheries (LDWF) to take emergency action if oyster resources and/or reefs are being adversely impacted, notice is hereby given that the Secretary of Wildlife and Fisheries hereby declares that the following public oyster areas east of the Mississippi River shall close to the taking of seed oysters for bedding purposes only at one-half hour after sunset on Monday, November 14, 2011:

1. all public oyster seed grounds north of the Mississippi River Gulf Outlet (Louisiana Department of Health and Hospitals harvest areas 1, 2, 3, and 4); and
2. all public oyster seed grounds and reservations south of the Mississippi River Gulf Outlet and west of a line generally running from California Point northeast to Point Gardner (western portions of Louisiana Department of Health and Hospitals harvest areas 5, 6, and 7).

Harvest of legal-size oysters ($\geq 3''$) for market sales in these areas will continue to be allowed until further notice.

Harvest pressure during the season has significantly reduced an already small seed oyster stock size and excessive amounts of non-living cultch material has been documented by LDWF biologists in commercial seed oyster loads. Continued commercial harvest of seed oysters for bedding purposes may threaten the long-term sustainability of remaining oyster resources in these areas. Protection of these remaining oyster reef resources from injury is in the best interest of the public oyster areas.

All other 2011/2012 oyster season details as outlined by the September 1, 2011 Declaration of Emergency passed by the Wildlife and Fisheries Commission, as well as the October 11, 2011 and November 1, 2011 Declaration of Emergencies issued by the secretary of LDWF, including the season and daily sack limits in Calcasieu Lake, shall remain in effect at this time.

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

Robert J. Barham
Secretary

1112#010

Rules

RULE

Department of Agriculture and Forestry Horticulture Commission

Retail Florist Exam (LAC 7:XXIX.107, 109, 111, and 113)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3801, the Department of Agriculture and Forestry, Horticulture Commission amends these rules and regulations to provide the correct name of the commission in the title of this Part and to remove provisions regarding the demonstration of actual floral design work by persons taking the retail florist examination. The legislature by Acts 2010, No. 1040, §1 repealed the requirement in R.S. 3:3807(B)(2) that applicants for the retail florist examination demonstrate actual floral design work as part of the examination and revoked the authority of the Horticulture Commission to adopt rules and regulations regarding the demonstration portion of the retail florist examination. The action implements the changes made by Act 1040 to the retail florist examination.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 1. Horticulture

§107. Application for Examination and Licensure or Permitting

A. Each applicant must complete the application form prescribed by the commission for the area in the practice of horticulture for which the license or permit is sought.

B. Landscape Architect

1. Applicants who desire to take the examination for landscape architect must file the completed application, together with any supporting evidence, official transcript(s), and affidavit(s) as may be necessary, and with the fee required under §109.B at the commission's state office in Baton Rouge. The application must be postmarked or received by the deadline date established for applying for examination, which date shall be published in a prior issue of the *Louisiana Register*.

2. Any applicant for licensure as a landscape architect who successfully completes one or more of the different sections of the examination but does not successfully complete all sections of the examination will not be required to submit to re-examination in any section which was successfully completed. In such cases, the applicant may apply to re-take only the section(s) of the examination which were not successfully completed.

C. Arborist, Landscape Horticulturist, Landscape Irrigation Contractor, Retail Florist, Utility Arborist, Wholesale Florist

1. Applicants who desire to take the examination for arborist, landscape horticulturist, landscape irrigation contractor, retail florist, utility arborist, or wholesale florist may apply at any time, in person or by writing, to the

commission's state office in Baton Rouge or to any district office of the Department of Agriculture and Forestry. Applicants who apply in person, will be allowed, whenever feasible, to complete the written application form at the initial visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801, R.S. 3:3807, and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:7 (January 1988), LR 18:249 (March 1992), LR 20:639 (June 1994), LR 23:854 (July 1997), LR 29:1460 (August 2003), LR 31:1053 (May 2005), LR 35:1227, 1228 (July 2009), LR 37:3464 (December 2011).

§109. Examination Fees

A. Landscape Architect

1. The fee for examination for licensure as a landscape architect shall be the cost for each section of the examination plus an administrative fee of \$200 for first time applicants and those applying through reciprocity.

2. The fee for re-examination in the various sections for licensure as a landscape architect shall be the cost for each section plus one administrative fee of \$100.

B. Arborist, Landscape Horticulturist, Landscape Irrigation Contractor, Retail Florist, Utility Arborist, Wholesale Florist

1. The fee for examination or re-examination for licensure as an arborist, landscape horticulturist, landscape irrigation contractor, retail florist, utility arborist, or wholesale florist shall be \$50.

C. All fees required under this Rule must be submitted at the same time as the application; failure to submit any required fees will bar the applicant from taking the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3806, R.S. 3:3805, and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:249 (March 1992), LR 20:640 (June 1994), LR 29:2297 (November 2003), LR 31:1053 (May 2005), LR 35:1227 (July 2009), LR 37:3464 (December 2011).

§111. Minimum Examination Performance Levels Required

A. The performance level for satisfactory completion of all examinations for licensure, except the examination for landscape architect shall be a minimum of 70 percent.

B. The minimum performance level for satisfactory completion of the examination for landscape architect shall be the minimum performance level acceptable to the Council of Landscape Architects Registration Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3807 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 20:153 (February 1994), LR 35:1229 (July 2009), LR 37:3464 (December 2011).

§113. Examination Schedule

A. Landscape Architect

1. The examination for licensure as a landscape architect shall be given by the commission on the date selected for administration of the examination nationally by the Council of Landscape Architects Registration Board.

2. The commission shall publish the time and location selected by the Council of Landscape Architects Registration Board for administration of the examination for landscape architect in an issue of the *Louisiana Register* to be published prior to the scheduled examination date and will disseminate information concerning the scheduled examination to all interested applicants.

3. The Louisiana section of the examination for landscape architect shall be given on the date selected for administration of the examination nationally by the Council of Landscape Architects Registration Board and at no more than one other time during the year, if deemed necessary to the commission based on the number of applicants desiring to take the Louisiana section.

B. Arborist, Landscape Horticulturist, Landscape Irrigation Contractor, Retail Florist, Utility Arborist, Wholesale Florist

1. Examinations for licensure as an arborist, landscape horticulturist, landscape irrigation contractor, retail florist, utility arborist, or wholesale florist will be administered in the commission's state office in Baton Rouge and in district offices of the Department of Agriculture and Forestry upon request. Interested applicants may apply, in person or by writing, at the state office or the most convenient district office. A date for the examination will be established for each applicant.

2. Whenever any applicant fails to successfully complete an examination for licensure, he may not apply to re-take the examination for a period of two weeks following the date of the examination which he failed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3807 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:250 (March 1992), LR 20:640 (June 1994), LR 31:1053 (May 2005), LR 35:1227 (July 2009), LR 37:3465 (December 2011).

Mike Strain, DVM
Commissioner

1112#067

RULE

**Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences
Advisory Commission on Pesticides**

Pesticides (LAC 7:XXIII.Chapters 1-35)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3203, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides is revising the rules and regulations in Part XXIII of Title 7 of the LAC. The revisions to the existing rules are necessary to bring all of

them up to date and to reflect changes in agriculture and pesticides used in this state. The rules and regulations regarding bulk pesticide facilities have been adopted to comply with new standards adopted by the U.S. Environmental Protection Agency (EPA) dealing with pesticide containment and containers. EPA put the new rules in place to regulate pesticide containers and the filling and refilling of those containers. The action will bring the current state rules and regulations governing bulk handling of pesticides into compliance with the EPA rules.

These revisions add chapters, remove and revise Subchapters, and changes the Section numbers of most of the regulations. To assist interested persons in learning the revisions the following table shows the changes in Chapters, Subchapters, and Sections from the old format to the new format.

Louisiana Pesticide Regulations—Revisions of LAC 7LXXIII (Pesticides)	
Formerly	2011 Revisions
Chapter 1	Chapter 1
Subchapter A	None
§101	§101
Subchapter B	None
§103	§103
Subchapter C	Chapter 3
§105	§301
§107	§303
§109	§305
None	§307
Subchapter D	Chapter 5
§111	§501
§113	§503
§115	§505
§117	§507
§119	§509
Subchapter E	Chapter 7
None	Subchapter A
§121	§701
Subchapter F	Subchapter B
§123	§709
§125	§711
§127	§713
§129	§715
Subchapter G	None
§131	§901
Subchapter H	Subchapter C
§133	§723
§135	§725
§137	§727
§139	§729
None	Chapter 9
§131	§901
Subchapter I	Chapter 11
§141	§1101
§143	§1103
§145	§1105
§147	§1107
§149	§1109
§151	None
§153	§1111
§155	§1113
Subchapter J	Chapter 13
§157	§1301
None	§1303
Subchapter K	Chapter 15
§159	§1501
Subchapter L	Chapter 17
§161	§1701

Louisiana Pesticide Regulations—Revisions of LAC 7LXXIII (Pesticides)	
Formerly	2011 Revisions
Subchapter M	Chapter 19
§163	§1901
§165§	§1903
Subchapter N	Chapter 21
§167	§2101
§169	§2103
§171	§2105
Subchapter O	Chapter 23
§173	§2301
Subchapter P	Chapter 25
§175	§2501
Subchapter Q	Chapter 27
§177	§2701
Subchapter R	None
§179	None
Subchapter S	None
§181	§3301
Subchapter T	None
§183	None
Subchapter U	None
§185	None
Subchapter V	None
§187	None
Subchapter W	Chapter 29
§189	§2901
§191	§2903
§193	§2905
§195	§2907
§197	§2909
§199	None
Subchapter X	Chapter 31
§201	§3101
§203	§3103
§205	§3105
§207	§3107
Subchapter Y	Chapter 33
None	§3301
§209	§3303
§211	§3305
§213	§3307
§215	§3309
§219	§3311
Subchapter Z	Chapter 35
§221	§3501

Title 7
AGRICULTURE AND ANIMALS
Part XXIII. Pesticides

Chapter 1. Authority, Pesticide Declarations, Definitions

§101. Authority

A. Under the authority of the Louisiana Pesticide Law, R.S. 3:3201 et seq., and in accordance with the provisions in R.S. 49:950 et seq., the commissioner of Agriculture and Forestry adopts the following regulations.

B. The commissioner of Agriculture and Forestry, in accordance with R.S. 3:3203(E) has determined that pharmaceuticals administered to livestock used for agriculture purposes are pesticides. Pharmaceutical administered to livestock used for agricultural purposes shall be registered with the department in accordance with the Louisiana Pesticide Law and the rules and regulations found in this Chapter.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:171 (April 1983), amended LR 27:2084 (December 2001), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3466 (December 2011).

§103. Definitions

A. The definitions in R.S. 3:3202 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part.

Agricultural Pesticide—any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

Bulk Facilities—any person, except registrants, who engage in the activity of repackaging any agricultural pesticide product, except manufacturing use products and plant-incorporated protectants into refillable and non-refillable containers. This includes certified commercial applicators and licensed owner-operators dispensing agricultural pesticides from a stationary container.

Containment Pad—a containment structure that meets the design, construction materials and capacity requirements of 750 gallons or 100 percent of the capacity of the largest container/equipment used on the pad (whichever is less), for new and existing containment structures and accommodates pesticide spills or leaks in dispensing areas at bulk facilities.

Containment Structure or Structure—new and existing structures, at bulk facilities, that meets the design, construction materials and capacity requirements to contain spills or leaks from stationary pesticide containers or pesticide dispensing activities.

a. An existing containment structure is a structure for which installation began on or before July 1, 2011.

b. A new containment structure is a structure for which installation began after July 1, 2011 if certain conditions regarding permits, construction and contracts are met.

Director—the director of the Division of Pesticide and Environmental Programs or his duly authorized representatives acting at his direction.

District Office—any office of the department other than the Baton Rouge main office.

Division—the Division of Pesticide and Environmental Programs in the Office of Agricultural and Environmental Sciences of the department.

Herbicide—any substance or mixture of substances intended for use in preventing or inhibiting the growth of, killing, or destroying plants and plant parts defined to be pests by the commissioner. The term herbicide shall for the purposes of these regulations include a substance or mixture of substances intended for use as a plant growth regulator, defoliant, or desiccant.

Inorganic Arsenical—any herbicide containing a compound formed by a reaction between arsenic and any substance which does not contain a carbon-hydrogen (organic) group (radical). Examples are arsenic trioxide, sodium arsenate, and arsenic acid.

Insecticide—any substance or mixture of substances intended for preventing or inhibiting the establishment, reproduction, development, or growth of; destroying; or repelling any member of the class insecta or other allied classes in the phylum arthropoda that is defined as a pest by the commission.

Livestock used for Agricultural Purposes—any animal bred, kept, maintained, raised or used for profit or for the purpose of selling or otherwise producing crops, animals, or plant or animal products for market. This definition includes cattle, buffalo, bison, oxen and other bovine; horses, mules, donkeys, and other equine; sheep; goats; swine; domestic rabbits; fish, pet turtles and other animals identified with aquaculture which are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; imported exotic deer and antelope, elk, farm-raised white-tailed deer, farm-raised raptures and other farm-raised exotic animals; chickens, turkeys and other poultry; any animals placed under the jurisdiction of the commissioner or the department; and any hybrid, mixture or mutation of any type of animal if used for an agricultural purpose. However, dogs and cats shall not be considered livestock under these regulations.

Pharmaceuticals—any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of plant or animal pests, diseases, viruses, bacteria or other microorganisms in or on livestock and any substance other than food intended to affect the structure or any function of the body of any livestock.

Phenoxy Herbicides—any herbicide as defined above that contains a phenoxy derivative of lower aliphatic acid as an ingredient thereof.

Public Utility—a business or service which is engaged in regularly supplying the public with a service which is of public consequence and need, such as electricity, gas, water, transportation, or telephone or telegraph service.

Resident—any person who has been domiciled in Louisiana for a period of at least 90 days immediately preceding the date of application for the license and/or certification and has not claimed residence elsewhere for any purpose.

Rinsate—the liquid produced from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

Secondary Containment Structure (for the purposes of Subpart J)—a structure, including rigid diking, that is designed and constructed to intercept and contain agricultural pesticide spills and leaks and to prevent runoff and leaching from stationary agricultural pesticide containers. These are described as new or existing with the required capacities in the following:

a. new containment structures, un-protected from precipitation, 110 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within the containment area; or

b. existing structures, un-protected from precipitation, 100 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within the containment area; or

c. new or existing structures, protected from precipitation, 100 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within a containment area.

Stationary Pesticide Container—a refillable container that is fixed at a single bulk facility or, if not fixed, remains at the bulk facility for at least 30 consecutive days, and that

holds pesticide during the entire time. Stationary pesticide containers are subject to the regulations if they are designed to hold undivided quantities of pesticides equal to or greater than 500 gallons for liquids or 4000 pounds for dry pesticides.

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 Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3466 (December 2011).

Chapter 3. Advisory Commission on Pesticides

§301. Filings with the Commission

A. All notices, petitions, documents, or other correspondence to the commission or the commissioner shall be addressed and mailed to Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, 5825 Florida Blvd, Baton Rouge, LA 70806.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3467 (December 2011).

§303. Chairman; Presiding Officer

A. The chairman shall serve a term of one year or until a successor is elected. In the absence of the chairman, the vice-chairman shall preside. In the absence of both the chairman and the vice-chairman, the chairman's duly appointed representative shall preside.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3212.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3467 (December 2011).

§305. Expulsion

A. Each member being considered for expulsion and his sponsoring group, if any, shall be notified of the upcoming action at least 15 days before the commission meeting at which the action is to be considered. This notice shall be by certified mail. The commission may excuse an absence of a member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3211.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3467 (December 2011).

§307. Requests for Changes in Regulations or for Declaratory Rulings

A. A request for the adoption, amendment or repeal of a regulation in this Part shall be made in accordance with LAC 7:1.303.

B. A request for a declaratory order or ruling as to the applicability of any statutory provision or of any rule or

regulation in this Part or order made pursuant to any applicable law or regulation shall be made in accordance with LAC 7:1.305.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3467 (December 2011).

Chapter 5. Registration of Pesticides

§501. Registration Required

A. No pesticide, including pharmaceuticals administered to livestock used for agricultural purposes, shall be sold, offered for sale, or distributed in this state without being registered by the manufacturer annually with the department. This registration shall expire on December 31 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:2085 (December 2001), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3468 (December 2011).

§503. Chart of Tolerances

A. Content of active ingredients on all pesticides should be at the level of guarantee. However, determination of compliance based on assay of a single sample shall be made as follows.

1. A single sample whose assay deviates below the stated guarantee shall be considered in compliance except as noted in Paragraph 2, below, if its active ingredients are found to be within the following ranges.

Active Ingredient Percent Guaranteed	Allowable Deviation below Guarantee
Up to 1.00 percent	15 percent of Guarantee
1.01 percent-19.99 percent	0.1 plus 5 percent of Guarantee
20.00 percent-49.99 percent	0.5 plus 3 percent of Guarantee
50.00 percent-100.00 percent	1.0 plus 2 percent of Guarantee

2. A single sample whose assay deviates below the stated guarantee beyond the above limits may not be considered deficient if special sampling problems such as those associated with fertilizer-pesticide mixtures and granular formulations or if problems associated with accuracy, specificity or reproducibility of the method of analysis can reasonably be expected to have contributed to the lower assay.

3. A single sample whose assay ranges above the stated guarantee shall be judged individually. However, an assay ranging above the stated guarantee shall not be considered violative if:

- a. no illegal residue can be expected to result when product is used according to label directions;
- b. no significant increase in hazard to man or the environment can be expected to result when product is used according to label directions;
- c. stability of the formulation or ingredients thereof require over-formulation to insure that assay over a period stated on the label shall not fall below the minimum provided in Paragraph 1, above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3225 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission of Pesticides, LR 11:943 (October 1985), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3468 (December 2011).

§505. Standard Registrations

A. Application for registration shall consist of two types, namely initial registration and renewal registration. Initial registration application may be filed at any time of the year. Renewal registration application shall be filed by the first day of December each year. Application shall be made on forms or formats prescribed by the commissioner; or on forms or formats which have the prior, written approval of the commissioner.

1. Each application for the initial registration of a pesticide and for the re-registration of a pesticide for which the label has been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. two complete copies of the labeling of the pesticide, containing:
 - i. the specific name of each active ingredient in the pesticide;
 - ii. the percentage of the active ingredients in the pesticide unless the proportion of the active ingredients are expressed in international units, or some other form of scientifically recognized and accepted measurement; in which case the proportion of active ingredients may be reported in that manner;
 - iii. the percentage of the inert ingredients in the pesticide unless the proportion of the active ingredients in the pesticide are expressed in international units, or some other form of scientifically recognized and accepted measurement; in which case the proportion of inert ingredients may be reported in that manner;
 - iv. the net contents of each package in which the pesticide will be sold;
 - v. a statement of claims made for the pesticide;
 - vi. directions for the use of the pesticide, including warnings or caution statements;
 - d. the material safety data sheet prepared in accordance with the requirements of the Environmental Protection Agency;
 - e. the method for laboratory analysis if the pesticide is a pharmaceutical administered to livestock used for agricultural purposes;
 - f. such other information as the commissioner may require.

2. Application for re-registration of a pesticide for which the label has not been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. such other information as the commissioner may require.

3. The registration requirements as described in Subsection A shall be resubmitted for any pesticide for

which the label has been changed within 60 days of the change.

B. Any registration may be denied by the commissioner if he determines that:

1. the composition of the pesticide is not sufficient to support the claims made for the pesticide;
2. the label on the pesticide does not comply with state and federal requirements;
3. use of the pesticide may produce unreasonable adverse effects on the environment;
4. information required in Subsection A has not been furnished to the commissioner by the manufacturer.

C. Any pesticide registered in Louisiana must comply with the following.

1. Any pesticide sold or offered for sale or distribution must bear a label consistent with the label submitted in the registration application.

2. Each shipping container must bear the lot or batch number of the pesticide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 23:192 (February 1997), LR 23:853 (July 1997), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:2085 (December 2001), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3468 (December 2011).

§507. Special Registrations

A. The commissioner may issue the following registrations.

1. State Experimental Use Permits (5f, FIFRA). If the EPA authorizes the commissioner to issue state experimental use permits, the following terms and conditions shall apply.

a. Each person wishing to accumulate information necessary to register a pesticide for a special local need in this state shall file five copies of an application containing the following information:

- i. the manufacturer's name;
- ii. the name, address and telephone number of the applicant;
- iii. the proposed date of shipment or proposed shipping period not to exceed one year;
- iv. the percentage of the active ingredients in the pesticide;
- v. the percentage of the inert ingredients of the pesticide;
- vi. a statement of the approximate quantity to be tested;
- vii. available summary of test results on the acute toxicity of the pesticide;
- viii. a statement of the scope of the proposed experimental program, including:
 - (a). the type of pests or organisms included in the study;
 - (b). the crops, animals or commodities to be included in the study;
 - (c). the areas of the state in which the study is to be conducted;

(d). the results of any previous tests conducted by the applicant of the pesticide in this or any other state;

ix. when the pesticide is to be used on food or feed, a temporary tolerance must be obtained from the EPA or evidence that the proposed experiment will not result in injury to man or animals, or in illegal residues entering the food chain;

x. the proposed labeling which must bear:

(a). the prominent statement "For Distribution and Experimental Use Only Within Louisiana" on each container label and any labeling that accompanies the pesticide;

(b). an adequate caution or warning statement to protect those who may handle or be exposed to the pesticide;

(c). the name and address of the manufacturer;

(d). the point of destination of the pesticide;

(e). directions for use;

(f). a statement listing the name and percentage of each active ingredient and the total percentage of inert ingredients.

b. After an application has been received, the commissioner shall review it for completeness. If the commissioner determines that an application is not complete, the applicant shall be allowed to submit such subsequent data as required by the commissioner for review. If the commissioner determines that an application is complete, he may assign the application to an ad hoc advisory committee consisting of:

i. director, or his designee;

ii. assistant commissioner, Office of Agricultural and Environmental Sciences, department, or his designee;

iii. director, Louisiana Cooperative Extension Service, or his designee;

iv. director, Louisiana Agricultural Experiment Station, or his designee;

v. the member of the commission who represents the Louisiana Wildlife Federation, or his designee (R.S. 3:3211(B)9).

c. The committee shall consider the application based on the following criteria:

i. the applicant's need for the permit in order to accumulate data to support a special local needs registration;

ii. that the labeling is complete and correct as required in §507.A.1.a.x;

iii. that use of the pesticide under the permit will not cause unreasonable adverse effects on the environment;

iv. that either the applicant has supplied evidence that a tolerance or exemption from the requirement of a tolerance has been established for residues of the pesticide on such food or feed under section 408 of the Federal Food, Drug and Cosmetic Act; or that the applicant shall destroy all food or feed crops involved in the project.

d. After receiving the recommendations of the committee, the commissioner may: grant the request, in which event he shall prescribe the terms, conditions, and period of time of the permit; or deny the permit.

e. The commissioner may revoke a permit if he finds that:

i. the terms and conditions of the permit have been violated, or are inadequate to avoid unreasonable adverse effects on the environment;

ii. any required tolerance under the Federal Food, Drug, and Cosmetic Act (12 U.S.C. 301 et seq.) has been revoked by EPA or any exemption from the requirements for tolerance has been withdrawn by EPA;

iii. the permittee or any cooperator has failed to comply with any other federal or state law or regulation concerning state experimental use permits.

2. Special Local Needs Registration (24-C FIFRA)

a. Each person wishing to register a pesticide for a special local need in this state shall file five copies of an application containing the following:

i. name and address of the applicant and any other person whose name will appear on the labeling or in the directions for use;

ii. the name of the pesticide product, and, if the application is for an amendment to a federally registered product, the EPA registration number of that product;

iii. a copy of proposed labeling, including all claims made for the product as well as directions for its use to meet the special local need, consisting of:

(a). for a new product, a copy of the complete proposed labeling; or

(b). for an additional use of a federally registered product, a copy of proposed supplemental labeling and a copy of the labeling for the federally registered product;

iv. the active ingredients of the product, if the application is for a new product registration;

v. the appropriate application fees as required by §901 of these regulations.

b. The issuance or denial of a registration of a pesticide under this Section shall be done in accordance with federal regulations. The commissioner may refer this application to an ad hoc committee composed of:

i. director, commission, or his designee;

ii. director, Louisiana Cooperative Extension Service, or his designee;

iii. director, Louisiana Agricultural Experiment Station, or his designee;

iv. one agricultural consultant;

v. one farmer;

vi. such other members appointed by the commissioner as the commissioner deems necessary.

c. The committee shall consider the application based on the following criteria:

i. that the labeling is complete and correct;

ii. that use of the pesticide under the permit will not cause unreasonable adverse effects on the environment;

iii. that there is no other pesticide product registered with EPA for the same use;

iv. that no other pesticide product is registered with EPA which would be as safe and as efficacious, under the conditions of use proposed for a special local need;

v. that there is no EPA registered product available;

vi. that there is an EPA tolerance established for the product, if it is to be used on a food or a feed crop;

vii. that the special local needs application is based on a changed use pattern;

viii. that the product shows promise of efficacy for the condition under which it will be used;

ix. such other considerations as the commissioner deems appropriate.

d. After receiving the recommendation of the committee the commissioner may:

i. grant the registration, in which event he may prescribe the terms and conditions of use; or

ii. deny the registration.

e. The commissioner may amend or revoke a registration if he finds that:

i. the terms and conditions of the registration have been violated, or are inadequate to avoid unreasonably adverse effects on the environment;

ii. any required tolerance under the Federal Food, Drug, and Cosmetic Act (12 U.S.C. 301 et seq.) has been revoked by EPA or any exemption from the requirements for tolerance has been withdrawn by EPA;

iii. the registrant has failed to comply with any other federal or state law or regulation concerning state experimental use permits.

3. Special Exemptions

a. Specific exemption applications shall be completed in accordance with federal requirements after receiving the recommendations of the director the Louisiana Cooperative Extension Service or his designee and the director of the Louisiana Agricultural Experiment Station, or his designee.

b. Quarantine-Public Health Exemption. The commissioner may apply to EPA for a quarantine and/or public health exemption to allow the application of a pesticide if the commissioner finds that a foreign pest or a pest not previously known to be established in Louisiana threatens to become established. This application will be completed in accordance with federal requirements.

c. Crisis Exemption. The commissioner may issue a crisis exemption in accordance with federal regulations for the use of an unregistered pesticide if he finds that:

i. a situation involving the unpredictable outbreak of pests in the state is occurring;

ii. there is no readily available pesticide registered for the particular use to eradicate or control the pest; and

iii. the time element with respect to the application of the pesticide is so critical that there is no time to request a registration under any other Section of this Subchapter.

d. Pharmaceuticals in Custom Blended Feed(s) Exemption. It shall not be necessary to register a feed as a pesticide that contains a pharmaceutical ingredient if the following conditions are met.

i. The feed blend is prepared to the order of the customer and is not held in inventory by the blender.

ii. The blend is to be used on the customer's property or fed to the customer's livestock.

iii. The pharmaceutical(s) used in the blend bears end-use labeling directions that do not prohibit use of the product in such a blend.

iv. The blend is prepared from a pharmaceutical registered with the department.

v. The blend is delivered to the end-user along with a copy of the end-use labeling of each pharmaceutical used in the blend and a statement specifying the composition of mixture.

e. Commercial feeds, as defined in R.S. 3:1891(1), which are manufactured or distributed as feed to livestock and which contain pharmaceutical ingredients are hereby declared to be pharmaceuticals administered to livestock.

Each such commercial feed shall be registered with the department in accordance with the provisions of these regulations except for the following commercial feeds.

i. Commercial feeds registered with the department in accordance with the requirements of the Commercial Feeds Law found at Chapter 14 of Title 3 of the Louisiana Revised Statutes of 1950, (R.S. 3:1891-1907) as long as those registration and inspection fees and tonnage reports are current.

ii. Commercial feeds that have been manufactured or produced by any person for the purpose of feeding his own livestock.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:175 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:2085 (December 2001) amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3469 (December 2011).

§509. Supervision of Use

A. The sale, use, storage, distribution, transportation, or disposal of pesticides registered under this Subchapter shall be subject to the supervision by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission Pesticides, LR 9:178 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011).

Chapter 7. Examinations, Certification and Licensing

Subchapter A. Examinations

§701. Examinations of Applicators, Salespersons and Agricultural Consultants

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

B. The director, in cooperation with the director of the Cooperative Extension Service or his designee, shall be responsible for the preparation of all examinations.

C. The director shall be responsible for the administration and grading of all examinations.

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

E. No person shall be allowed to take an examination in any category more than three times in a 12-month period.

F. Louisiana citizens who have failed any examinations under these standards shall not be permitted to receive certification under a reciprocal agreement with another state.

G. All applicants for private applicators' certification must be at least 16 years of age or an emancipated minor. All applicants for salesperson certification must be at least 18 years of age or an emancipated minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3241 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, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 15:76 (February 1989), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 28:39 (January 2002), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011).

Subchapter B. Certification

§709. Certification of Private Applicators

A. Certification for private applicators shall be issued only after the applicant has satisfactorily passed an examination or has satisfactorily completed a training course approved by the commissioner.

B. Examinations for certification for private applicators of pesticides will be given during office hours upon request of the applicant, in Baton Rouge, at the division, at any district office of the department, at any location approved by the director or at the office of the county agent in any parish of the state.

C. Each person that has been certified as a private applicator and whose certification has not been revoked, suspended or expired may renew that certification by attending a recertification meeting or passing an examination as approved by the commissioner.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011).

§711. Certification of Commercial Applicators

A. The commissioner hereby establishes the following standards as qualifications required for certification.

1. Standards applicable to all categories:

a. must be at least 18 years of age or an emancipated minor;

b. must be able to read and write the English language with sufficient proficiency to demonstrate comprehension of label and labeling content and instructions;

c. must submit an application for certification in the form required by the commissioner;

d. must be able to demonstrate knowledge of the principles and practices of pest control and the safe use of pesticides. Applicants must demonstrate these capabilities by successfully completing the general standards examinations;

e. must be able to successfully complete an examination in the specific category in which certification is sought;

f. all prior certifications, if any, must be in good standing at the time that the application for any examination is filed;

g. aerial applicators shall successfully complete the aerial application of pesticides examination.

2. An individual applying for certification in subcategory 7c (§711.B.2.g.iii) must have two years of experience in the phase of work in which he is making application. Required experience must be substantiated by a notarized statement acceptable to the commissioner.

3. An individual applying for certification in subcategory 8d (§711 B.2.h.iv) must have either:

a. a bachelor's degree with at least 12 hours in entomology; or

b. at least four years of experience in mosquito control working under supervision of a person certified in subcategory 8d. Required experience must be substantiated by a notarized statement acceptable to the commissioner.

4. Commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, who have been found to have violated a provision of the Louisiana Pesticide Law or any of the rules or regulations adopted pursuant to that law by the commission or the commissioner, or who received a "warning letter" from the department during the past calendar year, shall attend a department-approved off-target training course prior to making any application in the following year, in order to maintain their certification as a commercial aerial applicator.

5. Commercial aerial pesticide applicators who are certifying for the first time or who have not been certified within the past three years, with the single exception of aerial mosquito pest control applicators, must attend a department-approved off-target training course prior to making any application.

B. Categories are established on the basis of the location where the application of pesticides will be made, and each applicant for certification is required to successfully complete an examination in the category in which the applicant desires certification.

1. Certification in a category authorizes the commercial applicator to make application of or supervise the application of restricted use pesticides in the areas listed for each category.

2. The commissioner hereby establishes the following categories and subcategories of certification for commercial applicators.

NOTE: The classifications in this Subsection reflect national categories established by EPA.

a. Agricultural Pest Control (category 1). This category includes commercial applicators using or supervising the use of restricted use pesticides on agricultural lands, grasslands and non-crop agricultural lands.

i. This category also includes commercial applicators using or supervising the use of restricted use pesticides on animals and to places on or in which animals are confined.

ii. This category includes Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large scale use of pesticides.

b. Forest Pest Control (category 2). This category has been subdivided into the following three subcategories.

i. General Forestry (subcategory 2a). This subcategory includes commercial applicators using or supervising pesticides with restricted use to control pests in the regeneration, management, and production of forest stands.

ii. Forest Tree Seed Orchards and Nurseries (subcategory 2b). This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to control pests and undesirable plants in the production of forest tree seed, seedlings, and cuttings.

iii. Wood Processing (subcategory 2c). This subcategory includes wood or fiber processing firms such as sawmills, veneer plants, plywood plants, wood preservation plants and pulping facilities which use restricted use pesticides in the manufacturing process of wood products.

c. Ornamental and Turf Pest Control (category 3). This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

d. Seed Treatment (category 4). This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

e. Aquatic Pest Control (category 5). This category is subdivided into two subcategories.

i. Subcategory 5a includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in category 8 (Subparagraph B.2.h);

ii. Subcategory 5b includes commercial applicators using, or supervising the use of, any restricted use pesticide containing Tributyltin (TBT) in paints to be applied to vessel hulls and other marine structures to inhibit the growth of aquatic organisms such as barnacles and algae.

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.

g. Industrial, Institutional, Structural, and Health Related Pest Control (category 7). This category includes commercial applicators and nonfee commercial applicators using, or supervising the use of, pesticides with restricted uses in, on, or around food-handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses and grain elevators; and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products. This category has been subdivided into four subcategories.

i. Subcategory 7a is for pest control operators who are, or will be, certified and licensed by the Structural Pest Control Commission. The commissioner hereby delegates to the Structural Pest Control Commission the authority to examine and certify all persons in this subcategory. The commissioner hereby delegates to the Structural Pest Control Commission the authority to enforce all federal and state laws and regulations as they apply to persons certified under this subcategory.

ii. Subcategory 7b is for applicators who apply or supervise the application of restricted use pesticides on a nonfee basis in, on or around institutions, motels, hotels, hospitals and like places as the owner or in the employ of the owner and for persons applying or supervising the application of any herbicide, rodenticide, or insecticide for grass and weed control and rodent and general pest control

in, on, or around structures or grounds of government subsidized and administered housing and multiplex housing.

iii. Subcategory 7c is for applicators who apply, or supervise the application of, restricted use pesticides on a nonfee basis in, on, or around commercial grain elevators and other grain handling establishments, feed mills, flour mills, food processing plants, and other places where processed or unprocessed foods are stored, as the owner or in the employ of the owner. This subcategory is divided into three separate areas of certification:

- (a). (7c1) general pest control;
- (b). (7c2) vertebrate control;
- (c). (7c3) stored grain pest control.

iv. Subcategory 7d is for employees of a school or school system who apply or supervise the application of pesticides on a nonfee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or restricted use pesticides, in, on, or around structures and grounds of schools that provide education for classes kindergarten through 12. Pesticide applications for wood destroying insects shall be applied by licensed structural pest control operators. Each 7d certified applicator shall annually train all persons applying pesticides under his/her supervision in the proper handling, storage, use, application and disposal of pesticides.

h. Public Health Pest Control (category 8). This category is for commercial applicators and state, federal and other government employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance. This category has been subdivided into six subcategories, as follows.

i. Mosquito Control—Applicator (subcategory 8a). This subcategory is for commercial applicators and government employees who are applicators in mosquito control programs.

ii. Rodent Control (Subcategory 8b). This subcategory is for commercial applicators and government employees who are applicators in rodent control programs.

iii. Community Public Health (subcategory 8c). This subcategory is for commercial applicators and government employees who are applicators concerned with the control of all arthropods and rodents of public health importance.

iv. Mosquito Control: Program Supervisor (subcategory 8d). This subcategory is for commercial applicators and government employees who are program supervisors in organized mosquito control programs.

v. Antimicrobial Pest Control (subcategory 8e). This subcategory is for commercial applicators, including those in subcategory 7(a) found at LAC 7:XXIII. §711.B.2.g.i, engaged in antimicrobial pest control using restricted use pesticides.

vi. Sewer Root Control (subcategory 8f). This subcategory is for commercial applicators and government employees who are applicators engaged in root control in sewers using restricted use pesticides.

i. Regulatory Pest Control (category 9). This category includes state, federal or other governmental employees using or supervising the use of pesticides with restricted uses in the control of regulated pests.

j. Demonstration and Research Pest Control (category 10). This category includes individuals who demonstrate to the public the proper use and techniques of application of pesticides with restricted uses, or supervise such demonstrations and persons conducting field research with pesticides, and in doing so, use or supervise the use of pesticides with restricted uses. This category has been subdivided into eight subcategories:

- i. agricultural pest control;
- ii. forest pest control;
- iii. ornamental and turf pest control;
- iv. seed treatment;
- v. aquatic pest control;
- vi. right-of-way and industrial pest control;
- vii. industrial, institutional, structural and health related pest control;
- viii. public health pest control.

C. In addition to a determination of competence in a specific category or subcategory, each commercial applicator shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. In order to meet this requirement, each commercial applicator, at the time of initial certification in at least one category, must take a general standards exam.

D. Examinations for certification for commercial applicators will be given upon request of the applicant in Baton Rouge at the division or in any district office of the department during office hours. Request for exams in district offices must be made seven days in advance.

E. Each person that has been certified in any category or subcategory as a commercial applicator, and whose certification has not been revoked or suspended or expired, may renew that certification by attending a recertification meeting or training course for that category as approved by the commissioner.

F. The commissioner shall issue a certification card to each commercial applicator showing the categories or subcategories in which the applicator is certified. This certification card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form prescribed by the commissioner and by submitting the proper fee.

G. Each person who is certified as a commercial applicator need not be certified as a private applicator or a pesticide salesperson to apply or supervise the application of any restricted use pesticide as a private applicator, or to sell or supervise the sale of restricted use pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:324.

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 by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011).

§713. Certification of Pesticide Salespersons

A. Examinations for certification for pesticide salespersons will be given upon request of the applicant in Baton Rouge, at the division, or at any district office of the department. Each person who has been certified as a pesticide salesperson, and whose certification has not been revoked or suspended or expired, may renew that certification by attending a recertification meeting or training course for that category as approved by the commissioner. The commissioner shall issue a certification card to each pesticide salesperson. This card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form and the proper fee, as prescribed by the commissioner.

B. No pesticide salesperson shall sell or distribute any restricted use pesticide to any person who does not hold a valid certification card.

AUTHORITY NOTE: Promulgated In accordance with R.S. 3:3203, R.S. 3:3244 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:184 (April 1983), amended LR 10:194 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:280 (February 1998), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3474 (December 2011).

§715. Certification of Agricultural Consultants

A. Each application for Agricultural consultant shall be in writing and shall be on forms prescribed by the commissioner.

B. The agricultural consultant application experience requirements shall be substantiated by a notarized statement from the person who was responsible for the applicant during the time this experience was gained.

C. Each application for an agricultural consultant's examination shall be reviewed by an ad hoc committee appointed by the chairman of the commission. The committee shall consider the application and make its recommendation to the commission.

D. Each application for an agricultural consultant's examination shall be approved by the commission before an examination is administered. Examinations for agricultural consultants shall be administered only in Baton Rouge at the division during office hours and shall be administered only after payment of the proper fee.

E. Certification of Agricultural Consultants

1. Certification in a category authorizes the agricultural consultant to make recommendations in the areas listed for each category.

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. Making recommendations for the control of forest pests.

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

iv. Medical, Veterinary and Public Health Entomology. Making recommendations for control of arthropods affecting man and animals.

v. Orchard and Nut Tree Entomology. Making recommendations for the control of orchard pests.

vi. Ornamental Entomology. Making recommendations for the control of pests of ornamentals, lawns, turf and shade trees.

b. Control of Plant Pathogens (category 2)

i. Agricultural Plant Pathology. 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. 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. 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. 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. 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. Making recommendations for the control of weeds and grasses in ornamentals, turf areas, cemeteries and other similar areas.

iii. Forest Weed Control. Making recommendations for the control of weeds and grasses in forest lands.

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

d. Soil Management (category 4)

i. Agricultural Field Soil Management. 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. Knowledge of all diagnostic procedures pertaining to analysis of soil, water and/or tissue samples.

iii. Agricultural Soil Reclamation. 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. Knowledge of irrigation scheduling practices and techniques for various enterprises requiring water on a regular or intermittent basis.

E. Each person that has been certified in any category or subcategory as a agricultural consultant, and whose certification has not been revoked or suspended or expired, may renew that certification by attending a recertification meeting or training course for that category as approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3246 and R.S. 3:3249.

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), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3474 (December 2011).

Subchapter C. Licensing Requirements

§723. Owner-Operators

A. Every owner-operator of a pesticide application business must have a current license issued by the commissioner before making any applications of pesticides.

B. No person required by the provisions of R.S. 3:3243 to be licensed by the commissioner shall be licensed as an owner-operator unless such person:

1. has a current commercial applicator certification; or
2. employs a person having a current commercial applicator certification. All persons applying pesticides under an owner-operator license must maintain their commercial applicator certification in current status at all times.

C. No person may apply pesticides under an owner-operator license unless:

1. such person is named on the application for license; or
2. if employed subsequent to issuance of the license or on a temporary basis, the owner-operator has notified the commissioner of such employment prior to the first day of such employment. Initial notification of employment subsequent to issuance of the license may be made by telephone but must be confirmed, in writing, by the owner-operator within three days after the first day of employment.

D. Prior to issuance of the license, the applicant for an owner-operator license shall file proof of financial responsibility with the commissioner, as follows.

1. Ground Applicators—\$25,000
2. Aerial applicators who do not apply phenoxy herbicides—\$25,000
3. Aerial applicators who apply phenoxy herbicides—\$50,000

E. Proof of financial responsibility may be made by any of the following means:

1. filing a surety bond in the proper amount, written by a company authorized to do business in Louisiana and conditioned upon the licensee fulfilling his obligations to persons proven to have suffered damages as a result of actions of the owner-operator or any of his employees. Such surety bond shall provide for 90 days written notice to the commissioner prior to cancellation;
2. filing a certificate of insurance, in the form prescribed by the commissioner, in the same amount as required for a surety bond. Such insurance shall be payable

to the benefit of persons proven to have suffered damages as a result of the actions of the owner-operator or any of his employees and shall provide for 30 days written notice to the commissioner. Such insurance shall not be applied to damages or injury to agricultural crops, plants, or land being worked upon by the commercial applicator. An owner-operator shall not change the amount of such insurance during the period of the license without the prior written approval of the commissioner;

3. filing a certificate(s) of deposit in the same amount as required for a surety bond. Such certificates of deposit shall be assigned to the commissioner, endorsed, and deposited with the commissioner. Holders of such certificates shall continue to draw all interest thereon. Upon the request of the certificate holder, certificates of deposit may be exchanged at maturity, under procedures acceptable to the commissioner;

4. filing an irrevocable letter of credit, issued by a guarantor and in a form acceptable to the commissioner, which shall be non-cancelable during the term of the license for which the irrevocable letter is offered as security;

5. depositing cash equal to the amount required for the surety bond with the commissioner, which cash shall remain on deposit until replaced by other security acceptable to the commissioner or until expiration, suspension, or revocation of the license.

F. Failure to maintain the required security in full force and effect throughout the license period, as required under Subsection D of this Section, shall subject a licensee to immediate suspension or revocation of his license.

G. Applicants for owner-operator license must satisfactorily complete the application form prescribed by the commissioner and pay the fee.

H. Prior to issuance of the license and/or during the period of licensure, persons applying for owner-operator license under a corporate name must provide proof of compliance with Louisiana's Corporation Laws upon the commissioner's request.

I. Each application for owner-operator license must list all commercial applicators employed on a regular basis when the application is filed. Commercial applicators hired after the license is issued must be certified to the commissioner as required under this Section.

J. All mechanically powered pesticide application equipment used by any person required by the provisions of R.S. 3:3243 to be licensed by the commissioner shall have a department issued decal affixed to the equipment. The equipment shall be registered and decalled annually with the department.

K. Owner-operator licenses shall be valid until December 31 following date of issue and must be renewed annually by filing the application form prescribed by the commissioner, together with the fee, prior to December 31. A late fee of \$50 shall be imposed on any applicant filing application for renewal of an owner-operator license after December 31.

L. Licensed owner-operators who apply any pesticides which, upon disposal, are classified as hazardous wastes must comply with all rules adopted by the commissioner to regulate the handling of such pesticides prior to renewal of the license. If licensed after January 1, the owner-operator must comply with all rules regulating the handling of

pesticides, which upon disposal are classified as hazardous wastes, within 30 days after issuance of the license.

M. Any person whose license or required certification has been suspended or revoked may be required to appear before the commission prior to issuance of a new license or certification. No owner-operator license or required certification shall be reinstated after suspension or revocation unless the applicant for reinstatement has complied fully with all requirements of this Rule.

N. The commissioner may deny an owner-operator license or commercial applicator certification to any person who:

1. fails to demonstrate a knowledge of pesticides necessary for the safe and efficacious use thereof;

2. fails or has previously failed to comply with any requirement of these regulations and/or the pesticides statutes;

3. has previously been adjudged, in a properly conducted adjudication procedure, to have violated any provisions of the pesticide statutes and/or these regulations; and/or

4. has failed to apply for and receive a decal for every item of mechanically powered pesticide application equipment used in the operation of the business.

O. Grass-Cutter Exemption. A person, when applying a general use pesticide to the lawn or ornamental plants of an individual residential property owner using pesticides and pesticide application equipment owned and supplied by the property owner, is exempt from licensing provided the person does not advertise for or solicit herbicide (grass or weed control) application business and does not hold oneself out to the public as being engaged in herbicide (grass or weed control) application. The person shall not supply his/her own pesticide application equipment, use pesticide applying power equipment, or use any equipment other than a hand held container when applying the pesticide.

P. Licensed owner-operators and any person working under the license shall not apply any pesticide(s) which is in any way excluded from the coverage required by Subsection E of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission of Pesticides, LR 9:169 (April 1983), amended LR 10:194 (March 1984), LR 12:187 (February 1986), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 23:194 (February 1997), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3475 (December 2011).

§725. Pesticide Dealers Selling Restricted Use Pesticides

A. Pesticide dealers must be licensed by the commissioner prior to making any sale of restricted use pesticides.

B. No person shall be licensed as a pesticide dealer unless such person:

1. holds a current pesticide salesperson certification;
2. employs at least one person who holds a current pesticide salesperson certification; or
3. holds a current commercial applicator certification.

C. No person shall sell restricted use pesticides unless:

1. his/her name is listed on the application for pesticide dealer license; or

2. if employed after issuance of the license, the licensed pesticide dealer has notified the commissioner of such employment, in writing, within 30 days after the first day of such employment. Such subsequent notification shall contain the name, address, and certificate number of certified pesticide salespersons who are employed after the license is issued.

D. No licensed pesticide dealer may sell, offer for sale, or hold for distribution any pesticide which has not been registered with the department as required by R.S. 3:3221.

E. Applicants for pesticide dealer license shall satisfactorily complete the application form prescribed by the commissioner and pay the fee prior to issuance of the license.

F. Each application for pesticide dealer license shall contain the name, address, and certificate number of all certified pesticide salespersons.

G. Within 30 days after the termination of any certified pesticide salesperson listed on the license application form and/or certified to the commissioner after issuance of the pesticide dealer license, the licensee must notify the commissioner, in writing, of such termination.

H. Whenever such termination results in no certified pesticide salesperson at a licensed pesticide dealer's business, the pesticide dealer license shall be revoked 30 days after such termination, unless the licensee employs another certified pesticide salesperson within 30 days after termination of the original employee. In such event, the licensee may request the administration of an examination for pesticide salesperson certification on a priority basis, and the examination shall be immediately administered.

I. Pesticide dealer licenses shall be valid until December 31 following date of issue and must be annually renewed by filing the application form prescribed by the commissioner, together with the fee, prior to December 31. A late fee of \$50 shall be imposed on any applicant filing application for renewal of a pesticide dealer license after December 31.

J. Any person whose license or required certification has been suspended or revoked may be required to appear before the commission prior to issuance of a new license or certification. No pesticide dealer license shall be reinstated after suspension or revocation unless the applicant for reinstatement has complied fully with all requirements of this rule.

K. The commissioner may deny a pesticide dealer license or pesticide salesperson certification to any person who:

1. fails to demonstrate a knowledge of pesticides necessary for the safe and efficacious use thereof;

2. fails or has previously failed to comply with any requirement of these regulations and/or the pesticides statutes; and/or

3. has previously been adjudged, in a properly conducted adjudication procedure, to have violated any provisions of the pesticides statutes and/or these regulations.

L. Pesticide dealers shall maintain sufficient records to comply with the Hazardous Material Information Development, Preparedness, and Response Act (Act), for the required time as specified in the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3245.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:188 (April 1983), amended LR 10:195 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3476 (December 2011).

§727. Pesticides Dealers; Restrictions on Cash Sales

A. Pesticide dealers shall not sell the following restricted use pesticides for currency without first visually inspecting and confirming that the person seeking to purchase said pesticide holds the proper certification:

- 1. methyl parathion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3252 (A)(8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 19:609 (May 1993), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3477 (December 2011).

§729. Agricultural Consultants

A. No person shall be licensed as an agricultural consultant unless such person:

- 1. is currently certified as an agricultural consultant; or
- 2. employs a person currently certified as an agricultural consultant.

B. No person shall make pesticide recommendations for a fee unless:

- 1. his/her name is listed on the application for agricultural consultant license; or
- 2. if employed after issuance of the agricultural consultant license, the licensee has notified the commissioner in writing within 30 days after the first day of such employment. Notification of employment after the license is issued shall include the name, address, and certificate number of agricultural consultants employed by the licensee.

C. All applicants for agricultural consultant licenses shall complete the application form prescribed by the commissioner and pay the fee required prior to issuance of the license.

D. Each application for agricultural consultant license shall include the name, address, and certificate number of all certified agricultural consultants and the name and address of all field scouts employed by the applicant when the application for license is filed.

E. Each licensed agricultural consultant shall register every field scout employed under his/her license with the commissioner within 30 days after the first day of the scout's employment.

F. Reserved.

G. Agricultural consultant licenses shall be valid until December 31 following date of issue and shall be renewed annually by filing the application form prescribed by the commissioner, together with the fee required prior to December 31 of each year. A late fee of \$50 shall be imposed on any applicant filing application for renewal of an agricultural consultant license after December 31.

H. Any person whose license or required certification has been suspended or revoked may be required to appear before the commission prior to issuance of a new license or

certification. No agricultural consultant license shall be reinstated after suspension or revocation unless the applicant for reinstatement has complied fully with all requirements of this Rule.

I. The commissioner may deny an agricultural consultant license or certification to any person who:

- 1. fails to demonstrate knowledge of pesticides necessary for the safe and efficacious use thereof;
- 2. fails or has previously failed to comply with any requirement of these regulations and/or the pesticides statutes; and/or
- 3. has previously been adjudged, in a properly conducted adjudication procedure, to have violated any provisions of the pesticides statutes and/or these regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:188 (April 1983), amended LR 10:195 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3477 (December 2011).

Chapter 9. Fees

§901. Fees

A. Fees required under the Louisiana Pesticide Law to be adopted by regulation are established as:

Special Local Need Registration Application Fee	\$100
Examination Fees (for each exams' Private Applicator exempt)	
In Baton Rouge	\$25
At Meeting outside Baton Rouge	\$25
At District Offices	\$50
Duplicate Licenses and/or Certification Cards	Same as Original
	Postage + minimum of \$1 or Postage + \$0.25 /page
Requested Lists and Copies	

B. Fees for licensing shall be paid at the time of application for said license.

C. Fees for registration for field scouts and for equipment inspections shall be paid at the time of application for the appropriate license.

D. Fees for registrations, examinations, and certifications shall be paid at the time the application is submitted.

E. No application shall be processed until all criteria for which the application is made has been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3221, R.S. 3:3222 and R.S. 3:3251.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:194 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 24:281 (February 1998), amended by the Department of Agriculture and Forestry, Office of Commissioner, Advisory Commission on Pesticides, LR 30:197 (February 2004), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3477 (December 2011).

Chapter 11. Regulations Governing Application of Pesticides

§1101. General Requirements

A. No person shall apply pesticides as a commercial applicator unless such person is:

1. licensed as required under §725 hereof;
2. employed by a person licensed as required by §725 hereof;
3. making ground applications of pesticides under the direct supervision of a person certified as a commercial applicator; or
4. certified in demonstration and research.

B. No person shall apply any pesticide which is not registered with the department and the EPA, provided that this restriction shall not apply to:

1. activities conducted by persons certified in demonstration and research; and
2. activities conducted under an approved experimental use permit.

C. No person who is required under the provisions of R.S. 3:3243 to be licensed by the commissioner shall apply pesticides with mechanically powered pesticide application equipment which does not bear a current decal affixed by the commissioner, except as provided under §725.J.

D. No person shall apply any ester compound of phenoxy herbicide containing an aliphatic alcohol radical with less than six carbon atoms at any location within Louisiana.

E. All pesticides shall be applied in accordance with label and labeling requirements.

F. All persons who apply pesticides aerially must be certified as commercial applicators.

G. No person who is required under the provisions of R.S. 3:3243 to be licensed by the commissioner may dispose of any unused portions of pesticides and/or rinsate of pesticides at any location other than a site approved by the commissioner.

H. Commercial pesticide applicators applying any concentrations of agricultural pesticides shall not make applications from a height of greater than 18 feet for aerial applicators and 3 feet for ground applications, above the target field crops.

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), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3477 (December 2011).

§1103. Restrictions on Application of Certain Pesticides

A. In addition to all other pesticides classified by EPA as restricted use pesticides, the pesticides listed in Subsection B of this Section are classified as restricted use pesticides within the state of Louisiana, except:

1. when formulated in concentration of 2 percent or less; or
2. when formulated with fertilizer for use by homeowners; or
3. when formulated in containers of one quart or less or two pounds dry weight or less.

B. The following pesticides may not be applied by commercial applicators during the times set forth in this Rule in the areas listed in §1103.C, D and E.

Chemical Name	Common Name
1. 4-amino-3, 5,6-trichloro-picolinic acid	Picloram
2. Arsenic trioxide	---
3. 3-chlorophenoxy-alpha-propionamide	3-CPA
4. 4-chlorophenoxy acetic acid	4-CPA
5. 2,4-dichlorophenoxy acetic acid	2,4-D
6. 4-(2,4-dichlorophenoxy) butyric	2,4-DB
7. 2-methoxy-3, 6-dichlorobenzoic acid	Dicamba
8. 2-methyl-4-chlorophenoxyacetic acid	2, 4-MCPA
9. 4-(2 methyl-4-chlorophenoxy) butyric acid	---
10. 2-(2 methyl-4-chlorophenoxy)	2-MCPP
11. Arsenic acid	Arsenic
12. Sodium arsenite	---
13. 2-(2,4,5-trichlorophenoxy) ethyl 2,2 dichloropropionate	---
14. Tris (2,4-dichlorophenoxy ethyl) phosphite	---
15. A mixture of tri-, tetra-, and polychlorobenzoic acid	---

C. The pesticides listed in §1103.B shall not be applied by commercial applicators between March 15 and September 15 in the following parishes or wards:

1. Avoyelles;
2. Bossier;
3. Caddo;
4. Caldwell;
5. Catahoula;
6. Claiborne, Ward 4;
7. Concordia;
8. DeSoto, Ward 7;
9. East Carroll;
10. Evangeline, Wards 1, 3 and 5;
11. Franklin;
12. Grant;
13. Iberville Ward 9;
14. LaSalle;
15. Madison;
16. Morehouse;
17. Natchitoches;
18. Ouachita;
19. Pointe Coupee;
20. Rapides;
21. Red River;
22. Richland;
23. St. Landry;
24. St. Martin, Ward 5;
25. Tensas;
26. Union;
27. West Carroll;
28. West Baton Rouge, Wards 5, 6, and 7;
29. Winn, Ward 7.

D. The pesticides listed in §1103.B shall not be applied by commercial applicators between March 1 and June 15 in the area between the Mississippi River and Highway 61 in the parishes of St. James and St. John the Baptist.

E. The pesticides listed in §1103.B shall not be applied by commercial applicators in the parish of Plaquemines.

F. No commercial applicator may make application of the products listed in §1103.B and the following pesticides when the wind speed is at 10 miles per hour or above:

1. 3¹4¹-Dichloropropionanilide—Propanil;

2. 1:1-Dimethyl-4, 41-Bipyridinium (cation)—Paraquat;

3. Isopropylamine salt of glyphosate—Glyphosate;

4. Sulfosate Trimethylsulfonium carboxymethylaminomethyl-phosphonate—Touchdown;

5. Glufosinate-ammonium—Ignite.

H. Reserved.

I. Hand injections of pesticides are exempt from the requirements of §1103.C.

J. Reserved.

K. Reserved.

L. No person shall apply, use, or incorporate the use of any herbicide, as defined in §103, including but not limited to, those registered with and/or approved by the U.S. Environmental Protection Agency or the department, for the management, control, eradication or maintenance of weeds, grass, trees, shrubs, foliage, vegetation or other natural growth in any parish right-of-way, ditch, servitude, drainage area, roadside, road shoulder, green area, buffer zone, waterway, neutral ground or median in the unincorporated areas of St. Tammany Parish.

1. Definitions as used in this Subsection

Ditch—natural or dedicated area which provides for the containment or flow of water from rain or adjacent drainage areas or waterways such as streams, creeks, ponds, lakes or rivers.

Drainage Area—an area maintained for the purpose of channeling or preventing accumulation of water from surrounding land.

Easement—a designated right to use the property of another for a specific purpose, i.e., drainage, utility easement.

Median/Neutral Ground—the area dividing or separating a roadway and not used for right of passage.

Right-of-Way—any public way, street, road, alley, easement, servitude or access, which was dedicated to or acquired by the St. Tammany Parish to provide means of access to abutting properties; whether paved, improved or unimproved, including those areas dedicated for proposed or future uses.

Roadside/Road Shoulder—natural or dedicated areas which are parallel, contiguous to, abut, adjoin, border, edge, connect or approach any public right-of-way, road, street or highway.

Servitude—a right-of-way through or across property belonging to another.

2. Exemptions are hand held manual pump sprayers up to a maximum three-gallon capacity.

M. An ultra low volume (ULV) malathion and a ULV pyrethroid insecticide (tank mixed) may be applied to control plant bugs in cotton only between sunrise on May 15 through sunrise on September 15 of each year, subject to the following.

1. Applications shall be made at no less than seven day intervals at an application rate not to exceed the individual pesticide product labels and with no other dilutions or tank mixes.

2. Each application shall be reported, in writing and within 24 hours of the application, to the appropriate Boll Weevil Eradication Program district office by the farmer, agricultural consultant or owner/operator.

3. The report shall include the names and addresses of the farmer, agricultural consultant (if appropriate), owner/operator and applicator; the applicator's number issued by the department; the field name or number; the number of acres treated; the name and EPA registration number of the pesticide product; and the application date and time.

N. Reserved.

O. Regulations Governing Aerial Applications of 2, 4-D or Products Containing 2, 4-D

1. Registration Requirements

a. Prior to making any commercial aerial or ground application of 2, 4-D or products containing 2, 4-D, as described in §1103.P.3.a.i, the owner/operator must first register such intent by notifying the in writing.

b. All permits and written authorizations of applications of 2, 4-D or products containing 2, 4-D in the areas listed in §1103.P.3.a.i., shall be a part of the record keeping requirements, and be in the possession of the owner/operator prior to application.

2. Grower Liability. Growers of crops shall not force or coerce applicators to apply 2, 4-D or products containing 2, 4-D to their crops when the applicators, conforming to the Louisiana Pesticide Law and rules and regulations promulgated there under or to the pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this Section may be subject to a stop order, subject to an appeal to the commission.

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. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 3 and May 1 in the following parishes: 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 §1103.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D permitted by the department may be made in the area in Allen Parish which is south of Deer Farm Road and Carrier Road, north of U.S. Highway 190 between U.S. Highway 165 and Castor Creek and in the area in Evangeline Parish south of LA Highway 104, north of US Highway 190 and west of LA Highway 13. The request to the department for a permitted application shall be made in writing to the department and must be approved in writing by the Assistant Commissioner of the Office of Agricultural and Environmental Sciences or his designee.

4. Procedures for Permitting Applications of 2, 4-D or Products Containing 2, 4-D

a. Prior to any application of 2, 4-D, or products containing 2, 4-D, a permit shall be obtained in writing from

DPEP. Such permits may contain limited conditions of applications and shall be good for five days from the date issued. Growers or commercial ground or aerial applicators shall obtain permits from DPEP. Commercial ground and aerial applicators shall fax daily to DPEP all permitted or written authorized applications of 2, 4-D or products containing 2, 4-D. The faxed information shall include but not be limited to the following:

- i. wind speed and direction at time of application;
 - ii. temperature at time of application;
 - iii. field location and quantity of acreage;
 - iv. time of application;
 - v. grower name, address and phone number;
 - vi. owner/operator firm name, address and phone number;
 - vii. applicator name, address, phone number and certification number;
 - viii. product name and EPA registration number;
 - ix. any other relevant information.
- b. The determination as to whether a permit for application is to be given shall be based on criteria including but not limited to:
- i. weather patterns and predictions;
 - ii. wind speed and direction;
 - iii. propensity for drift;
 - iv. distance to susceptible crops;
 - v. quantity of acreage to be treated;
 - vi. extent and presence of vegetation in the buffer zone;
 - vii. any other relevant data.

5. Monitoring of 2, 4-D or Products Containing 2, 4-D

a. Growers or owner/operators shall apply to the DPEP, on forms prescribed by the commissioner, all requests for aerial applications of 2, 4-D or products containing 2, 4-D.

b. All owner/operators and private applicators shall maintain a record of 2, 4-D or products containing 2, 4-D applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

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 Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3478 (December 2011).

§1105. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A. Commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, shall adhere to the following standards for fixed wing aircraft, regarding boom configurations, nozzle angles, and volume of pesticides per acre.

1. The effective spray boom length shall not exceed 75 percent of the length of the wing (wing tip to wing tip) on which the boom is attached.

2. Except as follows, all spray nozzles shall be oriented to discharge straight back toward the rear of the aircraft. When applying insecticides by aircraft, with a maximum flying speed of less than 120 miles per hour, the applicator shall have the option to position nozzles at an angle of 45 degrees down from straight back or 45 degrees back from straight down.

3. The spray boom pressure shall not exceed a maximum of 40 pounds per square inch (40 PSI).

4. When disc and core type nozzles are used for herbicide, desiccant, or defoliant applications, a number 46 or larger core must be used.

5. Unless further restricted by other regulations or labeling herbicides shall be applied in a minimum of five gallons of total spray mix per acre.

6. Unless further provided for by other regulations or labeling all other pesticides shall be applied in a minimum of one gallon of total spray mix per acre. With the following exception:

a. insecticides applied in the Boll Weevil Eradication Program, which shall be applied in accordance with their labels.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3480 (December 2011).

§1107. Waiver of Restrictions

A. No commercial applicator shall apply any of the pesticides listed in §1103.B in the parishes and during the periods specified in §1103.C without written authorization from the commissioner prior to such application, except as described in §1103.P.

B. The commissioner may waive the time restrictions on application of pesticides listed in §1103.B upon written request, as follows.

1. Any commercial applicator desiring a waiver of any restriction contained in §1103 shall apply to the commissioner at least 24 hours prior to the date scheduled for application of the pesticide.

2. The application for waiver shall be submitted on a form provided by the commissioner and shall contain the following information:

a. the name and address of the person requesting the application;

b. the name of the applicator who will actually make the application;

c. the name of the owner-operator, if different from the applicator making the application;

d. the location where the application will be made, including the crop and name and address of the landowner;

e. the proposed date and hour when the application is scheduled; and

f. any other information pertinent to the specific waiver application which may be required by the commissioner.

C. Both the commercial applicator and the person for whom the pesticide application will be made must sign and date the waiver application.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:279 (March 2001), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3480 (December 2011).

§1109. Special Restrictions on Commercial Aerial Pesticide Applications; Applications in the Rain and Buffer Zones

A. All aerial pesticide applicators are prohibited from making an application of any pesticide while it is raining. This prohibition shall not apply to a drizzle of rain so light as to not cause puddling or run-off water from the field.

B. Unless further restricted by other regulations or labeling, commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, are prohibited from making an application of any pesticide within 100 feet from the edge of the swath to any inhabited structure, including but not limited to inhabited dwellings, hospitals, nursing homes and places of business. No aerial applicator, with the single exception of aerial mosquito pest control applicators, shall apply pesticides within 1000 feet of any school grounds during normal school hours.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3481 (December 2011).

§1111. Special Restrictions on Pesticide Applications in Schools

A. Any person who applies or supervises the application of pesticides on a nonfee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or restricted use pesticides, in, on, or around school structures and grounds shall be a certified commercial applicator or under the supervision of a certified commercial applicator.

B. School systems with 10 or more schools shall employ a minimum of two certified commercial applicators. School systems with less than 10 schools shall employ a minimum of one certified commercial applicator.

C. The governing authority (including but not limited to superintendents, headmasters, school boards, board of directors, chief executive officer, or principals) shall prepare and submit in writing, for each school under its authority, to the director, an annual integrated pest management (IPM) plan for pest control for grass and weed control and rodent and general pest control (roaches, wasps, and ants) in, on, or around school structures and grounds. The IPM plan shall include all pest control methods employed, including pesticide and non-pesticide methods and strongly recommends the least toxic methods of control. The first IPM plan shall be submitted prior to any application of pesticides beginning March 1, 1995 and shall be submitted on an annual year of August 1 through July 31. The plan

shall be available for review, upon request, by the commissioner and the general public, during normal school hours, at each school, in the business office. The annual IPM plan shall include, but not be limited to the following:

1. school name and mailing address, physical address, telephone number and contact person;
2. name and license or place of business number of company(s) and certification numbers of applicators, if contracted;
3. name and certification number of certified commercial applicator(s) of school system;
4. brand name and EPA registration number of all pesticides to be used;
5. for each pesticide to be used a list of the following:
 - a. pest to be controlled;
 - b. type of application to be used;
 - c. location of application;
 - d. restricted use pesticide or general use pesticide;
6. proposed location and date for non-certified applicator training;
7. other methods of pest control.

D. Any deviation from the integrated pest management plan submitted shall be submitted in writing to the director, within 24 hours after any application.

E. Records of pesticide applications shall be maintained according to §2101 and records of inspections, identification, monitoring, evaluations, and pesticide applications for grass and weed control and general pest control, shall be maintained by the school and submitted with the annual integrated pest management plan to the department annually on a form prescribed by the department in accordance with §2101.

F. No pesticides shall be applied for general pest control inside school buildings and no restricted use pesticides shall be applied in, on or around school grounds when students are present or expected to be present for normal academic instruction or extracurricular activity for at least eight hours after application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 21:928 (September 1995), amended LR 23:194 (February 1997), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3481 (December 2011).

§1113. Complaints

A. Persons filing complaints shall, at the same time the complaint is filed, execute a consent form granting access to the property for the purpose of inspection.

B. Each person filing a crop injury complaint must notify the commissioner at least 24 hours before the start of harvest of the alleged injured crop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3255.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3481 (December 2011).

Chapter 13. Pesticide Containers and Bulk Facilities

§1301. Pesticide Containers

A. Storage Areas for Full or Partially Full Pesticide Containers

1. Pesticide containers shall be stored in a secure enclosure.

2. Pesticide containers shall be free of leaks.

3. The storage area shall be maintained in good condition, without unnecessary debris.

B. Pesticide containers shall be cleaned and disposed of according to the product label.

C. Pesticide containers, ready for disposal, shall be stored in a secured area and shall be kept for no more than 90 days after the end of the product spraying season or 180 days if held for recycling.

D. Rinsate from pesticide container cleaning shall be used in the following manner:

1. in subsequent applications of the pesticide; or

2. placed in a rinsate collection system dedicated to that pesticide and used according to the label and labeling by the end of that applicable pesticide's spray season; or

3. disposed in a permitted waste facility.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended LR 11:943 (October 1985), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3482 (December 2011).

§1303. Bulk Facilities

A. Bulk facilities:

1. shall be registered with LDAF as a bulk facility and EPA as a producing establishment;

2. shall have a written contract/agreement from each pesticide's registrant prior to repackaging a pesticide. The contract/agreement for each registrant's product shall include but not be limited to the following:

a. the label and labeling; and

b. the residue removal procedure; and

c. a description of acceptable containers;

3. shall not change the pesticide formulation without an EPA registration for a new pesticide formulation;

4. shall repackage the pesticide into containers that:

a. are identified as acceptable by the registrant; and

b. meet the specified criteria with respect to continued container integrity, required markings and openings;

5. shall be responsible for:

a. the integrity of pesticides repackaged into containers; and

b. securely attaching the label containing the net contents and EPA establishment number to the container;

6. can repackage any quantity of pesticide into containers, up to the rated capacity of the container. There are no limits on the size of the containers;

7. shall clean a refillable container, according to the residue removal procedure, if one or more of the following occur:

a. each tamper-evident device is not intact; or

b. one-way valve (if equipped) is not intact; or

c. the container previously held a pesticide product other than the pesticide product being refilled;

8. shall not refill a refillable container with an agricultural pesticide if it fails an inspection or is compromised in at least one of the following ways:

a. the container shows signs of rupture or other damage which reduces its structural integrity; or

b. the container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects; or

c. the container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation; or

d. there is damage to the fittings, valves, tamper-evident devices or other appurtenances; or

e. the integrity of the container cannot be repaired, reconditioned or remanufactured; or

f. The container does not bear a legible and durably marked serial number or other identifying code; or

g. The container does not have an intact and functioning one-way valve, if required or tamper-evident device on each opening other than a vent;

9. shall keep and maintain for three years the following records:

a. the registrant-bulk facility written contract/agreement; and

b. the residue removal procedure; and

c. the description of acceptable containers; and

d. for each time a refillable container is refilled with an agricultural pesticide:

i. the EPA registration number of the pesticide product; and

ii. the date of repackaging; and

iii. the serial number or other identifying code of the container;

e. for containment structures:

i. inspection date; and

ii. name of person conducting inspection or maintenance; and

iii. conditions noted and specific maintenance performed; and

f. records of how long non-stationary tanks (with the specified capacities) remain at the facility; and

g. construction date of the structure (for as long as the structure is in use and for 3 years afterwards);

10. shall have secondary containment structures for stationary pesticide containers except for the following:

a. empty containers; or

b. containers holding only rinsate or wash water and so labeled; or

c. containers holding pesticides which are gaseous at atmospheric temperature and pressure; or

d. containers dedicated to non-pesticide use and so labeled;

11. shall have containment pads for dispensing areas if:

a. refillable containers of agricultural pesticide are emptied, cleaned or rinsed; or

b. agricultural pesticides are dispensed from any stationary container; or

c. agricultural pesticides are dispensed from a transport vehicle into a refillable container; or

d. agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container or filling a non-refillable container for sale or distribution;

12. containment structures shall:

a. be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head and load of any substances, equipment and appurtenances placed on the structure; and

b. be compatible with the pesticides stored; and

c. be liquid-tight with cracks, seams and joints sealed; and

d. not be constructed of Natural earthen material, unfired clay and asphalt;

13. shall protect appurtenances and containers against damage from personnel and moving equipment.

14. shall seal appurtenances, discharge outlets or drains through the base or wall of existing containment structures, except direct connections between containment structures.

15. shall not configure appurtenances, discharge outlets or drains through the base or wall of new containment structures, except direct connections between containment structures.

16. shall control stormwater in all containment structures by constructing with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto them from adjacent land or structures.

17. shall have the following for new and existing secondary containment:

a. liquid pesticide stationary containers shall be anchored or elevated to prevent flotation.

b. dry pesticide stationary containers shall:

i. be protected from wind and precipitation; and

ii. be on pallets or raised concrete; and have a floor that extends completely beneath the pallets or raised concrete platforms; and

iii. be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container;

18. shall have the following for containment pads:

a. for existing pads:

i. intercept leaks and spills; and

ii. have enough surface area to extend under containers on it; and

iii. accommodate at least the portion of the vehicle where the hose or device couples to it, for transport vehicles delivering pesticide; and

iv. allow for removal/recovery of spilled, leaked or discharged material and rainfall; and

v. have no automatic pumps without overflow cutoffs.

b. for new pads be designed and constructed to:

i. intercept leaks and spills; and

ii. have enough surface area to extend under containers on it; and

iii. accommodate at least the portion of the vehicle where the hose or device couples to it, for transport vehicles delivering pesticide; and

iv. allow for removal/recovery of spilled, leaked or discharged material and rainfall;

v. have no automatic pumps without overflow cutoffs; and

vi. have their surface sloped toward an area where liquids can be collected for removal;

19. shall:

a. prevent pesticides from escaping the structure;

b. manage spilled and leaked materials no later than the end of the day of occurrence except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment and according to the label and all regulations;

c. ensure that transfers of pesticides are attended;

d. lock valves on stationary pesticide containers or lock the facility, whenever the facility is unattended;

e. initiate repair to any areas showing damage and seal cracks and gaps no later than the end of the day on which damage is noticed and complete repairs within a reasonable time frame, taking into account factors such as the weather, and the availability of cleanup materials, trained staff and equipment. Additional pesticides cannot be stored until repairs have been made; and Equip stationary containers with suitable sample points for official samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3482 (December 2011).

Chapter 15. Mechanically Powered Pesticide Application Equipment

§1501. Commercial Applicators

A. The following systems or controls must be present and in good operating order prior to the issuance of a decal.

1. Aerial and Ground Application Equipment

a. The hopper must be free of leaks and in good working order; and

b. all equipment must include a properly functioning pressure gauge(s).

2. Aerial Application Equipment

a. The booms, nozzles, and hose fittings must be free of leaks;

b. the emergency dump, if present on an aircraft, must be free of leaks when in the closed position;

c. there must be a main fluid filter between the main tank and the boom system; and

d. the distance between the outermost nozzles on the boom of a fixed wing aircraft shall not be more than 75 percent of the wing span of the aircraft. The boom on the rotary-wing aircraft may not exceed the rotor diameter. The commissioner may waive these requirements for specific aircraft.

3. secondary containment and containment pads are required for dispensing pesticides from stationary containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:198 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:281 (February 1998), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3483 (December 2011).

Chapter 17. Monitoring of Commercial Applicator Operations

§1701. Monitoring of Commercial Applicator Operations

A. Duly authorized representatives of the commissioner may inspect all pesticide applicator operations semi-annually, with or without prior notification, provided that the commissioner may monitor such sites on a more frequent basis whenever, in his sole discretion, he determines that there is a need for more frequent monitoring of any specific commercial applicator.

B. In such monitoring, the authorized representative of the commissioner shall:

1. inspect the physical surroundings of the site to determine that all requirements of these regulations have been complied with;
2. inspect the records required by this Part;
3. take samples, as determined by the commissioner, at any of the following locations:
 - a. any site where an application of pesticides has been made by the applicator;
 - b. any base storage;
 - c. any containment tank for pesticides which, upon disposal, are classified as hazardous wastes;
 - d. any surface impoundment;
 - e. any wash pad;
 - f. any soils or water, flowing or still, at any location on or adjacent to the base operation; or
 - g. any application equipment (i.e., hopper tanks and connections, mixing tank, etc.).

C. Any samples taken as provided above shall be marked for identification under chain of custody procedures and shall be analyzed in accordance with procedures approved by the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency.

D. The owner-operator from whose operations any sample is taken shall be provided with a copy of the analysis results within 30 days after the analysis is completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3201.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:198 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3484 (December 2011).

Chapter 19. Requirements for Access, Examination and Sampling

§1901. Pesticide Dealers and Pesticide Salespersons

A. The commissioner, upon reasonable request, shall be permitted access to any premises where restricted use pesticides are sold, offered for sale, or held for distribution.

B. The commissioner may examine the records required under §2105 and may take samples of any restricted use pesticides found on the premises.

C. Such samples shall be marked for identification by accepted chain of custody requirements and shall be analyzed in accordance with procedures approved by the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency.

D. The owner of any restricted use pesticide from which such sample is taken shall be provided with a copy of the analysis results within 30 days after the analysis is completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3245.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:198 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3484 (December 2011).

§1903. Agricultural Consultants

A. The commissioner, upon reasonable request, shall be permitted access to the records required under §2105.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR:3484 (December 2011).

Chapter 21. Record Keeping Requirements

§2101. Owner-Operators, Non-Fee Commercial Applicators, and Commercial Applicators

A. Any person applying pesticides for a fee and commercial applicators described in §711, with the single exception of applicators listed in §711.B.2.g Category 7, shall accurately maintain, for a period of two years, records of pesticide applications on a record keeping form or record keeping format approved by the director. Records described herein must be maintained, within three days of the application, at the physical address of the employer or the physical address on the owner/operator license. A copy of these records shall be provided to any employee of department upon request at a reasonable time during normal working hours. The following information shall be included on that form:

1. owner/operator name, address, and license number;
2. certified applicator, name, address, and certification number;
3. customer name and address;
4. product/brand name;
5. EPA registration number;
6. restricted/general use pesticide;
7. application date;
8. crop/type of application;
9. location of application;
10. size of area treated (acres, square feet, or minutes of spraying);
11. rate of application;
12. total amount of product (concentrate) applied;
13. applicator;
14. certification number of applicator (if applicable).

B. Non-fee commercial applicators as described in §711.B.2.g, category 7, shall accurately maintain, for a period of two years, records of applications of all herbicides, insecticides, rodenticide, and fumigants on the appropriate record keeping form as described in LAC 7:XXV.117.I and §2101.A and approved by the director. Records described herein shall be maintained, within seven days of the application, at the physical address of the employer. A copy of these records shall be provided to any employee of the

department upon request, at a reasonable time during normal working hours.

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

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, LR 21:929 (September 1995), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3484 (December 2011).

§2103. Pesticide Dealers and Salespersons

A. The requirements of this rule apply to sales of:

1. pesticides classified as restricted use pesticides by the commissioner or the EPA;
2. pesticides which, upon disposal, are classified as hazardous wastes; and
3. pesticides listed in §1103.B, except when sales of pesticides listed in §1103.B are:
 - a. sold in concentrations of 2 percent or less; or
 - b. formulated with fertilizers for use by homeowners.

B. Licensed pesticide dealers, certified pesticide salespersons, and/or persons under the direct supervision of a certified dealer or salesperson shall maintain the following records on a current basis for a period of two years:

1. the name and amount of the pesticide purchased and/or sold;
2. the date of all purchase and/or sale transactions;
3. the name, address, and certification number of the purchaser, including the purchaser's name, address, and certification number in all purchases made for cash;
4. the name of the person handling any sales of pesticides covered by this Rule.

C. Whenever any pesticides which, upon disposal, are classified as hazardous wastes are delivered to a purchaser, the records required under this Rule shall include the name of the purchaser, amount of pesticide purchased, date of delivery, and location to which delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3245.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3485 (December 2011).

§2105. Agricultural Consultants

A. Every recommendation made by an agricultural consultant shall be in duplicate original and shall be dated and signed by the agricultural consultant.

B. Each recommendation made by an agricultural consultant shall include the following:

1. the name and address of person purchasing the consultant's services;
2. the location, including the crop, for which the recommendation is made;
3. the pesticide or pesticides recommended;
4. the recommended rate of application;
5. a brief statement as to the reasons for the recommendation; and
6. the date of when the recommendation is given.

C. The pesticide recommendation shall be given to the purchaser of the consultant services or his designee and a copy shall be maintained in the records of the agricultural consultant.

D. The commissioner, or his duly authorized representative, shall be permitted access to such records upon reasonable request.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3485 (December 2011).

Chapter 23. Penalties

§2301. Penalties for Violation of Pesticide Statutes and These Regulations

A. The commissioner may suspend or revoke any license issued under the provisions of R.S. 3:3241-3257 and/or may assess a civil penalty not to exceed \$5,000 for violation of any provision of R.S. 3:3201 through 3:3257 or any violation of any regulation enacted under the authority of said statutes.

B. Each separate day on which any violation occurs may be considered as a separate violation.

C. No penalty may be assessed by the commissioner prior to the holding of an adjudicatory hearing before the commission. 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. The commission shall recommend penalties to be imposed as a result of findings of fact and/or conclusions of law that a violation occurred.

E. Whenever the commissioner fails to accept the recommendations of the commission for the imposition of penalties following an adjudicatory proceeding, the commissioner shall notify the commission, in writing, of the reasons for his failure to accept the commission's recommendations.

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 Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3485 (December 2011).

Chapter 25. General Requirements for Rinsate Water

§2501. Rinsate Water

A. Rinsate from certified applicator's cleaning pesticide application equipment shall be used in the following manner:

1. in subsequent applications of the pesticide; or
2. placed in a rinsate collection system dedicated to that pesticide and used according to the label and labeling by the end of that applicable pesticide's spray season; or
3. disposed in a permitted waste facility.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:397 (May 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3485 (December 2011).

Chapter 27. Handling Pesticide Spills by Applicators

§2701. Handling Pesticide Spills

A. All uncontained spills of more than one gallon liquid or four pounds dry weight must be reported to the director of Pesticides and Environmental Programs within 24 hours by telephone and by written notice within three days.

B. The costs of cleanup resulting from pesticide spills are the responsibility of the person who spills the pesticide.

C. Cleanup of pesticide spills shall be approved by the director.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:397 (May 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3486 (December 2011).

Chapter 29. Emergency Procedures Related to Pesticides

§2901. Definitions

A. In addition to the definitions listed below, and unless otherwise provided, the definitions in R.S. 3:3202 and §103 shall apply to this Subchapter of these regulations.

Complaint—any information or report of any pesticide-related problem which could adversely affect human health or the environment.

Emergency—a situation involving pesticides where there is imminent danger to human health or to the environment.

Environment—includes water, air and land and the interrelationship which exists among and between water, air, land and all living things.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3486 (December 2011).

§2903. Identification of Emergency

A. Procedure

1. Persons detecting or discovering what they reasonably believe to be an emergency involving the use, misuse or storage of pesticides shall immediately contact the division via the 24-hour telephone hotline at (225) 925-3763.

2. Personnel receiving any complaint related to pesticides shall record the information required on department-approved telephone complaint forms.

3. Personnel receiving any complaint that could constitute an emergency shall immediately notify the director.

4. Upon notification, the commissioner shall make a determination as to whether an emergency exists. This determination shall be made as soon as possible. In determining the gravity of the danger, the commissioner shall consider whether the pesticides have resulted in the death of marine life or wildlife and whether the maximum

contaminant levels established by §3103 have been exceeded.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3486 (December 2011).

§2905. Declaration of Emergency

A. Upon determining that an emergency exists, the director shall immediately declare in writing that an emergency exists and direct that the following emergency procedures be employed. The director shall notify the appropriate governmental agencies and the media as soon as is practical, and in no case later than eight hours after declaration of emergency.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3486 (December 2011).

§2907. Response to Emergency

A. Containment. At the earliest possible time, the director shall direct and supervise efforts to accomplish the containment of the emergency.

B. Identification of Pesticide. The pesticide or pesticides involved in the emergency shall be identified. Efforts to identify the pesticide(s) shall include, but not be limited to the following:

1. labels of containers of the pesticides or other substances involved shall be consulted;

2. the point source or non-point source shall be investigated and if determined, the relevant records and storage areas of that source examined;

3. all emergency reports shall be reviewed by the director's staff;

4. if indicated, an investigation shall be made relative to any recalled, suspended or canceled pesticides;

5. samples shall be obtained at the earliest possible time and analyzed in accordance with procedures approved by the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency.

C. Reporting Requirements. If it is reasonably believed that a pesticide emergency has taken place, all appropriate requirements for reporting to the department shall be complied with, according to §2903.

D. Investigation. In investigating any possible or known pesticide emergencies, the following information shall be sought and recorded:

1. the date, time and location of the incident;

2. the date and time the incident was reported to the department;

3. the department employee receiving the report;

4. from whom the report was received;

5. who initiated the investigation, along with the date, time and place the investigation was initiated;

6. the identity and location of any witness(es);

7. the time, place and circumstances under which each witness' statement was taken and whether such statement was confirmed;

8. the time, description and location of any samples taken;

9. the time, description and location of any other physical evidence; and

10. any information obtained, including that obtained through the inspection of records relevant to causation, identity of pesticide, containment, clean-up, and disposal.

E. Remediation

1. At the earliest possible time, the director shall develop a written plan for clean-up and disposal of pesticide waste as necessary to accomplish remediation of the emergency. In developing said plan, the director shall consider at a minimum, the following information if ascertainable:

a. the location of the land where the pesticide(s) was applied;

b. the year, month, date and time the pesticide(s) was applied;

c. the product name(s) used on the registered label, and the scientific name(s);

d. the inert ingredients contained in the pesticide(s);

e. the United States Environmental Protection Agency and state registration numbers of the pesticide(s) that were applied;

f. the crop and site to which the pesticide(s) was applied;

g. the amount of pesticide(s) applied per acre, or other appropriate measure;

h. the concentration of pesticide(s) that was applied as well as concentrations in the soil and water to indicate extent of contamination;

i. the applicator's business name, if any;

j. the applicator's name, address, and telephone number;

k. if applied aerially, the direction and velocity of the wind at the time the pesticide(s) were applied; and

l. possible hazards to human health that may result from the release considering both direct and indirect effects of the pesticide(s) application.

2. The director shall issue appropriate remedial orders as are necessary to accomplish the plan for clean-up and disposal.

F. Health Related Complaints. Any complaint involving a health-related emergency shall be handled according to the agreement entered into between the department and the Louisiana Department of Health and Hospitals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural and Environmental Sciences, LR 18:247 (March 1992), amended LR 20:641 (June 1994), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3486 (December 2011).

§2909. Declaration of Termination of Emergency

A. When remediation is complete or there no longer exists a situation involving imminent danger to human health or the environment, the director shall declare in writing that the emergency has ended. The director shall

notify the appropriate governmental agencies and the media as soon as it is practical.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3487 (December 2011).

Chapter 31. Water Protection

§3101. Definitions

A. In addition to the definitions listed below, and unless otherwise provided, the definitions in R.S. 3:3202 and §103 shall apply to this Subchapter of these regulations.

Base Line Conditions—the pesticide level found in the water of a site immediately preceding the pesticide application season.

Maximum Contaminant Level—the maximum permissible concentration level of a pesticide in the waters of the state.

Pesticide Application Season—that period of time during the year that insecticides, herbicides or other pesticides are normally used on agricultural lands in a given area.

Reasonable Expectation of a Threat—a condition that is probable to lead to substantive injury to human health or the environment.

Threat—a condition that would lead to substantive injury to human health or the environment.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3487 (December 2011).

§3103. Establishment of Standards for Pesticides in Water

A. The maximum contaminant level standards as published by EPA shall be incorporated as standards for pesticides in waters of the state.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3487 (December 2011).

§3105. Procedures for the Determination of Threats

A. The procedures for determining whether pesticide concentrations exceed maximum contaminant level standards or pose a threat or reasonable expectation of a threat to human health or the environment shall be:

1. the department shall maintain a water monitoring program;

a. water sample collection sites shall be distributed throughout the state. The locations of said sites shall be selected by criteria including, but not limited to:

i. those areas that have agricultural land use;

ii. those areas that have water drainage from agricultural lands;

iii. the propensity for runoff due to topography, soil types and other characteristics;

iv. data from aquifer potential maps used to locate well sampling sites in a wide spectrum of the state's aquifers; and

v. proximity to pesticide application of irrigation wells or shallow private water wells;

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 as determined by the commissioner;

c. analytical parameters shall be established for each sampling site and shall be based upon, but not limited to, the following criteria:

i. the major crop(s) grown in the area of the monitoring site;

ii. the pesticide(s) most commonly used on the major crop(s) of the monitoring site area; and

iii. the base line conditions existent prior to the pesticide application season;

d. base line conditions at each water sampling site shall be established by water sampling and analysis prior to the pesticide application season;

e. the analysis of water samples shall be accomplished in accordance with procedures of the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency;

2. the commissioner shall consider results of the analysis of the samples, the criteria established in R.S. 3:3306(C), and/or other relevant data and shall promptly determine whether a threat or reasonable expectation of a threat to human health or to the environment exists and whether the standards as adopted herein have been exceeded.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3487 (December 2011).

§3107. Determination of Appropriate Action

A. Upon determination by the commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists or that the maximum contaminant level standards as adopted herein have been exceeded he shall:

1. promptly direct that thereafter the emergency procedures established by Chapter 29 of this Part be employed;

2. complete sufficient investigation as to permit appropriate action.

B. In determining appropriate action as to the pesticide involved the commissioner shall consider:

1. registration denial;
2. stop orders for use, sales or application;
3. label changes;
4. remedial or protective orders;
5. injunctive relief; and

6. any other relevant remedies.

C. In determining appropriate action as to the responsible party the commissioner shall consider:

1. referral for criminal prosecution;
2. referral to the commission;
3. remedial or protective orders;
4. injunctive relief; and
5. any other relevant remedies.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:249 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3488 (December 2011).

Chapter 33. Pesticide Wastes

§3301. Listing of Hazardous Pesticide Wastes

A. The commissioner shall annually, on or before December 31, publish in the *Louisiana Register* a full and complete list of all pesticides which, upon disposal, are classified as hazardous wastes under regulations of EPA and may supplement such listing at any time when any changes in such classifications are made by EPA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3488 (December 2011).

§3303. Procedures for Monitoring

A. In the course of conducting routine monitoring of pesticides, the commissioner shall monitor for the presence of pesticide wastes.

B. Monitoring for the presence of pesticide wastes shall include, but not be limited to, investigations involving canceled or suspended products, spill responses, and citizen complaints.

C. The procedures for monitoring pesticide wastes shall include but not be limited to the following activities:

1. visual or other sensory observations of conditions which may support the probability or actuality of the presence of pesticide wastes;

2. inquiries into the relevant circumstances surrounding the probability or actuality of the presence of pesticide wastes which may include sample taking and analysis; and

3. a preliminary determination as to whether or not there is a presence of pesticide wastes based upon the observations and the inquiries or upon relevant data, shall be made by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3271 and R.S. 3:3273.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:609 (May 1993), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3488 (December 2011).

§3305. Procedures for Determinations

A. When the director makes a preliminary determination as a result of monitoring or otherwise, that there is a presence of pesticide wastes as a result of monitoring or

otherwise, the procedures for determining whether the concentrations of pesticide wastes exceed promulgated federal or state standards, or that the concentrations of pesticides pose a threat or reasonable expectations of a threat to human health or to the environment are as set out below.

1. The commissioner shall take into consideration the following:

- a. the results of the analysis of samples, if available;
- b. the criteria established in R.S. 3:3274; and
- c. other relevant data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3271 and R.S. 3:3274.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:609 (May 1993), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3488 (December 2011).

§3307 Appropriate Actions

A. When the commissioner has determined that there is a presence of pesticide wastes and that the pesticide wastes do not exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides do not pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner may take one or more of the following actions:

1. issue appropriate orders to provide for proper disposal;
2. take such other action as the commissioner deems appropriate under circumstances.

B. When the commissioner has determined that there is a presence of pesticide wastes and that the pesticide wastes exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner may take one or more of the following actions:

1. issue appropriate protective orders to mitigate the further contribution to the accumulation of the pesticide or pesticide wastes;
2. issue remedial orders directing prompt remedial action to correct the offending situation;
3. communicate his determination to any appropriate governmental agency;
4. participate in issuing a public communication concerning the determination. Where a cooperative agreement exists, each public communication shall be issued in accordance with same;
5. take such other action as the commissioner deems appropriate under circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:610 (May 1993), amended LR 19:1120 (September 1993), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3489 (December 2011).

§3309. Record Keeping

A. In addition to the record keeping requirements set out in this Part, all persons conducting or having conducted activities of, generating, owning, possessing, storing, transporting, or disposing of pesticide wastes, shall keep copies of all records required by local, state or federal laws or regulations for a period of not less than three years from the receipt of any such record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:610 (May 1993), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3489 (December 2011).

§3311. Transportation of Pesticide Waste

A. All persons transporting pesticide wastes shall transport such wastes in a manner that conforms to the procedures and requirements set forth by the Louisiana Department of Environmental Quality and the Louisiana Department of Public Safety, in addition to all other applicable local, state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:610 (May 1993), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3489 (December 2011).

Chapter 35. Health Complaints

§3501. Notification of Pesticide Poisoning

A. Each physician who treats a health complaint that is diagnosed as caused by pesticide poisoning shall provide notice of the poisoning to the director of the division via the 24-hour telephone hotline, (225) 925-3763, within 24 hours of the diagnosis and in writing posted within three days of the diagnosis. Each report shall contain the following:

1. the name, address, and telephone number of the treating physician;
2. the name, address, and telephone number of each patient treated;
3. date of treatment; and
4. the location of the facility where the reporting physician provided treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and 3:3208.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences Programs, LR 20:642 (June 1994), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3489 (December 2011).

Mike Strain, DVM
Commissioner

1112#066

RULE

Department of Children and Family Services Economic Stability Section

Child Care Assistance Program and Quality Start (LAC 67:III.Chapter 51)

In accordance with provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services (DCFS), Economic Stability (ES), has amended the Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 12, Chapter 51, Sections 5107, 5109, 5113, 5117, 5119, 5121, and 5123.

The department finds this amendment necessary to address changes within the new Child Care Resource and Referral (CCR and R) contracts, to address possible fraud and penalties for fraud, and other needed revisions identified through best practices in Quality Start.

Section 5107 has been amended to include summer care programs at participating schools as an option for Child Care Assistance Program (CCAP), to include identity requirements for providers, owners, and directors of centers, to include in-home provider health statement requirements, and to clarify reasons a CCAP provider may be disqualified rather than terminated.

Section 5117 has been amended to require directors to be on site at the center participating in Quality Start a minimum of 30 hours a week during operating hours in addition to meeting director qualifications for licensure.

Section 5119 has been amended to replace some training required of staff to earn points in Quality Start with other training and for clarification of information regarding attendance at directors' meetings.

Section 5121 has been amended to address possible fraud and penalties for fraud for centers participating in Quality Start and to reflect the replacing of the midpoint review of star awards with a rating review of a percentage of participating centers.

Sections 5109, 5113, and 5123 have been amended for language clarification.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter B. Child Care Providers

§5107. Child Care Providers

A. The head of household, or parent/caretaker relative in the case of a STEP participant, shall be free to select a child care provider of his/her choice including center-based child care (licensed Class A centers, licensed Class A Head Start centers which provide before-and-after school care and/or summer programs, and child care centers licensed by the Department of Defense), a registered family child day care home (FCDCH) provider, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, before and after school and/or summer programs.

B. A licensed Class A center, licensed Class A Head Start center, or center licensed by the Department of Defense must be certified and active in the CCAP provider directory before payments can be made to that provider.

1. To be eligible for participation in CCAP, a licensed Class A center, licensed Class A Head Start center, or center licensed by the Department of Defense must complete and sign a Class A or Department of Defense provider agreement as appropriate and Form W-9, and meet all requirements, including:

a. provide complete and accurate documentation and information required for direct deposit;

b. participate in the system designated by the department for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a working internet connection at the center. A landline telephone can be substituted only if internet connection is unavailable due to no provider of service at the level required.

c. provide verification of identity and Social Security number of all owners and directors.

C. An FCDCH provider must be registered and active in the CCAP provider directory before payments can be made to that provider.

1. To be eligible for participation in CCAP, an FCDCH provider must meet registration requirements as provided in R.S. 46:1441 et seq., complete and sign an FCDCH provider agreement, complete a CCAP application for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number, identification, and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements, including:

a. - c. ...

d. submission of criminal background check(s) on all adults living at the provider's residence or employed by the provider and working in the provider's home or on the provider's home property, including the provider; each of which must be received from State Police indicating no enumerated conviction if the provider is a relative of a child in care;

e. effective March 1, 2002, submission of verification of 12 clock hours of training in job-related subject areas approved by the Department of Children and Family Services annually;

f. - i. ...

j. participation in the system designated by the department for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a working internet connection or a landline telephone.

2. All registration functions for FCDCH providers, as provided in R.S. 46:1441 et seq. and as promulgated in the *Louisiana Register*, September 20, 1991, previously exercised by the Bureau of Licensing, shall be carried out by the Department of Children and Family Services.

D. An in-home child care provider must be certified and active in the CCAP provider directory before payments can be made to that provider.

1. To be eligible for participation, an in-home child care provider must be at least 18 years of age, complete and sign an in-home provider agreement and Form W-9, pay appropriate fees, furnish verification of Social Security number, identification, and residential address, and meet all certification requirements, including:

a. - b. ...

- c. submission of a criminal background check conducted by State Police indicating no enumerated conviction;
- d. ...
- e. retain a statement of good health signed by a physician or his designee which must have been obtained within the past three years and be obtained every three years thereafter;
- f. possession of or access to a working telephone that can receive incoming calls and that can send outgoing calls and that is available at all times in the home in which care is being provided;
- g. participation in the system designated by the department for capturing time and attendance.

E. - E.4. ...

5. participate in the system designated by the department for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a landline telephone;

E.6. - F.7. ...

G.1. A provider shall be denied or terminated as an eligible CCAP provider:

- a. if an FCDCH provider fails to pass inspection by the fire marshal;
- b. if a provider fails to timely return all requested forms and fees;
- c. if a Class A or Department of Defense center's license is revoked or not renewed;
- d. if a school child care provider no longer meets the BESE regulations;
- e. if a school child care provider is no longer Brumfield vs. Dodd approved; or
- f. for any period for which the provider is disqualified as described in LAC 67:III.5113;
- g. if a Class A, Department of Defense, or school child care provider fails to submit complete and accurate documentation and information required for direct deposit.

G.2. - H.2. ...

I. On a limited basis due to one-time American Recovery and Reinvestment Act (ARRA) funding, an incentive will be offered to certain Quality Start centers with a collaborative agreement with a local education agency to provide pre-kindergarten, specifically C. Picard Pre-kindergarten Program (LA 4). Payments will be available on a first-come, first-serve basis to up to three qualifying centers in each DCFS region. The bonus will be equal to \$500 for each child included in the agreement. The collaborative agreement can be based on, but not limited to, the following criteria:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189(February 2003), LR 30:496 (March 2004), LR 30:1484 (July 2004), LR 31:102 (January 2005), LR 31:2263

(September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:845 (April 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2535 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3490 (December 2011).

§5109. Payment

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

b. the state maximum rate for authorized services effective January 1, 2007, and with the addition of rates for Class M centers effective October 30, 2009, as indicated below.

Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Class A	\$17.50	\$18.50	\$21.65	\$22.65
Class E	\$15.00	\$16.00	\$18.50	\$19.50
Class R	\$15.00	\$16.00	\$18.50	\$19.50
Class U	\$14.50	\$15.50	\$17.90	\$18.90
Class M	\$17.50	\$18.50	\$21.65	\$22.65

B.2. - D. ...

E. Payment will not be made for absences of more than five days by a child in any calendar month or for an extended closure by a provider of more than five consecutive days in any calendar month. A day of closure, on a normal operating day for the provider, is counted as an absent day for the child(ren) in the provider's care. If a child authorized for full-time care attends child care less than four hours in one day, this will be counted as a half day absent and half the daily rate will be paid to the provider. No absences will be authorized for part-time care.

Exception: In cases of a federal/state/locally declared emergency situation, or other special circumstances, the department may at the discretion of the assistant secretary waive this absence policy.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445(December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:847 (April 2010), LR 36:1279 (June 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3491 (December 2011).

§5113. Disqualification Periods for CCAP Providers

A. A child care provider shall be disqualified from receiving CCAP payments if the department determines that certain acts or violations have been committed by that provider. CCAP disqualifications shall apply as follows:

1. - 3.c....

4. A validated complaint of child abuse or neglect due to lack of supervision shall be deemed by the department as either a category 1 or a category 2 complaint, based on the severity of the complaint and the circumstances that existed at the time of the complaint.

5. - 6.c. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:2208 (October 2008), LR36:556 (March 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2536 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3491 (December 2011).

Subchapter C. Child Care Quality Rating System

§5117. Definitions

* * *

Child Care Resource and Referral (CCR and R)—a state and/or local organization with whom the department has contracted to provide services to families, early childhood professionals, and communities statewide.

* * *

Director—an administrator who meets the director qualifications as outlined in Louisiana Administrative Code, Title 67, Chapter 73, Section 7311 and is on site a minimum of 30 hours per week during operating hours when children are present.

* * *

Louisiana Pathways Child Care Career Development System—the state practitioner registry maintained by the Department of Children and Family Services and/or its contractor. LA Pathways registers child care directors and staff according to requirements based on training and education, experience, and professional activities, as approved by the Department of Children and Family Services. Categories are established for child care staff, child care assistant teacher, child care teacher, child care assistant director and child care director. Information on LA Pathways can be found at <http://pathways.louisiana.gov/> or www.dss.state.la.us.

* * *

AUTHORITY NOTE: 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2783 (December 2007). amended LR 34:2408 (November 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3492 (December 2011).

§5119. Quality Start Child Care Rating System Requirements

A. ...

B. The secretary of the Department of Children and Family Services, in specific instances, may waive compliance with a requirement if it is determined that the economic or adverse impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or children are not imperiled. If it is determined that the facility or individual is meeting or exceeding the intent of a requirement, the requirement may be deemed to be met. The decision to grant or deny a waiver rests with the sole discretion of the secretary.

1. - 2.b.i. ...

ii. Give every parent enrolling a child a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, SNAP assistance and information on a child's medical home.

2.c. - 3.a. ...

b. Staff Qualifications

Points	Criteria
1	<p>Directors and all lead teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director (on site)</p> <ol style="list-style-type: none"> Six semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework², and One year experience teaching young children in an early childhood program. <p>Assistant Director</p> <p>Three semester hour credits in the care of young children or child development.¹</p> <p>Lead Teacher</p> <p>All of lead teachers must complete three semester hour credits in the care of young children or child development from a list of approved courses¹ or enroll in the course and complete the course within one year of employment.</p> <p>Assistant Teacher</p> <p>Fifty percent of assistant teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>
2	<p>Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Nine semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year of teaching experience and one year teaching or administrative experience in an early childhood program. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of lead teachers must have completed six semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>Fifty percent of assistant teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>

3	<p>Directors and all teachers complete training in Louisiana’s Early Learning Guidelines and Standards which encompasses information from Louisiana’s Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Twelve semester hour credits in the care of young children or child development¹; and Six semester hour credits of administrative coursework²; and Three years experience in an early childhood setting as follows: At least one year of teaching experience and at least one year of administrative experience and one year of either teaching or administrative experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of lead teachers must have completed nine semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed six semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>Fifty percent of assistant teachers must have completed three semester hour credits in the care of young children or child development¹.</p>
4	<p>Directors and all teachers complete training in Louisiana’s Early Learning Guidelines and Standards which encompasses information from Louisiana’s Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Fifteen semester hour credits in the care of young children or child development¹; and Six semester hour credits of administrative coursework²; and Four years experience in an early childhood setting as follows: At least one year of teaching experience and at least one year of administrative experience and two years of either teaching or administrative experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of lead teachers must have completed 12 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed nine semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment and Two years full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>All assistant teachers must have completed three semester hour credits in the care of young children or child development¹.</p>
5	<p>Directors and all teachers complete training in Louisiana’s Early Learning Guidelines and Standards which encompasses information from Louisiana’s Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Associate’s degree in the care of young children, child

	<p>development or related field, with specific coursework in infant-toddler care, and the care of exceptional children or equivalent such as Director III LA Pathways and</p> <ol style="list-style-type: none"> Six semester hour credits of administrative coursework² and five years experience in an early childhood setting as follows: At least one year of teaching experience and at least one year of administrative experience, and three years of either teaching or administrative experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Six semester hour credits in the care of young children or child development¹; and Three semester hour credits in administration²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> All lead teachers must have six semester hour credits in the care of young children or child development¹ from a list of approved courses; and Seventy-five percent of lead teachers must have completed 15 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment; and Two years full-time experience in an early childhood setting for all teachers. <p>Assistant Teacher</p> <p>All assistant teachers must have completed six semester hour credits in the care of young children or child development¹ or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment.</p>
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c. An additional quality point can be earned by meeting additional requirements in both the administration practices and the family and community involvement areas.

Quality Point	
Points	Criteria
1	<p>Administration Practices - meet three requirements below:</p> <ol style="list-style-type: none"> Provide four of the benefits from the list⁴ of options below for all full-time staff. Include grievance procedure and a professional conduct code for staff in written personnel policies. Pay scale based on education, experience, responsibilities and merit. Provide training to staff on cultural sensitivity. Written parent and staff confidentiality policy and provide training to staff <p>and</p> <p>Family and Community Involvement - meet four requirements below:</p> <ol style="list-style-type: none"> Director or assistant director participates annually in at least two director’s meetings provided by the resource and referral agency. Provide a complaint process for parents. Offer opportunity for a formal parent/teacher conference meeting annually. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, Child Care Assistance, housing assistance, SNAP assistance and information on a child’s medical home. Parent Advisory Council meets annually to review policies, procedures and parent handbook. One group meeting per year offered to all families. One parent education workshop offered per year by center or other agency.

The following footnotes reference program criteria and staff qualifications in Section 5119:

Staff Qualifications

¹The following may be substituted to meet this requirement of three semester hour credits in the care of young children or

child development: a current CDA or have approved high school child development courses or have five years full-time experience in an early childhood program or have completed a Child Care Assistant Teacher 1 LA Pathways Classroom Certificate. The following may be used to meet the requirement of up to six semester hour credits in the care of young children or child development: current CDA or have completed a Child Care Assistant Teacher 2 LA Pathways Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of six semester hour credits.

²The following may be substituted to meet the requirement for three semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or three years experience in administration or a combination of one year in administration experience and four years in teaching young children in an early childhood program.

NOTE For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next rating review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

³For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R - Listening and Talking, Interaction and Program Structure; ECERS-R - Language-Reasoning, Interaction and Program Structure.

⁴Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, paid professional association fee.

AUTHORITY NOTE: 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated in accordance with the Department of Social Services, Office of Family Support, LR 33:2784 (December 2007), amended LR 34: 2408 (November 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3492 (December 2011).

§5121. Participation

A. A child care center will complete the application to participate in the Quality Start Child Care Rating System at one star. If awarded, this will establish the center's initial year in the system.

B. Centers with two to five stars may submit an application for a star(s) six months after the date of award of the current rating or denial of an award. A verification visit will be conducted by the department prior to the award of two or more stars.

C. Quality ratings will be valid for two years from the date of the star rating award as long as the center continues to qualify for the star rating. A rating review, which may be a visit or verification of documentation, will be conducted on a percentage of participating centers to ensure continued compliance.

D. Centers that have achieved a star rating may have their rating reviewed and modified. If at any time, it becomes known to the department or the department receives information from the center that the child care center no longer meets standards for the center's current star rating award.

E. Centers that have achieved a star rating will have their rating revoked if the child care license is revoked or not renewed.

F. Centers that have achieved a star rating may have their rating revoked, or centers applying may be denied, if it

is determined by the department that false or misleading statements or documents have been submitted or misrepresented or relevant facts have been concealed or withheld in order to qualify or maintain a star(s) in the quality start child care rating system or to obtain the school readiness tax credit (SRTC).

G. The provider must reimburse the department for all ineligible benefits received.

H. Participation in the quality start child care rating system is voluntary. There are no administrative appeal rights for providers whose participation is denied or terminated.

I. Centers that have their star award revoked by quality start may be prohibited from participating in quality start for 12 months from the date of revocation of star award.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2788 (December 2007), amended LR 34:2412 (November 2008), amended LR 36:332 (February 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3494 (December 2011).

§5123. Quality Start Child Care Rating System Tiered Bonus Payments

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program and for children in the state's Foster Care Program in accordance with the star rating. The payment is equal to a percentage, as defined below, of all child care subsidy payments received by the center from DCFS for services provided during the service period(s) in that quarter and the center's rating(s):

1. one star—0 percent;
2. two star—3 percent;
3. three star—8 percent;
4. four star—13.5 percent;
5. five star—20 percent.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2788 (December 2007), amended LR 34:2412 (November 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:3194 (December 2011).

Ruth Johnson
Secretary

1112#058

RULE

Department of Economic Development Office of the Secretary

Angel Investor Tax Credit Program
(LAC 13:I.3301, 3303, 3305 and 3307)

Under the authority of R.S. 47:6020 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development adopts LAC 13:I.3301 relative to the administration of the Angel Investor Tax Credit Program.

The purpose of this regulation is to explain the procedure employed for the administration of the Angel Investor Tax Credit Program under R.S. 47:6020 as enacted by Act 414 of the 2011 Regular Session of the Legislature. The regulation discusses how businesses qualify as a Louisiana entrepreneurial business, who is considered an accredited investor, how businesses should apply for the credits on behalf of their investors, how the Department of Economic Development will administer the \$5 million annual cap for the program and other determinations relevant to the program.

**Title 13
ECONOMIC DEVELOPMENT**

Part I. Financial Incentive Programs

Chapter 33. Angel Investor Tax Credit

§3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2011(Act 414 of 2011; R.S. 47:6020, the provisions of which shall hereinafter be referred to as "Act 414") is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 414. For the purposes of this Chapter, the "department" shall be Louisiana Economic Development.

B. Act 414 repealed the Angel Investor Tax Credit Program Act of 2005 and replaced it with the reenacted provisions of R.S. 47:6020. Therefore, effective July 8, 2011, which is the date the governor signed Act 414, the department must recertify all Louisiana entrepreneurial businesses and all annual and program caps for individual businesses will start over.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011).

§3303. Accredited Investor

A. An *accredited investor* shall be defined as:

1. an angel pool (which may be a limited liability corporation or limited liability partnership, as provided below) as determined by the department, all of whose participants shall be accredited investors;

2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;

3. a person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;

4. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or

partnership shall not exceed that person's share of the profits of the LLC.

B. Angel pools may receive certification from the department upon showing:

1. the proposed pool of investors is organized solely for the purposes of making angel investments;

2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in deal reviews as well as post investment review of company performance;

3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;

4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011).

§3305. Louisiana Entrepreneurial Business

A. A *Louisiana Entrepreneurial Business* shall be defined as those businesses approved by the department under Act 414 and that meet the following requirements.

1. A business shall provide the department with a business plan that includes all appropriate long and short term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 414 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than 50 percent of its sales will be from outside of Louisiana;

c. employs 50 or fewer full-time employees; and

d. the business has either gross annual sales of less than \$10 million or a business net worth of less than \$2 million.

2. Exclusions

a. Businesses primarily engaged in the following activities are not eligible to be certified as a Louisiana entrepreneurial business: retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, and financial services, including venture capital funds.

b. Businesses primarily engaged in the following activities may qualify as a Louisiana entrepreneurial business but only if the department, in its discretion, determines from the business plan that the company is a wealth-creating business for Louisiana: state or local government enterprises, business associations and professional organizations as defined in North American Industry Classification System (NAICS) code 8139, automotive rental and leasing, local solid waste disposal, local sewage systems and local water systems businesses, hospitals or nonprofit organizations.

3. Such other findings by the department as shall be consistent with Act 414, provided that under no circumstances shall the department's certification of the applicant as a Louisiana entrepreneurial business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Certification of a Louisiana entrepreneurial business shall be obtained from the department by submitting the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 414 electronically to an email address specified by the department on its website. Upon receipt, the department shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana entrepreneurial business. The department's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year from the date of the department's letter. The certification may be extended for additional one year periods upon application to the department showing that the business continues to be an entrepreneurial business within the meaning of the Act and these Rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the department. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 414 and these Rules with respect to the administration of the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011).

§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits

A. The following rules shall be applicable to investments by accredited investors in Louisiana entrepreneurial businesses.

1. For calendar year 2011, the department will begin accepting applications on September 1 and for calendar years 2012-2015, the department will begin accepting applications on January 1. The allocation of credits for all years will be administered on a first come, first serve basis until the annual \$5 million cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated.

a. Upon receipt of an application for the reservation of credits, the department will send the business a reservation letter indicating the dollar amount of credits which their investors are entitled to receive if proof of investment can be shown.

b. Each business applicant will have to decide on their application if they are willing to accept a prorated credit amount should their application be received on the day the cap is reached. The business will also have to determine

what percentage of proration they will accept. If the business does not indicate in their application a willingness to accept a prorated credit amount at the percentage of proration available on the day the cap is reached, their application will be deemed to have been received the day following the day in which the cap was reached.

c. Proof of investment must be provided to the department within 60 days from the date of the reservation letter. The department will accept the subscription agreement as required by the Securities and Exchange Commission as proof of investment.

d. If proof of investment is made within the requisite 60 day period, the department will issue a tax credit certification letter to the investor.

i. The tax credit certification letter will include the investor's name, address, Louisiana taxpayer identification number and the amount of the credit. The tax credit certification letter will include a breakdown of which years and in what amounts per year the credit will be claimed.

ii. The Louisiana Department of Revenue will receive a copy of the tax credit certification letter for purposes of verification of the credits.

e. If proof of investment is not provided to the Department within the requisite 60 day period, the angel investor tax credits which had been reserved for that company's investors will be added to the remaining available annual credit cap.

f.i. Any returned reservation credits whose businesses could not provide proof of investment within 60 days, will be allocated when available on a first come, first serve basis until the annual \$5 million cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated. Returned reservation credits will be made available the sooner of

(a) the day returned reservation credits exceed the amount of credits requested in applications in line to receive credits the next day or

(b) the day all 60 day proof of investment periods have expired.

ii. The timeline for proof of investment will be the same 60 day period as mentioned above.

g. A business who fails to provide proof of investment within 60 days will not be allowed to apply for angel investor credits again for a three month period. The three month period will begin on the day following the end of the 60 day period for proof of investment.

B. All applications for the reservation of credits shall be made on a form prescribed by the department. All applications for the reservation of credits shall be submitted to the department electronically to an email address specified by the department on its website.

C. An investment earns tax credits in the calendar year in which the investment is made. The request for the reservation of credits for an investment must be made in the same year in which the investment is made.

D. The angel investor tax credits should be claimed on the investor's income and corporation franchise tax returns in accordance with the statutory requirements of R.S. 47:6020(D)(3).

E. Transfers of the angel investor tax credits will be allowed in compliance with R.S. 47:6020(F).

F. The Angel Investor Tax Credit Program has a program cap of \$5 million in tax credits granted per calendar year. In the event that the total amount of credits granted in any calendar year is less than \$5 million, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the \$5 million limit for each year.

G. For purposes of receiving angel investor tax credits, an investor may not invest more than \$1 million per year per business or more than \$2 million per business total over the life of the program.

H. The department has the authority to change the administration of the Angel Investor Tax Credit Program when it is deemed necessary for the effective administration of the program. Notice of any change in administration will be done with 10 day prior notice published on the Department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3196 (December 2011).

Kristy G. McKearn
Undersecretary

1112#062

RULE

**Department of Economic Development
Office of Business Development Services**

Industry Assistance Program (LAC 13:I.Chapter 17)

The Department of Economic Development, Office of Business Development Services, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104 and 36:108 hereby amends the following rules of the Industry Assistance Program.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 17. Industry Assistance Program

§1701. Use of Louisiana Contractors, Labor and Supplies

A. The Louisiana Department of Economic Development ("LED") and the Board of Commerce and Industry ("board") encourages applicants and their contractors to give preference and priority to Louisiana manufacturers and in the absence of Louisiana manufacturers, to Louisiana suppliers, engineers, contractors and labor except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications under this program for whole or partial exemptions from taxation as provided by Section 1715 herein, the secretary, board, governor and Joint Legislative Budget Committee may take into account:

1. the past and projected future capital investment of the applicant in its Louisiana facilities;

2. the applicant's use of machinery, supplies and equipment manufactured in Louisiana, or sold or distributed by Louisiana residents;

3. the business potential for a clustering of industries including the applicant, or the applicant as a factor in an existing cluster; and

4. the applicant's creation or continuance of new and retained employment of Louisiana residents; and

5. the applicant's use of projected use of Louisiana engineers, contractors and labor in the construction, maintenance and operation of applicant's facilities.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3497 (December 2011).

§1703. Qualifications

A. To qualify for the exemption, in whole or in part, from the taxation referenced in Section 1715, the applicant must be:

1. a person defined as an *employer* within the meaning of R.S. 51:2453(1)(b)(1) and in §1105.A.1-A.5 of the quality jobs rules promulgated by this board;

2. an existing business with operating Louisiana facilities. The applicant must be able to demonstrate to the board's satisfaction that because of the exemption as well as its current and projected operating business plan and projections with the exemption, it will continue to maintain its current employment levels and will commit to significant investment sufficient to continue to grow and prosper in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3497 (December 2011).

§1705. How to Apply

A. An "advance notification" of intent to file for industry assistance shall be filed by the company at least 90 days prior to filing an application. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. Application to the Board of Commerce and Industry for the Industry Assistance Program must be filed with the Louisiana Department of Economic Development, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed, along with the required additional information.

C.1. An application fee shall be submitted with the application based on the following range of taxes estimated to be exempted.

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

2. LED reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

D. Application must be accompanied by five years of comprehensive financial statements, prepared in accordance with generally accepted accounting principles; and, which contains relevant information that will support the application justification. The justification should refer to qualitative as well as quantitative information contained in the financial statements which can materially demonstrate the need for the program benefits, and the resulting cost/impact benefits to the state on the basis of sound business plans and objectives. Qualitative information for the previous five year period should provide explanation about: economic resources, past and projected capital investment in the facilities, past and projected employment levels in the facilities and the wages, salaries and employee benefits paid to employees and projected into the future, the sources of prospective cash inflows: obligations to transfer economic resources to others, the causes of prospective cash outflows; and earnings, the financial results of operations and other events and conditions that affect the enterprise, and comparables for the applicant's similar facilities and operations in other states.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3497 (December 2011).

§1707. Additional Information May Be Required

A. In addition to the information contained in the application, the applicant shall make available any additional information and records that LED and/or the board may request.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1709. Public Hearings

A. The Board of Commerce and Industry shall conduct a public hearing on an application for exemption that receives the recommendation of the secretary of Economic Development who, personally or through his designee, shall present his recommendations to the Board of Commerce and Industry. After due consideration to all facts and testimony, the Board of Commerce and Industry shall determine whether or not the approval of the application should be recommended to the governor and to the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1711. Requirements for Exemption

A. The secretary of Economic Development, the Board of Commerce and Industry, the governor and the Joint Legislative Committee of the Budget may consider any and all factors which are relevant to the continued operations of the applicant. These should include, but not be limited, to the following:

1. the benefits to the state in terms of continued employment opportunities, payroll, expenditures for goods and services, contributions to the revenue base of the state and local governments and the creation of new and additional permanent jobs in conjunction with the considerations set forth in §§1701 and 1703 of these rules;

2. competitive conditions existing in other states or in foreign nations including the effect, if any, of United States and foreign trade policies, federal laws and regulations, and the competitive effect of like or similar policies upon related businesses;

3. the economic viability of the applicant and the effect of any tax exemption on maintaining or increasing capital investment, employment levels economic viability as reflected in the business plan of the applicant and the manner in which it addresses future competitive contingencies and other conditions pertinent to the prospects for maintaining or increasing investment capacity and job growth;

4. the applicant's history of compliance with Louisiana and federal environmental, tax, fair trade, civil rights and other laws in its operations.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1713. Approval of the Joint Legislative Committee of the Budget and the Governor

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendations together with all supporting documents and the recommendations of the Department of Economic Development to the governor and the Joint Legislative Committee of the Budget the assessor of the parish in which the plant is located, each member of the legislature, and the governing authority of each political subdivision as required by the statute. The governor and the Joint Legislative Committee on the Budget may determine that all, part or none of the recommendation of the board is to be followed and upon making that determination, shall advise each other and the board that the recommendation is rejected, or that the board may, subject to any restrictions imposed by the governor or the Joint Legislative Committee of the Budget, enter into a contract with such establishment exempting it from taxation.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of

Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1715. Taxes to be Exempt

A. The Department of Economic Development shall report to the governor and to the Joint Legislative Committee of the Budget the effect upon the applicant of the taxes or portions thereof to be exempt. Taxes that may be exempted include:

1. the corporation franchise tax;
2. sales and use taxes imposed by the state on any goods, services, material and supplies necessary for or used in manufacturing or production of a product or consumed by the applicant;
3. sales and use taxes imposed by the state on machinery and equipment to be used by the applicant, or materials and building supplies, whether purchased directly or through a contractor, to be used in the repair, reconstruction, modification or construction of plant and facilities;
4. the corporation income tax;
5. any other taxes imposed directly by the state on the applicant.

B. The Department of Economic Development shall recommend to the governor, such tax relief as shall be appropriate to and consistent with the purposes of statute and these rules. Provided, however, that the governor and the Joint Legislative Committee on the Budget shall agree to a determination of the relief to be provided by contract with the applicant subject to a maximum amount of exemption from taxation.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1717. Limits to Amount of Tax Exemption

A. The total amount of tax exemptions that can be granted to any single applicant shall be reasonably proportionate to the amount that shall be granted to other applicants based upon each applicant's total number of employees in Louisiana and amount of capital investment in Louisiana, provided that the wages for each job must equal or exceed the average wage paid in the parish or parishes of business operation of the applicant. Exceptions may be made if the department determines and recommends to the Board of Commerce and Industry that an additional amount of exemption will materially improve the viability and stability of the applicant's operation in Louisiana as measured by jobs created or retained and capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1719. Contract Subject to Annual Audit and Review

A. The contract shall provide that the applicant will be subject to an annual audit by the Louisiana legislative auditor. The company will receive notice of the annual review 45 days in advance. A review fee of \$100 must be returned and received 15 days prior to the appointment date

of the annual review. The contract will be reviewed annually by both the Board of Commerce and Industry and the Joint Legislative Committee of the Budget. Should the audit or other review or other known facts and circumstances uncover a violation of the contract, the Board of Commerce and Industry, with the approval of the governor and the Joint Legislative Committee of the Budget, shall give notice, thereof, in writing, and unless the violation is corrected within 90 days, any remaining portion of the exemption from taxation granted under any contract entered into under this statute may be canceled. The contract may also be canceled if the need for the exemption or the grounds for the exemption are no longer applicable.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1721. Renewing the Contract

A. The initial contract can be entered into for any period not exceeding five years. Each contract may be renewed for periods of up to five years providing that:

1. the total number of years of exemption shall not exceed 15 years;
2. the applicant can show that it is in the best interest of the state of Louisiana to extend the contract;
3. the renewal is recommended by the Department of Economic Development, and the Board of Commerce and Industry; and
4. the renewal is approved by the Joint Legislative Committee on the Budget and the governor.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1725. Economically Disadvantaged Business Set-Aside

A. Any establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to economically disadvantaged businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such economically disadvantaged businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Community Outreach Services (the "division") for assistance in identifying qualified, economically disadvantaged businesses.

C. Each affected applicant establishment shall submit to the division, at the time of submitting an application for industry assistance to the Office of Business Development Services, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each establishment shall include the following:

a. an affirmation that the establishment is committed to compliance with the intent of the economically disadvantaged business set-aside statutes and rules;

b. the methods it will use to:

i. encourage economically disadvantaged business participation;

ii. keep records of economically disadvantaged business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with economically disadvantaged businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from an economically disadvantaged business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by an economically disadvantaged business in a timely manner; or

iii. cannot be performed by an economically disadvantaged business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Paragraph D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the economically disadvantaged business set-aside statutes and Rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the economically disadvantaged business set-aside statutes and Rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4306; R.S. 39:1956.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR

15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

Kristy Mc Kearn
Undersecretary

1112#061

RULE

Department of Economic Development Office of Business Development Services

Tax Equalization Program (LAC 13:I.Chapter 19-25)

The Department of Economic Development, Office of Business Development Services, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104 and 36:108 hereby adopts the following rules of the Tax Equalization Program.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 19. Tax Equalization Program

§1901. General

A. Intent of Law. For qualifying manufacturing establishments, headquarters, or warehousing and distribution establishments, the Board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Tax Equalization Program is an inducement to attract, retain, and encourage the expansion of, manufacturing establishments, headquarters, and warehousing and distribution establishments to Louisiana, which would not do so in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3500 (December 2011).

§1903. Louisiana Manufacturers and Suppliers

A. The Louisiana Department of Economic Development ("LED") and the Board of Commerce and Industry ("board") encourages applicants and their contractors to give preference and priority to Louisiana manufacturers, and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications under this program

for whole or partial exemptions from taxation as provided by Section 1715 herein, the secretary, board, governor and Joint Legislative Budget Committee may take into account:

1. the past and projected future capital investment of the applicant in its Louisiana facilities;
2. the applicant's use of machinery, supplies, and equipment manufactured in Louisiana, sold or distributed by Louisiana residents;
3. the business potential for a clustering of industries including the applicant, or the applicant as a factor in an existing cluster; and
4. the applicant's creation or continuance of new and retained employment of Louisiana residents; and
5. the applicant's use of projected use of Louisiana engineers, contractors and labor in the construction, maintenance and operation of applicant's facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3500 (December 2011).

§1905. Economically Disadvantaged Business Set-Aside

A. Any establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to economically disadvantaged businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such economically disadvantaged businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Community Outreach Services (the "division") for assistance in identifying qualified, economically disadvantaged businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Business Development Services, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each establishment shall include the following:

- a. an affirmation that the establishment is committed to compliance with the intent of the economically disadvantaged business set-aside statutes and rules;
- b. the methods it will use to:
 - i. encourage economically disadvantaged business participation;
 - ii. keep records of economically disadvantaged business participation;
 - iii. require compliance by its bidders, contractors, and subcontractors for their contracts with economically disadvantaged businesses;
- c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

- i. cannot be purchased from an economically disadvantaged business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;
- ii. cannot be delivered by an economically disadvantaged business in a timely manner; or
- iii. cannot be performed by an economically disadvantaged- business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Paragraph D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the economically disadvantaged business set-aside statutes and rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the economically disadvantaged business set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3501 (December 2011).

§1907. Eligibility for Submission of Application

A. An applicant for tax equalization must be either a manufacturing establishment, a headquarters, or a warehousing and distribution establishment.

B. The sites under consideration must be valid and viable for the proposed operations.

C. An applicant must either be located in another state or be located in Louisiana and contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which the applicant is or seeks to be located.

D. The state in which the establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax

advantage to such establishment than does the taxing structure of Louisiana.

E. The secretary of the Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3501 (December 2011).

§1909. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Business Development Services reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3502 (December 2011).

§1911. Application Procedure

A. Prior to the formal announcement, an "advance notification" of intent to file for Tax Equalization must be filed with the Office of Business Development Services. The company will submit, on forms provided by the Office of Business Development Services, a comparison of taxes for all sites under consideration.

B. The secretary of the Department of Economic Development, after review of the advance notification shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Business Development Services, may be filed with the Office of Business Development Services. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Business Development Services. All Commerce and Industry Board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry

concur in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Department of Revenue.

E. The Department of Revenue shall within 10 days after receipt of the notice file in writing with the Board of Commerce and Industry any objections it has to granting the exemption.

F. If no objection is made, the Board of Commerce and Industry shall send the recommendation to the governor with a finding that no objection was filed by the Department of Revenue. If any such objection is made, the Board of Commerce and Industry shall hold a contradictory hearing to determine whether such exemption should be granted and the Board of Commerce and Industry shall act as arbitrator at such hearing. The Board of Commerce and Industry shall make its recommendations in writing to the governor for a final determination.

G. The Board of Commerce and Industry, with the approval of the governor, may enter into a contract of tax equalization with the new manufacturing establishment.

H. All contracts for tax equalization shall contain goals for new or retained employment, investment, and growth.

I. All information submitted will be held in confidence to the fullest extent permitted by the public records law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3502 (December 2011).

§1913. Application Contents

A. The application shall be submitted on forms provided by the Office of Business Development Services. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. construction cost;
- b. annual labor cost;
- c. annual raw materials cost;
- d. annual transportation cost;
- e. annual power cost; and
- f. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

- a. state sales/use tax;
- b. state corporate income tax;
- c. state corporate franchise tax;
- d. state ad valorem property tax (where applicable);
- e. state inventory tax (where applicable); and
- f. any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

- a. local sales/use tax;
- b. local ad valorem property tax;
- c. local inventory tax; and
- d. any other local taxes.

B. All applications for retention of an existing business located in Louisiana, shall demonstrate, to the satisfaction of the Board of Commerce and Industry, a real and compelling potential for the business to relocate to the competing site, including a demonstration that it is economically feasible to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3502 (December 2011).

§1915. Yearly Determination of Tax Equalization Amount

A. The contract of tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana corporate income and franchise tax return, the contractee shall furnish to the Department of Revenue and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state; and

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the

contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Business Development Services will assist the Department of Revenue should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Exemptions from taxation for manufacturing establishments shall be granted in the following priority:

1. state corporation franchise tax;
2. state corporation income tax;
3. state sales and use tax on machinery and equipment to be used in manufacturing;
4. state sales and use taxes on materials and supplies required in the manufacture or production of a product;
5. any other tax imposed by the state of Louisiana to which the applicant is subject.

G. Exemptions from taxation for headquarter shall be granted in the following priority:

1. state corporation franchise tax;
2. state corporation income tax;
3. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the headquarters facility;
4. state sales and use tax on purchases of tangible personal property used in the construction of the headquarters facility;
5. any other taxes imposed by the state to which such businesses are subject.

H. Exemptions from taxation for warehousing and distribution establishments shall be granted in the following priority:

1. state corporation franchise tax;
2. state corporation income tax;
3. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the warehousing and distribution establishment;
4. state sales and use tax on purchases of materials and supplies necessary for the on-site operation of the warehousing and distribution establishment;
5. state sales and use tax on purchases of tangible personal property used in the construction of the warehousing and distribution establishment;
6. any other taxes imposed by the state to which like businesses are subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3503 (December 2011).

§1917. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Business Development Services, within 30 days following the last day of the month

after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the project completion report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3503 (December 2011).

§1919. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the inspection which will be conducted by the Office of Business Development Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

§1921. Contract Renewals

A.1. Except as otherwise provided in this Section, each contract of exemption entered into under authority of this Chapter shall be reviewed and reevaluated, and shall be subject to renegotiation, five years from the date of the execution of the contract and may be renewed for an additional five-year period.

2. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §1913.A.2 and 3 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

B.1. Subsequent renewals for additional periods of five years or less may be granted to a contract holder whose contract has not expired as of the date of application for renewal if the applicant can demonstrate the conditions of the initial contract were met and the activities of the applicant in the state of Louisiana generate economic benefits to the state that exceed 20 times the benefit to the applicant of the incentive provided by this Chapter for the year preceding the request for renewal. Such benefit to the state shall be determined by the application of nationally recognized multipliers as appropriate and set forth in the Regional Input-Output Modeling System ("RIMS II"), or its successor publications, for the business operations of the applicant as published by Regional Economic Analysis Division BE-61, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230.

2. The contract holder's application for subsequent renewal shall include an attestation by an independent public accounting firm of the calculation of the economic benefit to the state.

3. In addition to the requirements of R.S. 47:3203, the Board of Commerce and Industry shall forward its recommendations, together with the proposed contract and all supporting documents, to the Department of Economic Development and the Joint Legislative Committee on the Budget. Upon receipt of the recommendations and proposed contract, the Joint Legislative Committee on the budget shall have 30 days to approve or reject the renewal contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

§1923. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have ninety days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

§1925. Environmental Report Requirement

A. Any applicant, the primary business of which is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana, shall submit with the application:

1. information relative to the impact the establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

Chapter 21. Tax Equalization for Manufacturing Facilities

§2101. Foreword

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3504 (December 2011).

§2103. Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2105. Certification of Sites

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2107. Certification of Taxes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2109. Certification of Local Taxes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2111. Contract Period

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2113. Method of Computation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2115. Contract Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2117. Board Action on Applications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic

Development, Business Incentive Services, LR 37:3505 (December 2011).

§2119. Violation of Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

Chapter 23. Tax Equalization for New Corporate Headquarters

§2301. General

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2303. Louisiana Manufacturers and Suppliers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2305. Minority Set-Aside

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2307. Eligibility for Submission of Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2309. Application Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2311. Application Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3505 (December 2011).

§2313. Application Contents

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2315. Yearly Determination of Tax Equalization Amount

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2317. Contract Period/Project Completion Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2319. Affidavit of Final Cost

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2321. Contract Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2323. Annual Review/Violation of Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1046 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2325. Environmental Report Requirement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1046 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

Chapter 25. Tax Equalization for New Warehousing and Distribution Establishments

§2501. General

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2503. Louisiana Manufacturers and Suppliers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2507. Eligibility for Submission of Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2509. Application Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2511. Application Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2513. Application Contents

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1056 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2515. Yearly Determination of Tax Equalization Amount

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1056 (December 1989), repealed by the Department of

Economic Development, Business Incentive Services, LR 37:3506 (December 2011).

§2517. Contract Period/Project Completion Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3507

§2519. Affidavit of Final Cost

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3507 (December 2011).

§2521. Contract Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3507 (December 2011).

§2523. Annual Review/Violation of Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:3507 (December 2011).

Kristy Mc Kearn
Undersecretary

1112#060

RULE

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

**Criteria Pollutant Emissions Inventory
(LAC 33:III.501)(AQ300)**

Editor's Note: Section 501 is being repromulgated to correct a citation error that resulted in the loss of Paragraph C.14. The original Rule may be viewed in its entirety on pages 3220-3232 of the November 20, 2011 edition of the *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 Air regulations, LAC 33:III.111, 311, 501, 605, 918, 919, 1513, 2115, 2139, 2141, 2153, and 5107 (AQ300).

Applicable facilities within Louisiana are required to submit annual point source emission inventories of criteria pollutants based upon attainment/nonattainment area designations of the National Ambient Air Quality Standards

(NAAQS). In 2006, the department launched a new emissions inventory reporting system, the Emissions Reporting and Inventory Center (ERIC). This revision will allow better compatibility between ERIC and the regulations. It will allow flexibility in updating the required elements for reporting in ERIC, as well as make the regulations easier to interpret, enforce, govern, and permit. In addition to the greater compatibility between the regulations and ERIC, additional applicability requirements are included to require facilities in a nonattainment area, or an area adjoining a nonattainment area, with a Standard Oil and Gas Air (SOGA) permit to report emissions in the emissions inventory. The Rule also includes additional requirements for facilities in an ozone nonattainment area. The basis and rationale for this Rule are to comply with the Federal Clean Air Act, as well as the Consolidate Emissions Reporting Rule (40 CFR 51, Subpart A). 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

§501. Scope and Applicability

A. - B.8. ...

C. Scope

1. - 10. ...

11. Emissions shall be calculated in accordance with LAC 33:III.919.G

12. Emissions estimation methods set forth in EPA's Compilation of Air Pollution Emission Factors (AP-42) and other department-accepted estimation methods may be promulgated or revised. As a result of new or revised AP-42 emission factors for sources or source categories and/or department-accepted estimation methods, changes in calculated emissions may occur. Changes in reported emission levels as required by LAC 33:III.919.F due solely to revised AP-42 emission factors or department-accepted estimation methods do not constitute violations of the air permit; however, the department may evaluate changes in emissions on a case-by-case basis, including but not limited to, assessing compliance with other applicable Louisiana air quality regulations.

13. If the emission factors or estimation methods for any source or source category used in preparing the annual emissions inventory required by LAC 33:III.919 differ from the emission factors or estimation methods used in the current air permit such that resulting "calculated" emissions reflect a significant change, notification of the use of updated emission factors or estimation methods shall be included in the Title V Annual Certification, as specified in the affected permit. The notification shall include the old and new emission factor or estimation method reference source and the date, volume, and edition (if applicable); the raw data for the reporting year used for that source category calculation; and applicable emission point and permit numbers that are impacted by such change. The notification shall include any other explanation, as well as the facility's intended time frame to reconcile the emission limits in the applicable permit. The department reserves the right to

reopen a permit pursuant to LAC 33:III.529. For purposes of this Paragraph, a significant change is defined as the lesser of the following:

- a. a 5 percent increase or decrease in the total potential or actual emissions from the facility;
- b. a 50 ton per year increase or decrease in the total potential or actual emissions from the facility; or
- c. a 10 ton per year increase or decrease in the potential or actual emissions from any single emission point (stack, vent, or fugitive).

14. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 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 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:3221 (November 2011), repromulgated LR 37:3507 (December 2011).

Herman Robinson, CPM
Executive Council

1112#037

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Solid Waste
(LAC 33:VII.315, 407, 503, 509, 513,
515, 525, 713, 715, and 719)(SW053)

Editor's Note: The following Sections are being repromulgated to correct citation errors that resulted in the unintentional loss of text and to correct the effective date of the Rule. The original Rule may be viewed in its entirety on pages 3233-3260 of the November 20, 2011 edition of the *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 solid waste regulations, LAC 33:VII.Subpart 1 and 2 (SW053).

The solid waste regulations are being updated. The new Rule will change the way solid waste permits are issued along with the application process for solid waste permits. Other changes will include definition changes, additional exemptions, and the establishment of a new annual compliance certification requirement.

The current solid waste permit system is not as efficient or productive as it could be. The current system has resulted in a backlog of pending solid waste permits that is

unacceptable to the agency, the regulated community and the public. The regulation changes will allow for a more direct permit approach that will limit the need for notices of deficiencies to be issued to permit applicants and will also enable DEQ surveillance personnel to inspect these facilities more appropriately by having a permit that is written with clearer conditions. The Rule will also provide additional clarification in definitions and exemptions. The basis of this Rule is to make necessary changes and clarifications in the solid waste regulations and to allow for a better permit process. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

A. ...

B. Storage of Wastes. No solid waste shall be stored or allowed to be stored in a manner that may cause a nuisance or health hazard or detriment to the environment as determined by the administrative authority. Unless authorized or approved by the administrative authority, no solid waste shall be stored or allowed to be stored at an off-site location unless such off-site location is an authorized transfer station or collection, processing, or disposal facility. After November 20, 2011 solid wastes may not be stored on-site for greater than one year, without approval from the Office of Environmental Compliance. The facility shall maintain records indicating the time frame that waste has been stored.

C. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 34:1400 (July 2008), LR 36:1240 (June 2010), LR 37:3235 (November 2011), repromulgated LR 37:3508 (December 2011).

Chapter 4. Administration, Classifications, and Inspection Procedures for Solid Waste Management Systems

§407. Inspection Types and Procedures

A. - D. ...

E. Closure Inspections. Closure inspections will be conducted within 30 days after the Office of Environmental Services has received written notice from the permit holder that closure requirements have been met in accordance with the approved closure permit or closure plan for those facilities that began closure activities in accordance with an approved closure plan prior to November 20, 2011, and the

permit holder has submitted a request for a closure inspection. Closure inspections shall be conducted before backfilling of a facility takes place. The administrative authority reserves the right to determine if a facility has been closed properly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1032 (June 2007), LR 33:2142 (October 2007), LR 37:3235 (November 2011), repromulgated LR 37:3508 (December 2011).

Chapter 5. Solid Waste Management System

Subchapter A. General Standards for Nonpermitted Facilities

§503. Standards Governing Solid Waste Accumulation and Storage

A. Solid Waste Accumulation

1. No solid waste shall be stored or allowed to be stored long enough to cause a nuisance, health hazard, or detriment to the environment as determined by the administrative authority, and after November 20, 2011, no solid waste shall be stored on-site for greater than one year without approval from the Office of Environmental Compliance. The facility shall maintain records indicating the time frame during which waste has been stored.

A.2. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1033 (June 2007), LR 34:613 (April 2008), LR 37:3236 (November 2011), repromulgated LR 37:3509 (December 2011).

Subchapter B. Permit Administration

§509. Permit System

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

c. Temporary permit holders who do not have financial assurance meeting the requirements of LAC 33:VII.Chapter 13 shall submit financial assurance meeting the requirements of LAC 33:VII.Chapter 13 within 120 days of November 20, 2011.

B.2. - D.3. ...

E. Public Hearings

1. Public hearings may be held concerning standard permits for facilities at the discretion of the administrative authority.

2. Public hearings may be held concerning major modifications of standard permits at the discretion of the administrative authority.

3. Public hearings shall not be held concerning mandatory modifications, which are considered an enhancement of a standard permitted facility.

4. Public hearings shall be held for all facilities when the administrative authority determines, on the basis of comments received and other information, that a hearing is necessary. Public hearings shall be conducted in accordance with the Environmental Quality Act for fact-finding hearings or other hearing procedures developed by the administrative

authority and the Administrative Procedure Act (R.S. 49:950 et seq.).

5. **Public Opportunity to Request a Hearing.** Any person may, within 30 days after the date of publication of the draft decision in a newspaper notice (LAC 33:VII.513.G.3), request that the administrative authority consider whether a public hearing is necessary. If the administrative authority determines that the requests warrant it, a public hearing will be scheduled. If the administrative authority determines that the requests do not raise genuine and pertinent issues, the Office of Environmental Services shall send the person(s) requesting the hearing written notification of the determination. The request for a hearing shall be in writing and shall contain the name and affiliation of the person making the request and the comments in support of or in objection to the issuance of a permit.

6. **Public Notice of a Public Hearing.** If the administrative authority determines that a hearing is necessary, notices shall be published at least 20 days before a fact-finding hearing in the official journal of the state and in a major local newspaper of general circulation in the area where the facility is located. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. Those persons on the Office of Environmental Services mailing list for hearings shall be mailed notice of the hearing at least 20 days before a public hearing. A notice shall also be published at least 20 days before a public hearing in the departmental bulletin, if available, or on the department's internet site in the public notices section.

7. **Review of Comments Following a Public Hearing.** Comments received by the Office of Environmental Services within 30 days after the date of a public hearing shall be reviewed by the Office of Environmental Services.

F. Other Requirements

1. The applicant may be required to obtain additional permits from other local state and federal agencies. Typical permits that may be needed include, but are not limited to, the following:

a. NPDES/LPDES (Section 402 of the Clean Water Act);

b. Louisiana Water Discharge Permit;

c. Louisiana Coastal Use Permit (issued by the Department of Natural Resources, Coastal Management Division);

d. Louisiana Air Emissions Permit;

e. U.S. Army Corps of Engineers Permit (Dredge and Fill, Section 404 of the Clean Water Act); or

f. appropriate local permits, licenses, certification, registration, or approval.

2. It is the responsibility of the applicant to identify the other applicable permits that may be required. A listing of the permits that the applicant intends to apply for shall be included in the solid waste permit application.

3. The applicant shall provide appropriate documentation to the Office of Environmental Services that the proposed use does not violate zoning or other land-use

regulations that exist at the time of the submittal of the standard permit application.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2518, 2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1035 (June 2007), LR 33:2143 (October 2007). LR 37:3236 (November 2011), repromulgated LR 37:3509 (December 2011).

§513. Permit Process for Existing Facilities and for Proposed Facilities

A. Applicability. Solid waste permit applications and application processing shall be subject to the following requirements.

1. Permit holders who have been issued a final permit or modification prior to November 20, 2011, and have been issued an order to commence prior to November 20, 2011, shall follow the existing permit or modification. Any changes requested to the existing permit shall follow the procedures outlined in Subsections B-K of this Section.

2.a. Permit holders who have been issued a final permit or modification prior to November 20, 2011, and have not been issued an order to commence prior to November 20, 2011, shall submit a construction certification to the Office of Environmental Services, signed by a professional engineer, licensed in the state of Louisiana, after completion of any necessary construction or upgrades, that the facility has been constructed or upgraded in accordance with the permit. Unless a longer time period is set by mutual agreement, within 15 working days of receipt of construction certification by the Office of Environmental Services, the administrative authority shall conduct a start-up inspection. Within 15 working days after a new, existing, or modified facility has undergone an initial start-up inspection, the administrative authority shall either issue an order authorizing commencement of operations or a written notice of deficiency to the permittee, unless a longer time period is set by mutual agreement.

b. Permit holders who have been issued an initial final permit prior to November 20, 2011, and have not been issued an order to commence prior to November 20, 2011, shall provide written confirmation from the appropriate municipal or parish governing authority where the facility will be located, dated within one 180 days prior to receiving an order to commence, indicating that the facility is or will be in compliance with all existing local zoning and land use restrictions.

3. Applicants for solid waste permits or major modifications who submitted an application prior to November 20, 2011, and have not yet been issued a final permit shall not be required to submit a new application form, unless required by the administrative authority. However, those applicants shall be required to comply with the requirements of LAC 33:VII.513.B.1 and 2, as applicable.

4. All solid waste permit applications and modification applications submitted after November 20,

2011, shall follow the procedures of LAC 33:VII.513.B-K, as applicable.

B. - D. ...

E. Permit Application Review and Evaluation

1. LAC 33:VII.Chapters 5, 7, 8, 13 and 15 establish the evaluation criteria used by the administrative authority.

2. The applicant shall make available to the department the assistance of professional engineers or other trained individuals responsible for the design of the facility to explain the design and operation.

3. The applicant shall furnish all other technical information the department may require to evaluate the standard permit application, monitor the performance of the facility, and insure that the purposes of this program are met.

F. Standard Permit Applications Deemed Unacceptable or Deficient

1. Applications deemed unacceptable for technical review will be rejected. For the administrative authority to reconsider the application, the applicant shall resubmit the entire standard permit application to the Office of Environmental Services, including the review fee, by a reasonable due date set by the administrative authority.

2. Applicants submitting applications that are acceptable for technical review, but lack the information outlined in these regulations, will be informed of such deficiencies. These deficiencies shall be corrected by the submission of supplementary information by a reasonable due date set by the administrative authority.

3. The supplementary information as referenced in Paragraph F.2 of this Section shall address all deficiencies and/or show significant progression in addressing all outstanding deficiencies, or the application may be denied.

G. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1037 (June 2007), LR 33:2143 (October 2007), LR 37:1563 (June 2011), LR 37:3238 (November 2011), repromulgated LR 37:3510 (December 2011).

Subchapter C. Permit System for Facilities Classified for Upgrade or Closure

§515. Permit Process for Existing Facilities Classified for Closure

A. - C.2. ...

D. Closure Plans Deemed Technically Complete. Closure plans that have been deemed technically complete shall be approved by issuance of a closure permit. The facility shall comply with the closure permit for all closure activities performed for closing the facility. If the facility received approval of a closure plan prior to November 20, 2011, the facility shall comply with the approved closure plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of

the Secretary, Legal Affairs Division, LR 31:2489 (October 2005), LR 33:1038 (June 2007), LR 33:2144 (October 2007), LR 37:3240 (November 2011), repromulgated LR 37:3510 (December 2011).

Subchapter E. Permit Requirements

§525. Certification of Compliance

A. - D.18. ...

E. In addition to those items listed in Subsection D of this Section, those permit holders who received their permit prior to November 20, 2011 shall also certify the following:

1. all reports required by the permit or regulations have been submitted as required; and
2. monitoring requirements have been met.

F. Permit holders who are issued a major modification after November 20, 2011 shall submit the annual compliance certification as specified in Subsection D of this Section and in the modified permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:3246 (November 2011), repromulgated LR 37:3511 (December 2011).

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§713. Standards Governing Surface Impoundments (Type I and II)

A. - E.3.c. ...

i. Final cover shall be a minimum of 24 inches of recompacted clay with a permeability of less than 1×10^{-7} cm/sec overlain with an approved geomembrane covering the entire area. Areas that are steeper than 4:1 slope do not require geomembrane overlay. Final slopes shall not be less than four percent nor greater than 3(H):1(V). Alternate final slopes may be approved by the administrative authority. Geotechnical calculations prepared by a registered professional engineer shall be provided if required by the administrative authority for all facilities whose closure plans have not been approved as of November 20, 2011.

E.3.c.ii. - F.2.b.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1053 (June 2007), LR 33:2146 (October 2007), LR 36:1241 (June 2010), LR 37:1564 (June 2011), LR 37:3250 (November 2011), repromulgated LR 37:3511 (December 2011).

§715. Standards Governing Landfarms (Type I and II)

A. - C.1.b. ...

i. a copy of the semiannual soil waste mixtures tests and analyses of the results with conclusions, submitted semiannually, or more frequently if deemed necessary by the administrative authority. Test parameters shall consist of soil pH, total nitrogen, phosphorus, organic matter, salts

(intrinsic to the waste), cumulative metals, and others as deemed necessary on a site- and waste-specific basis;

ii. annual reports of the analysis of all test results on the soils, land-use, and crop information, calculated amounts of waste applied per acre, total amounts of nitrogen applied per acre, and cumulative-metals loading. Annual reports shall be submitted to the Office of Environmental Services for a minimum of three years for Type II landfarms and 10 years for Type I landfarms after closure and shall contain analyses of all test results of the soils. The post-closure monitoring annual reporting may be reduced for certain types of landfarms if the permit holder demonstrates to the administrative authority's satisfaction that such a change is warranted.

C.2. - F.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2525 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1058 (June 2007), LR 33:2147 (October 2007), LR 35:1880 (September 2009), LR 37:1565 (June 2011), LR 37:3251 (November 2011), repromulgated LR 37:3511 (December 2011).

Subchapter C. Minor Processing and Disposal Facilities

§719. Standards Governing All Type III Processing and Disposal Facilities

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

3. Buffer Zones

a. Buffer zones of not less than 50 feet shall be provided between the facility and the property line. Buffer zones of not less than 200 feet shall be provided between the facility and the property line for any new facility. The requirement for a 200 feet buffer zone between the facility and the property line shall not apply to any facility existing on November 20, 2011, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 feet buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 50 feet from the facility (for facilities existing on November 20 2011, less than 200 feet from the facility (for facilities constructed after November 20, 2011, or less than 300 feet from the facility (for facilities located less than 300

feet from a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of woodwaste/construction/demolition-debris landfills that have been closed in accordance with these regulations and for existing facilities. Notwithstanding this Paragraph, Type III air curtain destructors and composting facilities that receive putrescible, residential, or commercial waste shall meet the buffer zone requirements in LAC 33:VII.717.B.3. In addition, air curtain destructors shall maintain at least a 1,000-foot buffer from any dwelling other than a dwelling or structure located on the property on which the burning is conducted (unless the appropriate notarized affidavit waivers are obtained).

B.3.b. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:3252 (November 2011), repromulgated LR 37:3511 (December 2011).

Herman Robinson, CPM
Executive Counsel

1112#036

RULE

Office of the Governor

Board of Examiners of Certified Shorthand Reporters

Examinations (LAC 46:XXI.301, 307 and 309)

In accordance with the Administrative Procedures Act, R. S. 49:950 et seq. Notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters has adopted changes made to the examination rules.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 3. Examinations

§301. Applications for Examinations

A. - F. ...

G. A certified digital reporter (CDR) applicant who is eligible as an official or deputy official reporter will be scheduled for an examination to be given by a designee of the education or examination committee chair. The examination will be administered at the court in which the applicant wishes to obtain certification and will not be administered for an individual CDR applicant more frequently on an annual basis than the number of examinations scheduled each year by the board in accordance with Subsection A of this Section. A certified digital reporter applicant is not subject to the qualifying exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2555(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:393 (May 1990), LR 17:578 (June 1991), LR 19:1537 (December 1993), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 29:1086 (July 2003), LR 35:64 (January 2009), LR 37:3512 (December 2011).

§307. Content of Examination

A. - B. ...

C. Completion time for the written knowledge test is one hour. Four hours are allowed for transcribing the three segments of the dictated test. The time allocated for an applicant taking fewer than three segments of the dictated test shall be reduced proportionately. A certified digital reporter applicant must pass all three segments in one sitting. Transcripts must be typed.

D. ...

E. Only stenomask and certified digital reporter candidates will be allowed to use electronic recording equipment during an examination.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Shorthand Reporters, LR 14:530 (August 1988), LR 16:394 (May 1990), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 37:3512 (December 2011).

§309. Grading of Examination

A. Each candidate's examination will be graded on the basis of his ability to accurately transcribe his notes or a digital, electronic, or audio recording; the time occupied in the transcription; his knowledge of court reporting procedure, and its related terminology, spelling, and punctuation; and the general style of the transcript.

B. - D. ...

E. Except for a certified digital reporter applicant, an examinee who passes any segments of the skills test is exempt from retaking those segments under the following conditions.

E.1. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2555(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:394 (May 1990), LR 19:1010 (August 1993), LR 19:1537 (December 1993), LR 27:184 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1087 (July 2003), LR 37:3512 (December 2011).

Vincent P. Borrello, Jr.,
Education Committee Chairman

1112#077

RULE

Department of Health and Hospitals Board of Chiropractic Examiners

Specialty Advertising, Unethical Conduct,
Code of Ethics (LAC 46:XXVII.320, 501, and 502)

Notice is hereby given that the Board of Chiropractic Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and relative to its authority to adopt, amend or repeal rules provided by R.S. 37:2804, has amended Chapter 3 and Chapter 5 of LAC 46:XXVII. The board has amended 46:XXVII.320, Specialty Advertising, to recognize an exception for the chiropractic physician, who does not meet certain requirements, to seek approval from the board to advertise a specialty when possessing special knowledge, skills or training. The board has amended LAC 46:XXVII.501, Unethical Conduct, to include a code of ethics as a basis for a determination that a chiropractic physician's behavior is unethical. The board has adopted LAC 46:XXVII.502, Code of Ethics, to set forth applicable ethical duties for chiropractic physicians.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXVII. Chiropractors

Chapter 3. Professional Conduct

§320. Specialty Advertising

A. - C. ...

D. Only those licensees holding the final certification in postgraduate training and certification programs may hold themselves out to the public as possessing special knowledge, skills or training. A licensee who utilizes any advertisement, which states that a licensee has special training or skills or is certified in a specialty that does not comply with Subparagraphs D.1.a-d, is engaged in deceptive and misleading advertising practices, unless an exception to D.1.a-d has been approved by the board, which would allow the licensee to hold themselves out to the public as possessing special knowledge, skills or training or certified in a specialty.

1. - 1.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 35:954 (May 2009), amended LR 37:3513 (December 2011).

Chapter 5. Due Process Procedures for Ethics Violations

Subchapter A. Applicability

§501. Unethical Conduct

A. Unethical conduct shall be determined on the basis of the provisions of the rules and regulations of the Board of Chiropractic Examiners, ethical standards of chiropractors, and other provisions included in the Code of Ethics and R.S. 37:2801-2807, specifically, if a chiropractor:

1. - 3. ...

4. has used any fraud or deception in applying for a license, in renewing a license, or in taking an examination provided for in the act; or

5. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Chiropractic Examiners, LR 10:327 (April 1984), amended LR 13:344 (June 1987), LR 35:955 (May 2009), LR 37:3513 (December 2011).

§502. Code of Ethics

A. Preamble. This code of ethics sets forth principles for the ethical practice of chiropractic. All chiropractic physicians are responsible for maintaining and promoting an ethical practice and otherwise complying with the terms of this code of ethics. To this end, the chiropractic physician shall act in the best interest of the patient. This code of ethics shall be binding on all chiropractic physicians.

B. Duty to Report. It shall be the duty of every licensee to notify the board of any violation of law or board rules.

1. Reporting of certain judgments to the board.

a. The following must be reported to the board within 30 days:

i. if a judgment is entered against a licensee in any court;

ii. a settlement is reached on a claim involving malpractice exceeding \$50,000;

iii. a licensee is convicted of a felony or a crime involving dishonesty, theft, violence, habitual use of drugs or alcohol, or sexual misconduct;

iv. the licensee may satisfy the provision of this subsection if he/she provides the board with a copy of the judgment or settlement.

C. Prohibition Against Sexual Contact, Impropriety and Misconduct

1. The physician and patient relationship is of a fiduciary nature in which the patient entrusts his/her welfare to the physician, and reflects the physician's respect for the patient. That boundary, once crossed, severely impacts the patient's wellbeing on an individual basis and causes distrust to other professional relationships in general. Sexual misconduct is a harmful example of a boundary violation, occurring in multiple contexts and involving a wide range of behaviors. The physician and patient relationship requires the doctor of chiropractic to exercise the utmost care that he or she will do nothing to exploit the trust and dependency of the patient.

2. Definitions

Sexual Contact—may include, but is not limited to the following:

i. genital to genital contact;

ii. oral to genital contact;

iii. anal to genital contact;

iv. kissing;

v. touching breasts, genitals, or other body parts without clinical justification;

vi. encouraging patient to masturbate in presence of chiropractor;

vii. chiropractor masturbating in the presence of a patient;

viii. offering clinical services in exchange for sexual favors.

Sexual Impropriety—may include, but is not limited to, sexually suggestive behavior, gestures, expressions,

statements, and it may include failing to respect a patient's privacy such as in the following examples:

- i. failing to employ disrobing or draping practices with respect to the patient's privacy;
- ii. examination or touching a patient's genital region without donning gloves and having another professional staff present during the examination;
- iii. inappropriate comments to a patient about the patient's body, sexual orientation, or potential sexual performance during the examination;
- iv. soliciting a date or romantic relationship;
- v. performing an intimate examination without clinical justification;
- vi. requesting personal information from the patient which is not clinically necessary.

Sexual-Misconduct—includes sexual impropriety towards a patient, sexual contact towards a patient, sexual harassment in the workplace, facilitating a hostile work environment, sexual conduct between supervisors and subordinates, and commission of sexual assault and other sexual crimes.

3. A patient's or staff's consent to, initiation of or participation in sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.

4. This rule shall not apply between a chiropractor and their spouse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2804.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Chiropractic Examiners, LR 37:3513 (December 2011).

Patricia Oliver
Executive Director

1112#063

RULE

Department of Health and Hospitals Board of Dentistry

Administration of Botox and Dermal Fillers (LAC 46:XXXIII.132)

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), the Department of Health and Hospitals, Board of Dentistry creates LAC 46:XXXIII.132. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§132. Administration of Botox and Dermal Fillers

A. The board does not issue permits for the administration of Botox or dermal fillers. The board does not regulate dental materials of any type. However, due to the

rising utilization of these materials by dentists, the board sets forth the following requirements.

B. Before administering Botox or dermal fillers, a dentist must have either received satisfactory training in a dental institution accredited by the Commission on Dental Accreditation of the American Dental Association or successfully completed a continuing education course of instruction that includes at a minimum the following:

1. patient assessment and consultation for Botox and dermal fillers;
2. indications and contraindications for these techniques;
3. safety and risk issues for botulinum neurotoxin/dermal fillers injectable therapy;
4. proper preparation and delivery techniques for desired outcomes;
5. enhancing and finishing esthetic dentistry cases with dermal fillers;
6. botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;
7. knowledge of adverse reactions and management and treatment of possible complications;
8. patient evaluation for best esthetic and therapeutic outcomes;
9. integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans;
10. live patient hands-on training including diagnosis, treatment planning, and proper dosing and delivery of Botox and dermal fillers.

C. Botox and dermal fillers shall only be administered in dental offices using universal precautions as required by the Federal Centers for Disease Control.

D. All dental auxiliaries are prohibited from administering either Botox or dermal fillers.

E. Continuing education courses shall be approved or sponsored by one or more of the entities set forth in LAC 46:XXXIII.1615.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 37:3513 (December 2011).

C. Barry Ogden
Executive Director

1112#028

RULE

Department of Health and Hospitals Board of Dentistry

Dentistry Requirements (LAC 46:XXXIII.124, 306, 403, 409, 415, 1611, 1709, and 1711)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department

of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.124, 306, 403, 409, 415, 1611, 1709, and 1711. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§124. Guidelines for Returning to Active Practice

A. - C. ...

D. When a licensee has been inactive for a period of three months to one year, it is the prerogative of the board to have the licensee evaluated in any specific or all fields of dentistry or dental hygiene as deemed necessary by the board.

E. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 25:511 (March 1999), amended LR 28:1776 (August 2002), LR 28:2512 (December 2002), LR 37:3515 (December 2011).

Chapter 3. Dentists

§306. Requirements of Applicants for Licensure by Credentials

A. - A.19. ...

B. The applicant must also:

1. ...

2. sign a release authorizing the peer review chairman to provide such information to the board;

3. show that his professional liability insurance has never been revoked, modified, or nonrenewed; and

4. provide satisfactory documentation that the initial licensing examination passed by the applicant included the use of live patients and that the overall examination was at least equivalent to the licensing examination of the Louisiana State Board of Dentistry.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:67 (January 2009), amended LR 37:1405 (May 2011), LR 37:3515 (December 2011).

Chapter 4. Fees and Costs

Subchapter A. General Provisions

§403. Form of Payment Required

A. With the exception of nonrestricted dental and dental hygiene license and permit renewal fees, payments to the board of fees or costs shall be made in U.S. funds in the form of a check, a certified check, a cashier's check or a money order.

B. Nonrestricted dentists and all dental hygienists shall pay license and permit renewal fees to the board in U.S.

funds in the form of a check, a certified check, a cashier's check, a money order, or a credit card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 37:3515 (December 2011).

§409. Term of License; Renewal

A. All nonrestricted licenses shall be renewed biennially and will expire on December 31 of each calendar year of the renewal period. License renewal notifications are to be mailed by the board to licensed dentists and dental hygienists at their last known mailing address as indicated in the board files.

B. All restricted dental licenses shall expire annually on June 30. Restricted license renewal notifications are to be sent to the dentists' employing dental school or facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 23:1529 (November 1997), LR 37:3515 (December 2011).

Subchapter C. Fees for Dentists

§415. Licenses, Permits, and Examinations (Dentists)

A. For processing applications for licensure, permits, and examinations, the following non-refundable fees shall be payable in advance to the board.

1. - 23. ...

24. Application and permitting for mobile or movable dental office \$250

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 37:2150 (July 2011), LR 37:3515 (December 2011).

Chapter 16. Continuing Education Requirements

§1611. Continuing Education Requirements for Relicensure of Dentists

A. - K. ...

L. Louisiana licensed dentists shall be eligible for three hours of clinical continuing education for treating a donated dental service patient (pro bono) from a Louisiana State Board of Dentistry approved agency. The maximum number of hours will be no more than six in any two year biennial renewal period, and verification of treatment from the agency is mandatory in order to obtain these continuing education credits.

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),

Chapter 17. Licensure Examinations

§1709. Examination of Dentists

A. - C. ...

1. Effective January 1, 2012 the clinical licensing examinations administered by Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Exam (ADEX), and Western Regional Examining Board (WREB), will not be accepted by the Louisiana State Board of Dentistry for initial licensure. However, applicants who have taken those examinations prior to the examination cycle of calendar year 2011 shall have three years from the date of their successful completion of those examinations to apply for a license via examination in the state of Louisiana. After the three year deadline it will necessary for those applicants to apply for a licensure by credentials in the state of Louisiana.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011).

§1711. Examination of Dental Hygienists

A. - C.5. ...

6. Effective January 1, 2012 the clinical licensing examinations administered Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Exam (ADEX), and Western Regional Examining Board (WREB), will not be accepted by the Louisiana State Board of Dentistry for initial licensure. However, applicants who have taken those examinations prior to the examination cycle of calendar year 2011 shall have three years from the date of their successful completion of those examinations to apply for a license via examination in the state of Louisiana. After the three year deadline it will necessary for those applicants to apply for a licensure by credentials in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:1779 (August 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011).

C. Barry Ogden
Executive Director

1112#008

RULE

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Active Duty Military Families
(LAC 50:XXI.303)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have adopted LAC 50:XXI.303 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 XXI. Home and Community-Based
Services Waivers**

Subpart 1. General Provisions

Chapter 3. Eligibility

§303. Active Duty Military Families

A. Any active duty member of the armed forces who has been temporarily assigned to work outside of Louisiana, and any member of his/her immediate family who has qualified for and received home and community-based waiver services provided under the Medicaid Program for persons with developmental disabilities, shall be eligible to receive the next available opportunity for waiver services upon the member's resumed residence in Louisiana.

1. For purposes of these provisions, immediate family shall be defined as the spouse, child, or other person for whom the member of the armed services has guardianship.

B. After the individual returns to live in Louisiana, he/she must contact the department to report his/her address and to request that the waiver services be restarted.

C. The individual's name will be placed on a preferred registry with other active duty persons who have returned to live in Louisiana and requested that their waiver services be restarted.

D. Waiver opportunities shall be offered to individuals on the preferred registry on a first come, first serve basis.

1. The first available waiver opportunity shall be offered to an individual on this registry based on the date that the request to restart services was received.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:3516 (December 2011).

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.

Bruce D. Greenstein
Secretary

1112#095

RULE

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Community Choices Waiver
(LAC 50:XXI.Chapters 81-95)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services have repealed and replaced LAC 50:XXI.Chapters 81-91 and have adopted LAC 50:XXI.Chapters 93-95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

Title 50

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

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Community Choices Waiver includes individuals who:

1. are currently in the Elderly and Disabled Adults Waiver as of September 30, 2011;
2. are 65 years of age or older; or
3. are 21-64 years of age with a physical disability; and
4. meet nursing facility level of care requirements.

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

C. Requests for Community Choices Waiver services shall be accepted from the following:

1. an individual requestor/applicant;
2. an individual who is legally responsible for a requestor/applicant; or
3. a responsible representative designated by the requestor/applicant to act on his/her behalf.

D. Each individual who requests Community Choices Waiver services has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the individual to act on his/her behalf in the process of accessing and/or maintaining Community Choices Waiver services.

1. The appropriate form authorized by the Office of Aging and Adult Services (OAAS) shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not take away the right of the individual to continue to transact business on his/her own behalf nor does it give the representative any legal authority other than as specified in the designation form.

b. The written designation is valid until revoked by the individual granting the designation. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the individual in the assessment, care plan development and service delivery processes; and

b. to aid the participant in obtaining all of the necessary documentation for these processes.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011).

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the request for services registry, hereafter referred to as "the registry," for the Community Choices Waiver. An individual who wishes to have his or her name placed on the registry must contact a toll-free telephone number which shall be maintained by the department.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011).

§8105. Programmatic Allocation of Waiver Opportunities

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

B. Community Choices Waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for Community Choices Waiver opportunities, in the order listed:

1. individuals with substantiated cases of abuse or neglect referred by Adult Protective Services (APS) or Elderly Protective Services (EPS) who, without Community Choices Waiver services, would require institutional placement to prevent further abuse or neglect;

2. individuals diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig's disease;

3. individuals admitted to a nursing facility who are approved for a stay of more than 90 days;

4. individuals who are not presently receiving home and community-based services (HCBS) under another approved Medicaid waiver program, including, but not limited to the:

- a. Adult Day Health Care (ADHC) Waiver;
- b. New Opportunities Waiver (NOW);
- c. Supports Waiver, and/or
- d. Residential Options Waiver (ROW); and

5. all other eligible individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process shall continue until an individual is determined eligible. A Community Choices Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Notwithstanding the priority group provisions, 75 Community Choices Waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

E. Notwithstanding the priority group provisions, up to 100 EDA Waiver opportunities may be granted to qualified individuals who require emergency waiver services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an emergency waiver opportunity, the individual must, at the time of the request for the emergency opportunity, be approved for the maximum amount of services allowable under the Long Term Personal Care Services Program and require institutional placement, unless offered an emergency waiver opportunity.

2. The following criteria shall be considered in determining whether or not to grant an emergency waiver opportunity:

- a. support through other programs is either unavailable or inadequate to prevent nursing facility placement;
- b. the death or incapacitation of an informal caregiver leaves the person without other supports;
- c. the support from an informal caregiver is not available due to a family crisis; or
- d. the person lives alone and has no access to informal support.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011).

§8107. Resource Assessment Process

A. Each Community Choices Waiver applicant/participant shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets nursing facility level of care and to assess multiple key domains of function, health, social support and service use. The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

B. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various activities of daily living (ADLs) and instrumental activities of daily living (IADLs):

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational and/or speech) within the seven days prior to their MDS-HC assessment.

2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:

- a. tracheostomy;
- b. ventilator or respirator; or
- c. suctioning.

3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs and have one or more of the following conditions or require one or more of the following treatments:

- a. stage 3 or 4 pressure ulcers;
- b. tube feeding;
- c. multiple sclerosis diagnosis;
- d. quadriplegia;
- e. burn treatment;
- f. radiation treatment;
- g. IV medications; or
- h. fever and one or more of the following

conditions:

- i. dehydration diagnosis;
- ii. pneumonia diagnosis;
- iii. vomiting; or
- iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:

- a. dehydration;
- b. any stasis ulcer. A stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
- c. end-stage/terminal illness;
- d. chemotherapy;
- e. blood transfusion;
- f. skin problem;
- g. cerebral palsy diagnosis;
- h. urinary tract infection;
- i. hemiplegia diagnosis. Hemiplegia diagnosis shall include a total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;
- j. dialysis treatment;
- k. diagnosis of pneumonia;
- l. one or more of the eight criteria in special care

(with low ADL need); or

m. one or more of the three criteria in extensive services (with low ADL need).

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and

behavior problems. This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Persons in this category do not meet the criteria in one of the previous six categories.

C. Based on the RUG III/HC score, the applicant/participant is assigned to a level of support category and is eligible for a set annual services budget associated with that level.

1. If the applicant/participant disagrees with his/her annual services budget, the applicant/participant or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/participant may qualify for an increase in the annual services budget amount upon showing that:

a. one or more answers are incorrect as recorded on the MDS-HC (except for the answers in Sections AA, BB, A, and R); or

b. he/she needs an increase in the annual services budget to avoid entering into a nursing facility.

D. Each Community Choices Waiver participant shall be re-assessed at least annually.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3518 (December 2011).

Chapter 83. Covered Services

§8301. Support Coordination

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing, and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved plan of care (POC) as well as:

1. evaluation and/or re-evaluation of the level of care;
2. assessment and/or re-assessment of the need for waiver services;
3. development and/or review of the service plan;
4. coordination of multiple services and/or among multiple providers;
5. linking waiver participants to other federal, state and local programs;
6. monitoring the implementation of the service plan and participant health and welfare;
7. addressing problems in service provision;
8. responding to participant crises; and
9. determining the cost neutrality of waiver services for an individual.

B. Support coordinators shall provide information and assistance to waiver participants in directing and managing their services. When participants choose to self-direct their waiver services, the support coordinators are responsible for reviewing the *Self-Direction Employer Handbook* with participants who have elected this option for service delivery. Support coordinators shall be available to participants for on-going support and assistance in these decision-making areas and with employer responsibilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011).

§8303. Transition Intensive Support Coordination

A. Transition intensive support coordination is services that will assist participants who are currently residing in nursing facilities in gaining access to needed waiver and other state plan services, as well as needed medical, social, housing, educational and other services, regardless of the funding source for these services. Support coordinators shall initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

1. This service is paid for up to six months prior to transition from the nursing facility when adequate pre-transition supports and activities are provided and documented.

2. The scope of transition intensive support coordination shall not overlap with the scope of support coordination.

B. Support coordinators may assist persons to transition for up to 180 days while the individual still resides in 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 and the Office of Aging and Adult Services, LR 37:3519 (December 2011).

§8305. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are necessary physical adaptations that will be made to the home to reasonably assure the health and welfare of the participant, or enable the participant to function with greater independence in the home. Without these necessary adaptations, the participant would require institutionalization.

1. There must be an identified need for environmental accessibility adaptations as indicated by the MDS-HC.

a. Once identified by MDS-HC, a credential assessor must verify the need for, and draft specifications for, the environmental accessibility adaptation(s).

b. A credentialed assessor must ensure that the environmental accessibility adaptation(s) meets all specifications before payment shall be made to the contractor that performed the environmental accessibility adaptation(s).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011).

§8307. Personal Assistance Services

A. Personal assistance services (PAS) provide assistance and/or supervision necessary for the participant with functional impairments to remain safely in the community. PAS include the following services and supports based on the approved POC:

1. supervision or assistance in performing activities of daily living;

2. supervision or assistance in performing instrumental activities of daily living;

3. protective supervision provided solely to assure the health and welfare of a participant;

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable delegation/medication administration;

5. supervision or assistance while escorting/accompanying the individual outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the POC and to provide the same supervision or assistance as would be rendered in the home; and

6. extension of therapy services, defined as follows:

a. Licensed therapists may choose to instruct the attendants on the proper way to assist the participant in follow-up therapy sessions. This assistance and support provides reinforcement of instruction and aids in the rehabilitative process.

b. In addition, a registered nurse may instruct an attendant to perform basic interventions with a participant that would increase and optimize functional abilities for maximum independence in performing activities of daily living such as range of motion exercises.

B. PAS is provided in the participant's home or in another location outside of the home if the provision of these services allows the individual to participate in normal life activities pertaining to the ADLs and IADLs cited in the POC. IADLs may not be performed in the participant's home when the participant is absent from the home. There shall be no duplication of services. PAS may not be provided while the participant is admitted to or attending a program which provides in-home assistance with ADLs or IADLs or while attending or admitted to a program or setting where such assistance is provided.

C. The provision of PAS services outside of the participant's home does not include trips outside of the borders of the state without prior written approval by OAAS or its designee, through the POC or otherwise.

D. Participants who receive PAS cannot receive long-term personal care services.

E. PAS may be provided through the "a.m. and p.m." delivery option defined as follows:

1. a minimum of 1 hour and a maximum of 2 hours of PAS provided to assist the participant at the beginning of his/her day, referred to as the "a.m." portion of this PAS delivery method; and

2. a minimum of 1 hour and a maximum of 2 hours to assist the participant at the end of his/her day, referred to as the "p.m." portion of this PAS delivery method; and

3. a minimum 4 hours break between the "a.m." and the "p.m." portions of this PAS delivery method; and

4. not to exceed a maximum of 4 hours of PAS being provided within a calendar day.

5. "A.m. and p.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

6. It is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day. However, "a.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

F. PAS may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider. Waiver participants may

share PAS staff when agreed to by the participants and as long as the health and welfare of each participant can be reasonably assured. Shared PAS is to be reflected in the POC of each participant. Reimbursement rates shall be adjusted accordingly.

G. A home health agency direct service worker who renders personal assistance services must be a qualified home health aide as specified in Louisiana's Minimum Licensing Standards for Home Health Agencies.

H. Every PAS provider shall ensure that each waiver participant who receives PAS has a written individualized back-up staffing plan and agreement for use in the event that the assigned PAS worker is unable to provide support due to unplanned circumstances, including emergencies which arise during a shift. The individualized plan and agreement shall be developed and maintained in accordance with OAAS policy.

I. Every PAS provider shall ensure timely completion of the OAAS Emergency Plan and Agreement Form for each waiver participant they serve in accordance with OAAS Policy.

J. The following individuals are prohibited from being reimbursed for providing services to a participant:

1. the participant's spouse;

2. the participant's curator;

3. the participant's tutor;

4. the participant's legal guardian;

5. the participant's responsible representative; or

6. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

K. Participants are not permitted to receive PAS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011).

§8309. Transition Services

A. Transition Services are time limited, non-recurring set-up expenses available for individuals who have been offered and approved for a Community Choices Waiver opportunity and are transitioning from a nursing facility to a living arrangement in a private residence where the individual is directly responsible for his/her own living expenses.

B. Allowable expenses are those necessary to enable the individual to establish a basic household, excluding expenses for room and board, but includes:

1. security deposits that are required to obtain a lease on an apartment or house;

2. specific set up fees or deposits (telephone, electric, gas, water and other such necessary housing set up fees or deposits);

3. essential furnishings to establish basic living arrangements; and

4. health and welfare assurances (pest control/eradication, fire extinguisher, smoke detector and first aid supplies/kit).

C. These services must be prior approved in the participant's POC.

D. These services do not include monthly rental, mortgage expenses, food, monthly utility charges and household appliances and/or items intended for purely diversional/recreational purposes. These services may not be used to pay for furnishing or to set-up living arrangements that are owned or leased by a waiver provider.

E. Support coordinators shall exhaust all other resources to obtain these items prior to utilizing the waiver.

F. Funds are available one time per \$1500 lifetime maximum for specific items as prior approved in the participant's POC.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3520 (December 2011).

§8311. Adult Day Health Care Services

A. Adult day health care (ADHC) services are furnished as specified in the POC at an ADHC center, in a non-institutional, community-based setting encompassing both health/medical and social services needed to ensure the optimal functioning of the participant.

B. ADHC Services include:

1. meals, which shall not constitute a "full nutritional regimen" (3 meals per day) but will include 2 snacks and a hot nutritious lunch;

2. transportation between the participant's place of residence and the ADHC;

3. assistance with activities of daily living;

4. health and nutrition counseling;

5. individualized exercise program;

6. individualized goal-directed recreation programs;

7. health education classes; and

8. individualized health/nursing services.

C. ADHC services may be provided no more than 10 hours per day and no more than 50 hours per week.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011).

§8313. Caregiver Temporary Support Services

A. Caregiver temporary support services are furnished on a short-term basis because of the absence or need for relief of caregivers during the time they are normally providing unpaid care for the participant.

B. Federal financial participation is not claimed for the cost of room and board except when provided as part of caregiver temporary support services care furnished in a facility approved by the state that is not a private residence.

C. The intent of caregiver temporary support services is to provide relief to unpaid caregivers to maintain the informal support system.

D. Caregiver temporary support services are provided in the following locations:

1. the participant's home or place of residence;

2. nursing facilities;

3. assisted living facilities;

4. respite centers; or

5. adult day health care centers.

E. Caregiver temporary support services provided by nursing facilities, assisted living facilities and respite centers must include an overnight stay.

F. When Caregiver temporary support service is provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Services may be utilized no more than 30 calendar days or 29 overnight stays per plan of care year for no more than 14 consecutive calendar days or 13 consecutive overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

H. Caregiver temporary support may not be delivered at the same time as adult day health care or personal assistance services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011).

§8315. Assistive Devices and Medical Supplies

A. Assistive devices and medical supplies are specialized medical equipment and supplies which include devices, controls, appliances, or nutritional supplements specified in the POC that enable individuals to:

1. increase or maintain their abilities to perform activities of daily living; or

2. to perceive, control, or communicate with the environment in which they live or provide emergency response.

B. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of assistive devices, and durable and non-durable medical equipment. This service includes personal emergency response systems (PERS) and other in-home monitoring and medication management devices and technology.

C. This service may also be used for routine maintenance or repair of specialized equipment. Batteries, extended warranties, and service contracts that are cost effective may be reimbursed. This includes medical equipment not available under the state plan that is necessary to address participant functional limitations and necessary medical supplies not available under the state plan that are addressed in the POC.

D. Where applicable, participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain brand or supplier is not grounds for declining another payer in order to access waiver services.

E. All services must be based on a verified need of the participant and the service must have a direct or remedial benefit to the participant with specific goals and outcomes. This benefit must be determined by an independent assessment on any items whose cost exceeds \$500 and on all communication devices, mobility devices, and environmental controls. Independent assessments are done by the appropriate professional, *e.g.*, an occupational therapist, physical therapist, and/or speech-language pathologist, who has no fiduciary relationship with the manufacturer, supplier, or vendor of the item.

F. All items must reduce reliance on other Medicaid State Plan or waiver services.

G. All items must meet applicable standards of manufacture, design, and installation.

H. All items must be prior authorized and no experimental items shall be authorized.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011).

§8317. Home Delivered Meals

A. The purpose of home delivered meals is to assist in meeting the nutritional needs of an individual in support of the maintenance of self-sufficiency and enhancing the quality of life.

B. Up to two nutritionally balanced meals per day may be delivered to the home of an eligible participant who is unable to leave his/her home without assistance, unable to prepare his/her own meals, and/or has no responsible caregiver in the home.

C. Each meal shall provide a minimum of one-third of the current recommended dietary allowance (RDA) for the participant as adopted by the United States Department of Agriculture. The provision of home delivered meals does not provide a full nutritional regimen.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011).

§8319. Non-Medical Transportation

A. Non-medical transportation is a service offered to enable waiver participants to participate in normal life activities pertaining to the IADLs cited in the POC and includes activities needed to facilitate transition to the community.

B. Waiver transportation services may not be used to:

1. replace unpaid caregivers, volunteer transportation, and other transportation services available to the individual;
2. replace services that are included in a service provider's reimbursement;
3. obtain items that can be delivered by a supplier or by mail-order; or
4. compensate the service provider for travel to or from the service provider's home.

C. This service shall be offered in addition to medical transportation required under 42 CFR §431.53 and transportation services under the state plan, defined at 42 CFR §440.170(a) (if applicable), and shall not replace them.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011).

§8321. Nursing Services

A. Nursing services are services that are medically necessary and may only be provided efficiently and effectively by a nurse practitioner, registered nurse, or a licensed practical nurse working under the supervision of a registered nurse. The nursing services provided must be within the scope of the Louisiana statutes governing the practice of nursing.

B. Nursing services may include periodic assessment of the participant's medical condition when the condition requires a skilled nurse to identify and evaluate the need for medical intervention or to monitor and/or modify the medical treatment services provided by non-professional care providers.

C. Services may also include regular, ongoing monitoring of a participant's fragile or complex medical condition as well as the monitoring of a participant with a history of noncompliance with medication or other medical treatment needs.

D. Nursing may also be used to assess a participant's need for assistive devices or home modifications, training the participant and family members in the use of the purchased devices, and training of direct service workers in tasks necessary to carry out the POC.

E. Where applicable, a participant must use Medicare, Medicaid State Plan services, or other available payers first. The participant's preference for a certain staff or agencies is not grounds for declining another payer in order to access waiver services.

F. All services must be based on a verified need of the participant. The service must have a direct or remedial benefit to the participant with specific goals and outcomes.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011).

§8323. Skilled Maintenance Therapy

A. Skilled maintenance therapy is therapy services that may be received by Community Choices Waiver participants in the home or in a rehabilitative center. Unlike State Plan therapy services, provision of therapy services under the Community Choices Waiver expands the provider base to rehabilitative centers and individually licensed therapists so that participants may receive maintenance therapies either at home, work, or at a rehabilitative center in order to increase access to therapy services.

B. Skilled maintenance therapy services include physical therapy, occupational therapy, respiratory therapy and speech and language therapy.

C. Therapy services provided to recipients under the Community Choices Waiver are not necessarily tied to an episode of illness or injury and instead focus primarily on the person's functional need for maintenance of, or reducing the decline in, the participant's ability to carry out activities of daily living.

D. Skilled maintenance therapies may also be used to assess a participant's need for assistive devices or home modifications, training the participant and family members in the use of the purchased devices, performance of in-home fall prevention assessments, and participation on the POC planning team.

E. Services may be provided in a variety of locations including the participant's home, place of employment or a clinic as approved by the POC planning team.

F. Skilled maintenance therapy services specifically include:

1. physical therapy services which promote the maintenance of, or the reduction in, the loss of gross/fine

motor skills, and facilitate independent functioning and/or prevent progressive disabilities including:

- a. professional assessment(s), evaluation(s) and monitoring for therapeutic purposes;
- b. physical therapy treatments and interventions;
- c. training regarding physical therapy activities, use of equipment and technologies;
- d. designing, modifying or monitoring the use of related environmental modifications;
- e. designing, modifying, and monitoring the use of related activities supportive to the POC goals and objectives; or
- f. consulting or collaborating with other service providers or family members, as specified in the POC;

2. occupational therapy (OT) services which promote the maintenance of, or reduction in, the loss of fine motor skills, coordination, sensory integration, and/or facilitate the use of adaptive equipment or other assistive technology including:

- a. teaching of daily living skills;
- b. development of perceptual motor skills and sensory integrative functioning;
- c. design, fabrication, or modification of assistive technology or adaptive devices;
- d. provision of assistive technology services;
- e. design, fabrication, or applying selected orthotic or prosthetic devices or selecting adaptive equipment;
- f. use of specifically designed crafts and exercise to enhance function;
- g. training regarding OT activities; and
- h. consulting or collaborating with other service providers or family members, as specified in the POC;

3. speech language therapy (SLT) services which preserve abilities for independent function in communication, facilitate oral motor and swallowing function, facilitate use of assistive technology, and/or prevent progressive disabilities including:

- a. identification of communicative or oropharyngeal disorders;
- b. prevention of communicative or oropharyngeal disorders;
- c. development of eating or swallowing plans and monitoring their effectiveness;
- d. use of specifically designed equipment, tools, and exercises to enhance function;
- e. design, fabrication, or modification of assistive technology or adaptive devices;
- f. provision of assistive technology services;
- g. adaptation of the participant's environment to meet his/her needs;
- h. training regarding SLT activities; and
- i. consulting or collaborating with other service providers or family members, as specified in the POC; and

4. respiratory therapy services which provide preventative and maintenance airway-related techniques and procedures including:

- a. application of medical gases, humidity and aerosols;
- b. intermittent positive pressure;
- c. continuous artificial ventilation;
- d. administration of drugs through inhalation and related airway management;

- e. individual care;
- f. instruction administered to the waiver participant and informal supports; and
- g. periodic management of ventilation equipment for participants whose ventilation care is performed by informal caregivers.

G. Where applicable, the participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain therapist or agency is not grounds for declining another payer in order to access waiver services.

H. All services must be based on a verified need of the participant and the service must have a direct or remedial benefit to the participant with specific goals and outcomes. The authorized service will be reviewed/monitored by the support coordinator to verify the continued need for the service and that the service meets the participant's needs in the most cost effective manner.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011).

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of Community Choices personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Participant Responsibilities. Waiver participants choosing the self-directed services option must understand the rights, risks, and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he/she must have a responsible representative who understands the rights, risks, and responsibilities of managing his/her care and supports within his/her individual budget.

C. Termination of the Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. A waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him/her to receive provider-managed services under the following circumstances:

- a. the health or welfare of the participant is compromised by continued participation in the self-directed option;
- b. the participant is no longer able to direct his/her own care and there is no responsible representative to direct the care;
- c. there is misuse of public funds by the participant or the responsible representative; or

- d. the participant or responsible representative:
 - i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;
 - ii. fails to follow the POC;
 - iii. fails to provide required documentation of expenditures and related items; or
 - iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3523 (December 2011).

Chapter 87. Plan of Care

§8701. Plan of Care

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC may include the array of services covered under the Community Choices Waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The POC shall be developed using a person-centered process coordinated by the support coordinator.

B. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's, or its designee's, approval of the POC.

C. The support coordinator shall complete a POC which shall contain the:

- 1. types and number of services (including waiver and all other services) necessary to reasonably assure health and welfare and to maintain the person in the community;
- 2. individual cost of each service (including waiver and all other services); and
- 3. the total cost of services covered by the POC.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011).

Chapter 89. Admission and Discharge Criteria

§8901. Admission Criteria

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

- 1. meets the target population criteria as specified in the approved waiver document;
- 2. initial and continued Medicaid eligibility;
- 3. initial and continued eligibility for a nursing facility level of care;
- 4. justification, as documented in the approved POC, that the Community Choices Waiver services are appropriate, cost effective and represent the least restrictive environment for the individual; and
- 5. reasonable assurance that the health and welfare of the participant can be maintained in the community with the provision of Community Choices Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria above shall result in denial of admission to the Community Choices Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011).

§8903. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the Community Choices Waiver Program if any of the following conditions are determined.

- 1. The individual does not meet the target population criteria as specified in the approved waiver document.
- 2. The individual does not meet the criteria for Medicaid eligibility.
- 3. The individual does not meet the criteria for a nursing facility level of care.
- 4. The participant resides in another state or has a change of residence to another state.
- 5. Continuity of services is interrupted as a result of the participant not receiving and/or refusing Community Choices Waiver services (exclusive of support coordination services) for a period of 30 consecutive days.
- 6. The health and welfare of the individual cannot be reasonably assured through the provision of Community Choices Waiver services.
- 7. The individual fails to cooperate in the eligibility determination process or in the performance of the POC.
- 8. Failure on behalf of the individual to maintain a safe and legal home environment.
- 9. It is not cost effective or appropriate to serve the individual in the Community Choices Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011).

Chapter 91. Waiver Cost Neutrality

§9101. Waiver Costs Limit

A. The annual service budget for each of the RUG-III/HC groups shall be reviewed to ensure that the costs of the Community Choices Waiver remain within applicable federal rules regarding the cost-effectiveness of the waiver. To ensure cost-effectiveness, the mean expenditures across all RUG-III/HC categories must be less than or equal to the average cost to the state of providing care in a nursing facility. If the waiver is not cost-effective, the annual service budgets for some or all RUG-III/HC groups shall be reduced to bring the waiver into compliance.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011).

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. Any provider of services under the Community Choices Waiver shall abide by and adhere to any federal or state laws, rules, policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving

services in accordance with the Community Choices Waiver Program provisions and the services have actually been provided.

C. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. OAAS or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

D. Providers must maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department, or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011).

§9303. Reporting Requirements

A. Support coordinators and direct service providers are obligated to report any changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers are responsible for documenting the occurrence of incidents or accidents that affect the health and welfare of the participant and for completing an incident report. The incident report shall be submitted to the department or its designee with the specified requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011).

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for the following services:

1. personal assistance services (except for the "a.m. and p.m." service delivery model);

a. personal assistance services furnished to one participant shall be reimbursed at 100 percent of the full rate for the participant;

b. personal assistance services furnished to two participants shall be reimbursed at 75 percent of the full rate for each participant;

c. personal assistance services furnished to three participants shall be reimbursed at 66 percent of the full rate for each participant;

2. in-home caregiver temporary support service when provided by a personal care services or home health agency; and

3. caregiver temporary support services when provided by an adult day health care center.

B. The following services shall be reimbursed at the cost of the assessment, inspection, installation/fitting, maintenance, repairs, adaptation, device, equipment, or supply item and when the service has been prior authorized by the plan of care:

1. environmental accessibility adaptations;

2. assistive devices and medical supplies;

3. home delivered meals (not to exceed the maximum limit set by OAAS); and

4. transition expenses up to a lifetime maximum of \$1500.

C. The following services shall be reimbursed at a per diem rate:

1. caregiver temporary support services when rendered by the following providers:

a. assisted living providers;

b. nursing facility; or

c. respite center.

D. The following services shall be reimbursed at an established monthly rate:

1. support coordination; and

2. transition intensive support coordination.

E. Non-medical transportation is reimbursed per one-way trip at a fee established by OAAS.

F. Certain nursing and skilled maintenance therapy procedures as well as personal assistance services furnished via "a.m. and p.m." delivery method will be reimbursed on a per-visit basis.

G. Certain environmental accessibility adaptation, nursing, and skilled maintenance therapy procedures will be reimbursed on a per-service basis.

H. Adult day health care services shall be reimbursed a per quarter hour rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all Community Choices Waiver participants by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

I. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's approval of the POC.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011).

§9503. Direct Support Professionals Wage Enhancement

A. An hourly wage enhancement payment in the amount of \$2 shall be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Community Choices Waiver participants. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

1. At least 75 percent of the wage enhancement shall be paid in the aggregate to the direct support professionals as wages. If less than 100 percent of the enhancement is paid in

wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

B. The minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on October 1, 2011 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011).

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.

Bruce D. Greenstein
Secretary

1112#096

RULE

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver

Allocation of Waiver Opportunities for ICF-DD Transitions
(LAC 50:XXI.13707)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.13707 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 XXI. Home and Community Based Services
Waivers**

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

**§13707. Programmatic Allocation of Waiver
Opportunities**

A. - C.2. ...

3. Except for those waiver opportunities addressed in Paragraphs C.1, 2, 6 and 7, waiver opportunities vacated during the waiver year shall be made available to persons residing in or leaving any publicly operated ICF-DD at the time the facility is transferred to any private ICF-DD under a cooperative endeavor agreement with OCDD, or their alternates.

C.4. - D. ...

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

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

with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:3526 (December 2011).

Bruce D. Greenstein
Secretary

1112#097

RULE

**Department of Natural Resources
Office of Conservation
Environmental Division**

Water Well Construction—Location
(LAC 56:I.321)

The Louisiana Office of Conservation has amended LAC 56:I.Chapter 3, Section 321 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment will require protective corner posts around certain drilling rig supply water wells.

Title 56

PUBLIC WORKS

Part I. Water Wells

Chapter 3. Water Well Construction

**§321. Location in Relation to Buildings and Other
Structures**

A. A well shall be located far enough from a building to allow reworking or rehabilitation with a drilling rig. A well shall not be located below ground surface, such as in pits and basements, and shall not be located within the foundation of a building, except a building constructed solely to house pumping and water system equipment.

B. For drilling rig supply wells, if the well is located on the constructed work pad for drilling operations or within the ring levee system, it must be surrounded with four protective corner posts. If the well is located outside the ring levee system and will be transferred for some other future use or will not be plugged and abandoned within six months of completion of associated oil and gas well drilling activity, it must be surrounded by four protective corner posts. The corner posts shall be constructed of four inch diameter metal pipe not less than schedule 40 and shall be concreted below the ground surface not less than four feet and shall extend above the ground surface not less than three feet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:954 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 37:3526 (December 2011).

James H. Welsh
Commissioner

1112#026

RULE

**Department of Natural Resources
Office of Conservation
Environmental Division**

Water Well Registration, Construction
and Closure (LAC 56:I.Chapters 1, 3, 5 and 7)

The Louisiana Office of Conservation has amended LAC 56:I.Chapters 1, 3, 5 and 7 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The amendment will address numerous typographical changes and rule clarifications necessary as a result of Act 437 of 2009 which transferred duties and responsibilities relative to ground water resources, water wells and drillers from the Department of Transportation and Development, Office of Public Works to the Department of Natural Resources, Office of Conservation.

Title 56

PUBLIC WORKS

Part I. Water Wells

Chapter 1. Registering Water Wells

§101. Authorization

- A. - B. ...
- C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-38:3098.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:950 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:906 (March 2011), LR 37:3527 (December 2011).

**§105. Registration of Water Wells and Holes
Completed on or after November 1, 1985**

- A. - G.1. ...

2. If an unregistered well is reworked, deepened or changed in any manner or if screen setting is altered, the proper registration form (DNR-GW-1 or DNR-GW-1S) shall be submitted to the department by the contractor no later than 30 calendar days after the work has been completed. Failure to file the proper registration form may result in enforcement actions including the assessment of civil penalties in accordance with the authority of the commissioner of conservation.

- H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-38:3098.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:950 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:906 (March 2011), LR 37:3527 (December 2011).

§113. Definitions

- A. ...

Free Flowing Water Well—an artesian well which flows, under natural conditions, at or above the ground surface.

Relief Well—any well drilled for the sole purpose of relieving the hydrostatic pressure inside a levee system during times of high water.

Test Hole—a temporary exploratory borehole drilled for the sole purpose of obtaining geologic, hydrologic and water quality data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3098 -38:3098.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 1:969 (May 1975), amended LR 11:969 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:907 (March 2011), LR 37:3527 (December 2011).

Chapter 3. Water Well Construction

§301. Preamble

A. As announced in the October 1985 issue of the *Louisiana Register*, the rules, regulations and standards for constructing water wells and holes were prepared by the Louisiana Department of Transportation and Development (DOTD), Office of Public Works, in accordance with R.S. 38:3091 through 38:3098.8. Effective January 1, 2010, in accordance with Act 437 of 2009, The Department of Natural Resources, Office of Conservation, hereafter referred to as *department*, is responsible for water well construction in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:952 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:909 (March 2011), LR 37:3527 (December 2011).

**§305. Approval of Plans and Specifications for Public
Water Supply Systems**

- A. - B.Note. ...

C. In accordance with these legislative directives, the rules, regulations and standards governing construction of public supply water wells were prepared by the DOTD in close cooperation with the Louisiana Department of Health and Hospitals, Office of Public Health (LDHH-OPH), and they are intended to eliminate duplication of efforts and requirements by the two agencies, thereby minimizing cost and optimizing operating efficiencies.

- D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:952 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:909 (March 2011), LR 37:3527 (December 2011).

§307. Licensing Requirements

A. - B. ...

C. Drillers operating in the state of Louisiana should, as a best management practice, carry minimum coverage for liability insurance for drilling operations engaged by their company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3528 (December 2011).

§313. Minimum Distance Requirements for Locating a Water Well

A. Provided that all other applicable rules and regulations are complied with, the minimum distance requirements for locating a water well shall be in accordance with the following Sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3528 (December 2011).

§315. Location in Relation to Possible Sources of Contamination

A. The horizontal distance between any water well and any possible sources of contamination shall be as great as possible but in no case less than the following minimum distances.

Possible Sources of Contamination	Minimum Distance (in feet)
Septic Tanks	50
Storm or Sanitary Sewer	50 ¹
Cesspools, outdoor privies, oxidation ponds, subsurface absorption fields, pits, etc.	100 ²
Sanitary landfills, feed lots, manure piles, solid-waste dumps and similar installations	100
Another water well	25 ³
Drainage canal, ditch, stream, pond or lake	50 ⁴

¹This distance may be reduced to 30 feet if the sewer is of cast iron with leaded joints or schedule 40 plastic pipe with water-tight joints.
²For domestic water wells, this distance may be reduced to 50 feet.
³This minimum distance requirement does not take into consideration the effects of interference from pumping nearby wells in the same aquifer.
⁴Horizontally measured from the water edge to the well at the highest water level which may have occurred in a 10 year period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3528 (December 2011).

§317. Location in Relation to Levees

A. Wells or holes as defined in Part I, except relief wells, shall not be drilled within 250 feet of the levees [R.S.

38:225(6)]. The department interprets this statute to mean that the well or wells shall be at least 250 feet from the land side toe of the levee. For this agency to consider any exception to the above, written approval from the appropriate local authorities such as levee boards or the Corps of Engineers is necessary and should be submitted with the variance request.

B. ...

C. Requirements for relief wells located within 250 feet from the land side toe of the levee include:

1. Written approval from the Corps of Engineers and the local levee authority, if applicable, and;
2. Minimum construction standards for grouting down to at least 10 feet from the ground surface and a one-way check valve.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3528 (December 2011).

§319. Location in Relation to Flood Water

A. Locations subject to flooding should be avoided, if possible. If a reasonable alternate site does not exist, the well may be constructed in flood-prone areas provided the top of the casing is at least 2 feet above the highest flood level which may have occurred in a 10-year period but in no case less than 2 feet above the ground surface, except when located in coastal areas along the Gulf of Mexico prone to direct impact of storm surge events. Wells with a casing size of 4 inches or less located in coastal areas prone to direct impact of storm surge events shall be constructed with:

1. well casing material strength of S/40 PVC or greater and a maximum casing height of 24 inches above ground surface;
2. protective casing material strength of S/80 PVC or greater with a diameter size providing a minimum 3 inch space between the well casing outer diameter and the outer diameter of the protective casing;
3. protective casing height of 20 to 22 inches above ground surface and a minimum depth below ground surface to 38 inches or greater;
4. spacing between the protective casing and the well casing filled with Portland cement; and
5. grouting down to a depth of at least 50 feet below ground surface.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:953 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:3528 (December 2011).

§323. Drilling and Construction

A. - C.2. ...

3. record any unusual occurrences, such as loss of circulation, cave-ins, etc. (In the event the unusual

occurrence is observable evidence of naturally occurring methane gas, natural gas or similar sub-surface gas, such as bubbling drilling mud or gas venting at the well bore or other nearby surface location or feature, the contractor shall report such event verbally to the Environmental Division of the Office of Conservation within 24 hours.); and

C.4. - J.1.c. ...

2. During the drilling operation, the contractor shall take the necessary precautions to prevent the contamination of any aquifer and the exchange of waters between aquifers.

J.3. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:954 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:3528 (December 2011).

§325. Casing

A. - F.4. ...

G. Casing Wall Thickness and Diameters

1. The pipe shall have a standard dimension ratio (SDR) of 26, 21, or 17, and shall be equivalent to at least Schedule 40 or 80, depending upon use, construction techniques, depths and strength requirements.

G.2. - H.1. ...

2. Where applicable, the well casing pipe, couplings, cement, primer and other compounds shall be evaluated and listed as conforming with both ANSI/NSF Standard 14 and ANSI/NSF Standard 61.

3. The pipe shall be marked with the nominal size standard dimension ratio or schedule, type of material, either the designation "PVC 1120" or "PVC 1220", the wording "well casing", designation "ASTM F-480", manufacturers name or trademark, and the NSF-WC designation.

I. - J.4. ...

5. Exposed PVC casings shall be protected from ultra-violet degradation by appropriate coatings as recommended by the manufacturer.

K. Height of Casing. Well casing shall project at least one foot above ground level, pump-house floor, or the top of concrete slab. For wells in areas subject to flooding, refer to §319.A. The ground surface or concrete slab around the well shall be sloped to drain away from the well in all directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:955 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3529 (December 2011).

§327. Screen

A. - B. ...

C. Screen Material. The type of screen material is generally dependent upon cost and the quality of water to be pumped. If the water contains a relatively high concentration of carbon dioxide, dissolved solids or hydrogen sulfide, corrosion-resistant materials should be used in the construction of the screen. If a corrosive environment is

present, the screen should be made entirely of the same material, and the lap or extension pipe (for not less than 5 feet) above the screen and blank pipe, if used, should be made of the same material as the screen. The likelihood of corrosion and encrustation can also be decreased by maintaining the entrance velocity within acceptable limits, 0.1 foot per second or less.

D. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:956 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:3529 (December 2011).

§329. Methods and Standards for Cementing the Annular Space

A.1. - A.2.c. ...

B. Methods for Cementing the Annular Space. The following regulations shall apply to all water wells, regardless of use or type.

1. Annular space shall be sealed with cement-bentonite slurry, which is a mixture of cement, bentonite and water, consisting of not more than 8 percent bentonite by dry weight of the cement, and a maximum of 10 gallons of water per sack (94 pounds) of cement. Additives, in the approved and proper ratio, may be added to the slurry if required. If the slurry is to be prepared in the field, it is recommended that the bentonite be added after cement and water are thoroughly mixed. Sodium bentonite with a minimum porosity of 10^{-8} may also be used.

2. - 6. ...

7. If one or more sands between the ground surface and the production sand contain saline water and/or water of objectionable quality, the annular space between the well casing and the hole shall be sealed with cement-bentonite slurry, at a minimum, to a depth of not less than 20 feet below the deepest sand containing the water of objectionable quality unless full depth cementing is required by §329.C.

C. - C.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:957 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3529 (December 2011).

§331. Well Development and Disinfection

A. - D.1. ...

2. The acceptable amount of sand per unit volume should be between recommended ratios of 1 ounce of sand per 8,000 gallons of water (about 1 milligram per liter) and one ounce per 100 gallons of water (80 milligrams per liter), depending on the use of water. Because of the possibility of damage by sand to plumbing fixtures and industrial equipment and products, the tolerance for sand in water used for public supply, domestic and most industrial purposes is low and should not exceed 5 milligrams per liter. Many wells that are used for public water supply systems have an

acceptable ratio of "no sand." The well owner should specify the acceptable limits of the "sand free" water with equal consideration given to the use of the water, the desired production rate, costs, and well development.

E. - F.3. ...

4. Disinfection of Wells. All new wells and existing wells in which repair work has been done shall be disinfected before being put into use, in accordance with Part XII of the State Sanitary Code (LAC 51:XII), if water is to be used for human drinking, cooking, washing or other potable purposes. Negative bacteriological analysis of water, performed by the Louisiana Department of Health and Hospitals, Office of Public Health (LDHH-OPH) or by a laboratory certified by the state health officer, shall be required for all public supply and domestic water wells.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:958 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:3529 (December 2011).

§333. Standards for Miscellaneous Appurtenances

A. Vent (Breather Pipe). Vents are required for all public supply water wells and are recommended for use on wells used for other purposes. Vents shall be so constructed and installed as to prevent the entrance of contaminants into the well. Vent openings shall be piped water-tight to a point at least 2 feet above the highest flood level which may have occurred in a 10-year period, but in no case less than 1 foot above the top of the well casing. Such vent openings and extensions thereof should not be less than 1/2 inch in diameter, with extension pipe firmly attached thereto. In all cases wherein a well's casing terminates less than 2 feet above the highest flood level which may have occurred in a 10-year period (such as along coastal areas as allowed under §319.A), the vent pipe opening shall continue to be required to terminate at least 2 feet above the highest flood level which may have occurred in a 10-year period. The openings of the vent pipes shall be turned downward and screened to prevent the entrance of insects, foreign matter and other contaminants. Vents will not be required when single-pipe jet pumps are used.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3098.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:959 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:910 (March 2011), LR 37:3530 (December 2011).

§335. Enforcement Actions

A. Provisions addressing enforcement of this Chapter appear in R.S. 38:3097.3, as follows.

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

C. The penalty provision for falsification of documents required under the provisions of this Part are therefore

criminal in nature and will be enforced through the district attorney having jurisdiction where said violation occurs. It should also be noted that utilization of the United States Mail in the falsification of documents constitutes a violation of Title 18 of the United States Code (Mail Fraud), and such information will be referred to the appropriate United States attorney.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:309.8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:959 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3530 (December 2011).

Chapter 5. Plugging and Sealing of Abandoned Water Wells and Holes

§501. Organization

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:959 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011), LR 37:3530 (December 2011).

§505. General Rules and Regulations

A. ...

B. Accordingly, the rules, regulations and standards for plugging abandoned water wells and holes stated herein were prepared in response to this legislative directive and were developed in coordination with other state agencies that are also concerned with the protection of the water resources of the state. The regulations and standards are intended to provide for restoration, as nearly as possible, of those subsurface and surface conditions that existed prior to drilling, boring, digging or augering activities; taking into account any changes that may have occurred as a result of "natural stresses."

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011), LR 37:3530 (December 2011).

§509. Exemptions

A. The following wells and holes are exempted from the provisions of the rules, regulations and standards stated herein:

1. saline-water wells associated with secondary recovery operations;
2. brine wells;
3. oil and gas wells and holes;

4. injection wells;
5. geothermal and geopressured holes associated with production of oil and gas; and
6. waste disposal wells.

B. Although the cited activities are not covered by R.S. 38:3094, they are not exempted or excepted by state law; therefore, persons, firms, corporations or others dealing with the cited activities should contact the appropriate regulating agencies for further information and should take any and all action necessary to protect the water resources of the state from contamination. The exclusion of these activities from these regulations does not in any way remove or establish legal liability for health and safety hazards, contamination, or pollution problems alleged to be caused by persons engaged in the activities cited in Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 37:3530 (December 2011).

§513. Variance Requests

A. Because of variable hydrologic conditions, differences in well construction, depth, and size, and the irregular occurrence of saltwater sands, the rules, regulations and standards stated herein cannot cover every possible situation. For cases where compliance with the rules, regulations, and standards stated in this Chapter is impractical, the owner, engineer, or the water well contractor may request a variance and/or clarification on methods specified. Such requests shall be addressed to the department as follows:

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275
Phone: (225) 342-5562

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:960 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended Department of Natural Resources, Office of Conservation, LR 37:911 (March 2011), LR 37:3531 (December 2011).

§525. Availability of Water Well Data

A. The drilling and construction records for a water well or test hole may be obtained from the owner, from the water well contractor, and/or from the following:

Louisiana Department of Natural Resources
Office of Conservation
P.O. Box 94275
Baton Rouge, LA 70804-9275
Phone: (225) 342-8244

B. ...

C. Information on monitoring wells may be obtained from the owner, the water well contractor, the engineer, the

Department of Natural Resources, as listed above, and/or from the following agency:

Department of Environmental Quality
Galvez Bldg.
602 North Fifth Street
Baton Rouge, LA 70802

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:961 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:912 (March 2011), LR 37:3531 (December 2011).

§533. Enforcement Actions

A. Provisions addressing enforcement of this Chapter appear in R.S. 38:3097.3, as follows:

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2091-R.S. 38:3097.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 11:964 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3531 (December 2011).

Chapter 7. Installing Control Devices on Free Flowing Water Wells

§701. Authorization

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:964 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:913 (March 2011), LR 37:3531 (December 2011).

§703. Purpose

A. The purpose of the rules and regulations, stated herein, is to conserve the ground water resources of the state by requiring that the owner install control devices on free flowing water wells (for glossary of terms, refer to §113.A of this Chapter) the owner shall install a flow control device on each free flowing water well in accordance with the rules and regulations stated in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:964 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3531 (December 2011).

§705. General Rules and Regulations

A. The rules and regulations, stated herein, apply to all free flowing water wells. A free flowing well is an artesian well which is allowed to flow, under natural conditions, at or above the land surface.

B. Exemptions. The following water wells are exempt from the provisions of this Chapter:

1. free flowing water wells in existence prior to January 1, 2012; however, wells reworked after January 1, 2012 shall not be exempt;

2. water wells producing saline water in connection with oil and gas production.

C. Wells In a State of Disrepair or Nonuse. If a water well is in such a state of disrepair that it cannot be used and a control device cannot be installed, it shall be considered abandoned and shall be plugged by the owner in accordance with the provisions of Chapter 5 of this Part, entitled "Rules, Regulations and Standards for Plugging Abandoned Water Wells and Holes."

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:965 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3531 (December 2011).

§707. Responsibility of the Owner

A. The owner shall be the party responsible for installing a flow control device on each free flowing water well.

B. The owner shall allow representatives of the department to enter the property and visit the well site to verify the installation of a control device, or inspect the completed work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:965 (October 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3532 (December 2011).

§709. Responsibility of the Department

A. At the request of a parish police jury or other governmental entity, the department may make a survey to locate and report on the location of free flowing water wells.

B. The department may enter into a financial cooperative agreement with the parish police jury or other governmental entity to have control devices installed on those free flowing water wells which produce over 25,000 gallons per day.

C. The department shall, in no way, be held responsible for a well "sanding up" or failing to yield water after a control device is installed on the well.

D. The department, upon receiving information on the existence of a free flowing water well, shall proceed as follows:

1. if a control device is required, the department will issue an order to the owner to require the installation of a control device on the well within 90 calendar days from the date of the said order. When the installation of the control device is completed, the owner shall apprise the department, in writing, within 30 calendar days after completion of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3094.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 11:965 (October 1985), repromulgated by the Department of

Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Natural Resources, Office of Conservation, LR 37:3532 (December 2011).

James H. Welsh
Commissioner

1112#025

RULE

Department of Revenue Policy Services Division

Income Tax Credits for Wind or Solar Energy Systems (LAC 61:I.1907)

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

Act 371 of the 2007 Regular Session of the Louisiana Legislature authorizes a credit against income tax for the cost of purchase and installation of a wind energy system or solar energy system, or both. Under the current version of the wind and solar energy system credit regulation, in order to be eligible for the credit all electrical components must be "UL" listed. This Rule updates the "UL" listed requirement and makes eligible for the wind and solar energy tax credit systems that use electrical components tested by all OSHA nationally recognized testing laboratories.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered

By the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1907. Income Tax Credits for Wind or Solar Energy Systems

A. - D.3. ...

E. Wind and Solar Energy Systems Eligible for the Tax Credit

1. - 5. ...

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be tested and certified by a federal Occupational Safety and Health Administration (OSHA) nationally recognized testing laboratory and must be installed in compliance with manufacturer specifications and all applicable building and electrical codes.

E.7. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 37:3532 (December 2011).

Cynthia Bridges
Secretary

1112#073

RULE

Department of Transportation and Development Office of Highways/Engineering

Advertising on Department of Transportation-Owned Assets
(LAC 70:III.Chapter 8)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development hereby enacts Chapter 8 of Part III of Title 70, entitled "Advertising on Department of Transportation-Owned Assets," in accordance with R.S. 48:21-26 and 48:274.2.

Title 70

TRANSPORTATION

Part III. Outdoor Advertising

Chapter 8. Advertising on Department of Transportation and Development-Owned Assets

§801. Purpose

A. The purpose of this Rule is to establish a policy within the Department of Transportation and Development for allowing certain limited types of advertising on high-visibility assets owned by the Department of Transportation and Development for the sole purpose of raising revenue to defray some costs of departmental services.

B. The establishment of this policy is not for the purpose of creating a public forum, but is for the purpose of allowing tasteful, visually appealing and inoffensive content for the department's customers while simultaneously supplementing departmental revenues.

C. The display of advertising on departmental assets will not constitute an endorsement by the department of any of the products, services or messages advertised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011).

§803. Requests for Proposals

A. The department may issue requests for proposals in order to secure bidders for advertisement spaces on state-owned assets.

B. The requests for proposals will be reviewed by a committee appointed by the secretary and the most suitable proposal, as determined by the committee, shall be selected.

C. The committee has the discretion to make reasonable choices concerning the types of advertising that may be displayed and shall utilize the criteria which follow in this Rule.

D. The department may limit the number of assets available for advertising displays.

E. The department may limit the term of the contract with the advertiser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011).

§805. Guidelines for Content of Advertising

A. Only commercial advertising will be accepted. It should have content which promotes a commercial transaction.

B. No content promoting illegal activity or obscene, vulgar or offensive conduct shall be allowed.

C. No content that demeans or disparages individuals or groups shall be allowed.

D. No political advertising shall be allowed.

E. No advertising of adult oriented products shall be allowed. Exception: advertising of gambling facilities shall be allowed.

F. The advertising should not be so controversial that it can promote vandalism of advertising materials and associated departmental property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011).

§807. Guidelines for Placement of Advertising on Assets

A. For advertising which requires a power source, such as electronics or LED lighting, the advertiser will be required by the department to submit and maintain detailed plans and provisions. The use of the powered advertising devices shall not have any adverse effect on the safety and functionality of the asset. If the safety and functionality of the asset is compromised after installation, the advertising shall be removed.

B. On ferries or vehicles, advertising may be placed on the inside or the outside of the ferry or vehicle. However, the advertising shall not be erected in such a manner that it impedes current lines of sight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011).

§809. Advertising Standards Committee

A. The secretary shall establish a three member Advertising Standards Committee. Such committee shall be independent and its determinations shall constitute final departmental determinations.

B. The committee shall review all requests for proposals and shall review all content of advertisement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011).

Sherri H. Lebas, P.E.
Secretary

1112#011

RULE

Department of Wildlife and Fisheries Office of Fisheries

Triploid Grass Carp (LAC 76:VII.901)

The Department of Wildlife and Fisheries, Office of Fisheries, hereby amends the rules governing exotic aquaculture species, specifically triploid grass carp. The amendments include reorganization of the rules and regulations for greater clarity. Additional changes would

make the triploid grass carp possession and transport permit valid for one year from the date of purchase and allow for the stocking of up to 500 fish, and would allow for multiple sales to the holder of a valid triploid grass carp possession and transport permit for up to 500 fish. The amendments also revise the triploid grass carp permit to require sellers possess a valid domestic aquatic organism license.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 9. Aquaculture

§901. Triploid Grass Carp

A. General Provisions

1. No person, firm or corporation shall at any time possess, sell or cause to be transported into this state, triploid grass carp (*Ctenopharyngodon idella*), except in accordance with and in compliance with the following regulations.

a. The following regulations govern the importation, transportation, possession, disposal and sale of live triploid grass carp for aquatic plant control in private and public waters, including ponds on public golf courses, municipal water treatment plants, parks and zoos. Nothing contained herein shall be construed to restrict or prevent the department from conducting bona-fide research studies and fish and aquatic plant management programs as authorized by law or regulation.

2. Definitions

Department—the Louisiana Department of Wildlife and Fisheries or an authorized employee of the department.

Permittee—individual that possesses a valid Louisiana triploid grass carp permit. A permittee can only be a natural person. A permittee may represent himself, a business, corporation or organization. The permittee is responsible for compliance with all stipulations in the permit.

Secretary—the secretary of the Louisiana Department of Wildlife and Fisheries.

Triploid Grass Carp—refers to *Ctenopharyngodon idella* fingerlings and larger individuals that are certified as triploid carp (3N chromosomes) by the U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the department.

Triploid Grass Carp Possession and Transportation Permit—the official document that identifies the terms of and allows for the importation, transportation and possession of live triploid grass carp in Louisiana for use in privately owned waterbodies.

Triploid Grass Carp Sales Permit—the official document that allows for the importation, transportation, possession and sale of live triploid grass carp in Louisiana as approved by the secretary or his designee.

Triploid Grass Carp Seller—a properly licensed fish farmer who possesses a triploid grass carp sales permit.

B. Triploid Grass Carp Possession and Transport Permit

1. General Rules for Triploid Grass Carp Possession and Transportation Permit

a. No person shall stock private waterbodies in the state of Louisiana without a triploid grass carp possession and transport permit.

b. No person shall import, transport and/or purchase triploid grass carp to be brought into the state of Louisiana unless such fish are certified as triploid grass carp by the

U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the department.

c. No person shall import, transport or possess fingerlings less than six inches in total length or eggs or fry within the state of Louisiana.

d. Permits are not transferable from person to person or from site location to site location.

e. Permittee shall provide an adequate number of triploid grass carp to the department, at no cost to the department, upon request, to verify ploidy. The permittee shall agree to allow department officials or a department approved contractor to conduct unannounced random inspections of the transport vehicle, property, waterbody site and fish.

f. Department officials may be accompanied by other persons during these inspections. The department or its agents have the right to remove or take fish samples for analysis and/or inspection.

g. Permittee is responsible for damages caused by any escapement.

h. In cases of mortality or unavoidable loss, restocking will be permitted as long as permit is still valid.

i. If a permittee terminates the use of triploid grass carp in the permitted waterbody, the permittee shall notify the department immediately and dispose of the triploid grass carp according to methods approved by the department.

j. In addition to all other legal remedies, failure to comply with any of the provisions in this Section shall be just cause to immediately suspend and/or revoke the permittee's permit. All triploid grass carp shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation. Violation of any of the provisions of the permit constitutes a Class Four violation in accordance with R.S. 56:319(E).

k. Any permittee charged with violation of this Section may make a written response to the alleged violation(s) to the secretary, and may request a hearing to review the alleged violation(s).

1. Qualified universities and public entities conducting research approved by or in conjunction with the department shall be exempt from fee charges.

2. Request Procedure for a Triploid Grass Carp Possession and Transport Permit

a. Individuals wishing to import or possess live triploid grass carp in Louisiana, but not sell them, must apply for a triploid grass carp possession and transport permit from the department for a fee of \$50.

b. The triploid grass carp possession and transport permit shall be valid for one year from date of purchase. Permittee must request new permit for subsequent purchases if permit has expired.

c. Permittees may stock up to 10 fish per acre of water, and shall not exceed 500 fish. Request to stock more than 500 fish must be approved by the department through site visitations by a department representative. Fisheries staff of the Louisiana Cooperative Extension Service or other qualified fisheries professional approved by the department may be used as a substitution for departmental site visit.

3. Requirement for transporting and stocking of triploid grass carp in private water bodies

a. Permittee must have in his immediate possession and available upon demand by department representatives, a

triploid grass carp possession and transportation permit when importing, transporting and/or purchasing live triploid grass carp within the state of Louisiana.

b. A bill of lading must accompany those individuals in possession of live triploid grass carp during transportation and shall include:

- i. source of triploid grass carp (hatchery);
- ii. name, address and phone number of seller;
- iii. name, address and phone number of buyer;
- iv. copy of triploid certification;
- v. total number of fish;
- vi. destination of shipment.

c. No person shall stock private waters in the state of Louisiana without a valid triploid grass carp possession and transport permit.

d. Permittee is responsible for containing triploid grass carp in his private waterbody. Permittee is also responsible for erecting barriers to prevent the escape of triploid grass carp into adjoining waters.

e. This permit does not authorize the permittee to stock triploid grass carp in public waterbodies of the state. Release of any fish into the waters of the state is strictly prohibited, except as provided in Subsection D below.

C. Triploid Grass Carp Sales Permit

1. Request Procedure for a Triploid Grass Carp Permit

a. Individuals wishing to sell live triploid grass carp in the state of Louisiana must first request a triploid grass carp sales permit through an application furnished by the department.

b. The triploid grass carp sales permit shall be valid for one year beginning January first and ending December thirty-first of that same calendar year. The permit may be purchased at any time during the year for the current permit year and beginning November fifteenth for the immediately following permit year. The cost of a triploid grass carp sales permit is \$250.

c. An annual report detailing each sales transaction, including name and address of permitted buyer, permit number, date and number of triploid grass carp sold must be submitted with permit renewal application.

2. Requirement for Triploid Grass Carp Sales Permit

a. No person shall import or cause to be imported into the state of Louisiana triploid grass carp unless certified as triploid grass carp by the U.S. Fish and Wildlife Service or a qualified agent or contractor approved by the department. Such certification must be furnished to and approved by the department prior to importing of any fish into the state of Louisiana for stocking.

b. A triploid grass carp seller must possess a valid domestic aquatic organism license.

c. The person shall ship triploid grass carp without the words "TRIPLOID GRASS CARP" prominently on at least two sides of the vehicle or hauling tank with block letters that are not less than four inches high.

d. A triploid grass carp seller is bound by the triploid grass carp possession and transportation regulations as stipulated in LAC 76:VII.901.B; except that:

- i. the triploid grass carp sales permit serves in lieu of the triploid grass carp possession and transportation permit;
- ii. the holders of a triploid grass carp sales permit may only sell live triploid grass carp to holders of a valid

triploid grass carp possession and transportation permit or a triploid grass carp sales permit;

iii. no person shall sell more than 500 triploid grass carp to an individual possessing a valid triploid grass carp possession and transport permit unless otherwise stipulated by the department in the permit.

e. A triploid grass carp seller shall notify the department at the designated telephone number (1-800-442-2511) of shipments of live triploid grass carp to permitted buyers at least 24 hours prior to shipment. Notification shall include seller's permit number, buyer's name, address, buyer's permit number, number of fish, destination of shipment and date.

f. In addition to all other legal remedies, failure to comply with any of the provisions in this section shall be just cause to immediately suspend and/or revoke the permittee's permit. All triploid grass carp shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation. Violation of any of the provisions of the permit constitutes a class four violation in accordance with R.S. 56:319(E).

D. Requirements for Stocking Triploid Grass Carp in Public (state or local) Waterbodies

1. No person shall release triploid grass carp into the public waters of Louisiana without written approval of the secretary or his designee. Individuals, organizations and local governments may request, in writing, that they be allowed to stock triploid grass carp in public waters. The department shall review the request, and if approved, shall provide written approval signed by the secretary or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318, R.S. 56:319 and R.S. 56:319.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 17:806 (August 1991), amended LR 19:511 (April 1993), LR 24:962 (May 1998), LR 37:3534 (December 2011).

Robert J. Barham
Secretary

1112#003

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

General and WMA Turkey Hunting Regulations (LAC 76:XIX.113)

The Wildlife and Fisheries Commission does hereby amend the turkey rules and regulations for the 2012 season.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§113. General and WMA Turkey Hunting Regulations

A. General Regulations. Only gobblers (male turkeys) may be taken. Taking of hen (female) turkeys, including bearded hens, is prohibited. Still hunting only. Use of dogs, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot,

and approved archery equipment but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited. The running of coyote with dogs is prohibited in all turkey hunting areas during the open turkey season. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys. A baited area is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closures. No person hunting turkeys more than 200 yards from a baited area will be in violation of the turkey baiting regulation.

B. Tags

1. Prior to hunting turkeys, all turkey hunters, regardless of age or license status, must obtain turkey tags and have them in their possession while turkey hunting. Immediately upon killing a turkey, hunters must attach a carcass tag to the turkey before it is moved from the site of the kill and must document the kill on the turkey harvest report card. The date of kill and parish of kill must be recorded on the carcass tag. The tag must remain attached to the turkey while kept at camp or while it is transported to the domicile of the hunter or to a cold storage facility. Hunters who keep the carcass or meat at a camp must also comply with game possession tag regulations. Within seven days of the kill, the hunter must report the kill. Hunters may report turkeys by calling the validation phone number or using the validation web site.

2. Turkey hunters purchasing licenses by phone or internet will be given an authorization number and a LDWF identification number that will serve as their license and tags until the physical license and tags arrive by mail. Turkey hunters who have purchased a license with tags, but have not yet received their physical license and tags, must immediately tag their kill with a possession tag before moving it from the site of the kill. The authorization number and LDWF identification number must be recorded on the possession tag. Hunters must retain documentation of any turkeys killed and upon receiving their physical tags and harvest report card, validate their kill as required in these regulations. The tags for turkeys killed prior to receiving the physical tags must be removed from the turkey harvest report card and discarded.

3. Tags removed from the turkey harvest report card prior to killing a turkey are no longer valid and if lost will not be replaced. Duplicate tags and turkey harvest report cards are available to replace lost report cards and attached tags. Hunters will be charged a fee for duplicate turkey harvest report cards and tags. Hunters that have killed a turkey prior to losing their remaining tag and harvest report card must remove and discard the duplicate tag to account

for the original tag that was used and validated. Hunters must record any previously validated turkey on the duplicate turkey harvest report card.

C. Possession of Live Wild Turkeys. No person shall take live wild turkeys or their eggs from the wild. No person shall possess captive live wild turkeys, (*Meleagris gallopavo silvestris*, *M. g. osceola*, *M. g. intermedia*, *M. g. merriami*, *M. g. mexicana*) or their eggs, regardless of origin, without a valid game breeder license. No pen-raised turkeys from within or without the state shall be liberated (released) within the state.

D. Statewide Youth and Physically Challenged Season Regulations. Only youths 17 years of age or younger or hunters possessing a physically challenged hunter permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Youths must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for youth younger than 16 years of age. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. Except properly licensed youths 16-17 years old and youths 12 years old or older who have successfully completed a hunter safety course may hunt without a supervising adult. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their season bag limit of two.

E. Shooting Hours: one-half hour before sunrise to one-half hour after sunset.

F. Turkey Hunting Area Descriptions

1. Area A

- a. All of the following parishes are open:
 - i. Beauregard;
 - ii. Bienville;
 - iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - iv. East Baton Rouge;
 - v. East Feliciana;
 - vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - vii. Jackson
 - viii. LaSalle;
 - ix. Lincoln;
 - x. Livingston;
 - xi. Natchitoches (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xii. Rapides (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xiii. Sabine;
 - xiv. St. Helena;
 - xv. Tangipahoa;
 - xvi. Union;
 - xvii. Vernon (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xviii. West Baton Rouge;
 - xix. West Feliciana (including Raccourci Island);
 - xx. Winn (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);

- b. Portions of the following parishes are also open:
 - i. Allen: north of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;
 - ii. Avoyelles: that portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;
 - iii. Calcasieu: north of I-10;
 - iv. Caldwell: west of Ouachita River southward to Catahoula Parish line;
 - v. Catahoula: south and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. Also, that portion lying east of LA 15;
 - vi. Evangeline: north and west of LA 115, north of LA 106 west of LA 115 to US 167, west of US 167 south to LA 10, north of LA 10 west of US 167 to LA 13, west of LA 13 south of LA 10 to Mamou and north of LA 104 west of Mamou;
 - vii. Franklin: that portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;
 - viii. Iberville: West of LA 1. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - ix. Jefferson Davis: north of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;
 - x. Madison: that portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;
 - xi. Morehouse: west of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;
 - xii. Ouachita: all west of the Ouachita River. That portion east of the Ouachita River lying north of US 80 to LA 139, west of LA 139 to LA 134, north of LA 134 to the Morehouse parish line, south of the Morehouse parish line, and east of the Ouachita River;
 - xiii. Pointe Coupee: all of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis (Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries);
 - xiv. Richland: that portion south of US 80 and east of LA 17;
 - xv. St. Landry: that portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River (Exception: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates);

xvi. Upper St. Martin: all within the Atchafalaya Basin (Exceptions: Sherburne WMA and Indian Bayou Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates);

xvii. Tensas: that portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River.

2. Area B

a. All of the following parishes are open:

- i. Caddo;
- ii. DeSoto;
- iii. Red River;
- iv. St. Tammany;
- v. Washington.

b. Portions of the following parishes are open:

- i. Ascension: all east of the Mississippi River;
- ii. Bossier: all open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish line;
- iii. East Carroll: east of US 65 from Arkansas state line to Madison Parish line;
- iv. Iberville: all east of the Mississippi River;
- v. Webster: all open except that portion bounded on the north by I-20, on the east by US 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);

3. Area C

a. All of the following parishes are open:

- i. Concordia.

b. Portions of the following parishes are open:

- i. Caldwell: all east of the Ouachita River;
- ii. Catahoula: all of the parish except for that portion located in Area A;
- iii. Franklin: west of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;
- iv. Iberia: east of the West Atchafalaya Basin Protection Levee;
- v. Richland: West of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;
- vi. Tensas: east and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

4. Turkey season dates on wildlife management areas, national wildlife refuges, Kisatchie National Forest and U.S. Army Corps of Engineers land located within areas A, B, and C may vary from the season set for the parish in which they are located. Seasons for these lands are specified in LAC 76:XIX.115.

G. WMA Turkey Hunting Regulations

1. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Mullet Harvest Rules (LAC 76:VII.343)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.343, modifying the existing Rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§343. Rules for Harvest of Mullet

A. Seasons

1. The season for the commercial taking of mullet with a mullet strike net shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially with a mullet strike net at any time outside of this season.

2. Mullet may be taken for live bait purposes with a commercial cast net of no more than 12 feet in radius, operated manually, during any season.

3. Commercial harvest of mullet shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of mullet during the period after sunset and before sunrise.

B. Commercial Taking

1. Mullet may be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of 1,200 feet or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and Social Security number of the owner of the net and the permit number of the permit issued to commercially take mullet with a mullet strike net. The department shall not issue any tag to a person who does not have a Social Security number.

3. Live mullet for bait purposes may be taken commercially with a cast net that shall not exceed 12 feet in radius and shall only be operated manually such that no mechanical device is used to hold open the cast net nor propel or deploy the cast net.

4. Any person commercially taking live mullet for bait purposes with a cast net must have a valid cast net gear license issued by the Department of Wildlife and Fisheries for each cast net within their possession while taking live mullet for bait purposes along with other applicable licenses.

C. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

D. Recreational Limits. The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

2. Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

3. Lottery Hunts. All or portions of some WMA seasons are designated as lottery hunts and are restricted to hunters selected by pre-application lottery. To apply for these lottery hunts, a hunter must submit a completed official application form to the Baton Rouge office by the deadline printed on the application. A non-refundable fee of \$5 must be sent with each application. Applicants for WMA youth hunts must be 17 years of age or younger and at least 8 years old on the day of the hunt. Applicants may submit only one application and may be selected for only one spring WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Hunters must abide by self-clearing permit requirements. Hunters chosen for WMA lottery hunts may be accompanied by one person. The person accompanying a lottery hunter shall not possess a firearm/bow or take a turkey, and must remain within a distance that allows normal voice contact with the lottery hunter at all times. Youths chosen for special youth only hunts may be assigned a guide on the day of the hunt provided that guides are available. One person may accompany the youth and guide, but may not hunt.

4. WMA Physically Challenged Hunt (wheelchair confined). Open only to hunters with a physically challenged hunter permit with wheelchair classification. During this hunt, ATVs may be used by hunters on all designated ATV trails in accordance with the physically challenged hunter permit. Hunters must abide by self-clearing permit requirements.

5. Rules Specific to Certain WMAs

a. Bens Creek: no turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

b. Sandy Hollow: no turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

c. Sherburne: all turkeys taken must be checked at the WMA headquarters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November 2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2469 (November 2007), LR 35:91 (January 2009), LR 35:2478 (November 2009), LR 36:2581 (November 2010), LR 37:3535 (December 2011).

Robert J. Barham
Secretary

1112#006

E. Permits

1. The commercial taking of mullet with a mullet strike net is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents. This permit, along with other applicable licenses, authorizes the bearer to sell his mullet catch.

2. No person shall be issued a license or permit for the commercial taking of mullet with a mullet strike net unless that person meets all of the following requirements.

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant, using any of the methods listed below.

i. Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been certified by the Internal Revenue Service (IRS).

ii. Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.), which has been filed and stamped "received" at a local IRS office, accompanied by a signed cover letter acknowledging receipt by the IRS.

iii. Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return, including all attachments (e.g., Schedule C of Federal Form 1040, Form W-2, etc.) along with an IRS-stamped transcript and IRS-signed cover letter. Transcripts are available at local IRS offices.

c. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance will review the submitted tax return information and determine applicant's eligibility as defined by R.S. 56:333(D)(1)(b).

d. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet with a mullet strike net.

4. Notwithstanding LAC 76:VII.343.E.2, the department, upon application from an individual who is currently permitted to commercially take mullet with a mullet strike net, may transfer a valid mullet permit under the following requirements and conditions.

a. The transferee must possess and provide the department his/her Social Security number.

b. The transferee must possess a valid commercial fishing license and shall provide proof that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in the calendar year immediately prior to the year of application. Proof shall be for the tax

year immediately prior to the application for transfer, and shall be in the form of an IRS transcript stamped by the local office, plus a copy of the applicant's personal file copy of his or her completed tax return for that year including all schedules and Form W-2s.

c. The transferee shall not currently possess a mullet permit to commercially take mullet with a mullet strike net nor have been permanently barred from the mullet fishery.

d. The transferor and the transferee each must certify that there shall be no financial gain realized for the transfer of such license or permit in accordance with department guidelines.

e. Any mullet permit found to have been transferred for financial gain shall be rendered void, shall immediately be surrendered to the department, and shall not be reissued.

5. In the case of a proven physical hardship, the department, upon written request from an individual who is currently permitted to commercially take mullet with a mullet strike net, may transfer a valid mullet permit into the name of the spouse, parent/legal guardian, or child/legal dependent of such person under the following requirements and conditions.

a. A mullet permit holder shall make a written request that includes the name, address and Social Security number of both the permit holder and the person to whom the license is requested to be transferred and shall set forth in detail the reasons justifying the request.

b. The mullet permit holder must present documentation sufficient to prove relationship as being the spouse, parent/legal guardian, or child/legal dependent, between the permit holder and the person to whom the permit is to be transferred. Examples of documents tending to establish such proof would include marriage license, birth certificate and/or judgment of legal guardianship.

c. The mullet permit holder must provide a signed statement from the treating physician setting forth the specific nature and extent of the disability together with a statement that the condition prevents participation in commercial fishing activities.

6. Any person commercially taking live mullet for bait purposes must possess a valid commercial fishing license issued by the department as well as all other applicable licenses.

F. A valid mullet permit to commercially take mullet with a strike net may only be transferred from a mullet permit holder who has no pending mullet charges for violating any provisions of R.S. 56:333 or any commission rule or regulation adopted pursuant to R.S. 56:333 after August 15, 2001. The provisions of R.S. 56:333.F shall apply to permit transfer recipients. Permits under suspension or revocation shall not be transferable during any suspension or revocation period.

G. Any person who transfers a mullet permit shall be precluded thereafter from obtaining a mullet permit to commercially take mullet with a mullet strike net whether by transfer or other method.

H. General Provisions. Effective with the closure of the commercial season for the taking of mullet with a mullet

strike net, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession except when commercially taking live mullet for bait purposes as provided for in this rule. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

I. In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:325.1, R.S. 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:236 (March 1996), LR 24:359 (February 1998), LR 26:2332 (October 2000), LR 28:1032 (May 2002), LR 37:3538 (December 2011).

Robert J. Barham
Secretary

1112#002

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Rules of the Road for Vessels (LAC 76:XI.301)

The Wildlife and Fisheries Commission does repeal the Rules of the Road for Vessels.

**Title 76
WILDLIFE AND FISHERIES
Part XI. Boating**

Chapter 3. Boating Safety

§301. Rules of the Road for Vessels

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:851.27A.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 29:1835 (September 2003), repealed LR 37:3540 (December 2011).

Robert J. Barham
Secretary

1112#005

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Tuna Harvest Regulations (LAC 76:VII.361)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.361, modifying the existing Rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§361. Tuna—Harvest Regulations

A. Bag and Possession limits, Recreational

Species	Bag and Possession Limit
1. Yellowfin Tuna	3 fish per person
2. Bluefin Tuna	1 fish per vessel per year as incidental catch during open seasons.

B. Size Limits, Recreational and Commercial

Species	Minimum Size Limit
1. Yellowfin Tuna	27 inches Curved Fork Length (CFL)
2. Bigeye Tuna	27 inches Curved Fork Length (CFL)
3. Bluefin Tuna*	73 inches Curved Fork Length (CFL)

*The size class of a bluefin tuna found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35.

NOTE: Curved Fork Length (CFL): the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel. Pectoral Fin Curved Fork Length (PFCFL) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

C. No person shall take or have in their possession any species of tuna, less than the minimum size or in excess of the take or possession limits. The possession limit on tunas applies to tuna taken within or outside Louisiana territorial waters.

D. Permits

1. Recreational. Persons aboard a vessel whether within or outside Louisiana territorial waters possessing any of the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna and albacore are required to have a valid federal recreational tuna permit in their immediate possession on board the vessel.

2. Commercial. Persons harvesting the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna and albacore whether within or outside Louisiana state territorial waters for commercial purposes or possessing such tuna species in excess of a recreational take limit are required to have a valid federal commercial tuna permit in their immediate possession on board the vessel. No person shall sell, barter, trade or exchange or attempt to sell, barter, trade or exchange any species of tuna without a valid federal commercial tuna permit. No person shall purchase, barter, trade or exchange any species of tuna from any person who harvested tuna without a valid federal commercial tuna permit.

3. No person aboard any commercial vessel shall transfer or cause the transfer of fish between vessels on state or federal waters.

E. 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 tunas while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange tunas 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(25)(a), R.S. 56:326.1, R.S. 56:326.3 and R.S. 56:320.2(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2834 (December 2000), amended LR 27:2269 (December 2001), LR 37:3540 (December 2011).

Robert J. Barham
Secretary

1112#004

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Turkey Seasons (LAC 76:XIX.115)

The Wildlife and Fisheries Commission does hereby amend the turkey dates and limits for the 2012 season.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§115. Turkey Hunting Areas, Seasons, and Bag Limits

A. Daily limit is one gobbler. Season limit is two gobblers. Turkeys taken on WMAs are part of the season bag limit. Only one turkey may be taken during spring WMA lottery hunts.

B. Turkey season will open on the fourth Saturday in March. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife management areas, national forests, national wildlife refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the fourth Saturday in March falls the day before Easter.

C. Statewide youth turkey and physically challenged season on private lands shall be the weekend prior to the start of the regular turkey season.

D. Only those wildlife management areas listed herein are open to turkey hunting. All other wildlife management areas are closed.

E. 2012 Turkey Hunting Schedule

Area	Season Dates
A	March 24-April 22
B	March 24-April 15
C	March 24-April 8
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 17-18

F. Wildlife Management Area Turkey Hunting Schedule

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Attakapas	March 24-April 1	None
Bayou Macon	None	April 14-15
Bens Creek	March 24-April 8	None
Big Lake	March 24-April 8	None
Bodcau	March 24-April 8	None
Boeuf	March 24-April 1	None
Clear Creek	April 2-April 22	March 24-25 March 31 April 1
Camp Beauregard	March 24-April 1	None
Dewey Wills	None	April 14-15 April 21-22
Fort Polk	March 24-April 22	None
Grassy Lake	March 24-April 1	None
Hutchinson Creek	March 24 – April 22	None
Jackson-Bienville	March 24-April 8	None
Lake Ramsey	March 24-April 8	None
Little River	March 24-April 8	None
Loggy Bayou	None	April 13-15
Peason Ridge	March 24-April 22	None
Red River	March 24-April 8	None
Sabine	None	April 14-16 April 20-22
Sandy Hollow	March 24-April 8	None
Sherburne	March 29-30	March 24-25 March 26-28
Sicily Island	None	March 24-26 March 27-29 March 30-April 1 April 2-4 April 5-8
Tangipahoa Parish School Board	March 24-April 22	None
Three Rivers	March 24-April 8	None
Tunica Hills South Tract	April 9-15	March 24-25 March 31-April 1 April 7-8
Tunica Hills North Tract	April 9-15	March 24-25 March 31-April 1 April 7-8
Union	None	April 20-22
Walnut Hills	March 24-April 22	None
West Bay	None	March 24-25 March 31-April 1 April 7-8

G. Wildlife Management Area Lottery Youth Hunts

WMA	Lottery Youth Hunt Date
Bens Creek	March 17
Big Lake	March 17
Bodcau	March 17-18
Clear Creek	March 17
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 17
Grassy Lake	March 17
Jackson-Bienville	March 17-18
Loggy Bayou	April 7-8
Pearl River	April 7
Pomme de Terre	April 7
Sherburne	March 17-18

WMA	Lottery Youth Hunt Date
Sicily Island	March 17
Spring Bayou	April 7
Tunica Hills	March 17
Union	April 7-8
West Bay	March 17

Title 40

LABOR AND EMPLOYMENT

**Part 1. Workers' Compensation Administration
Subpart 1. General Administration**

Chapter 3. Electronic Billing

§301. Purpose

A. The purpose of this Rule is to provide a legal framework for electronic billing, processing, and payment of medical services and products provided to an injured employee and data reporting subject to R.S. 23:1203.2. It is the goal of the OWCA that electronic billing in Louisiana will follow formats that adhere to national standards and industry practices so as to minimize any customization specific to Louisiana. However, electronic billing in the workers compensation environment requires additional consideration for the required medical records (electronic attachments). At the time of promulgation, electronic attachments are not commonly used outside of the workers compensation environment. While the purpose of R.S. 23:1203.2 and these accompanying rules are to implement electronic billing in Louisiana, it is recognized that not all healthcare providers will immediately have the systems and processes to accommodate electronic billing and electronic attachments; therefore, participation in electronic medical billing as established in these rules is consistent with R.S. 23:1203.2 and is voluntary for healthcare providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3542 (December 2011).

§303. Definitions

A. For the purposes of this Rule the following definitions shall apply.

Agent—broadly construed to mean any person or entity that performs medical bill related processes for the insurance carrier responsible for the bill. These processes include, but are not limited to, reporting to government agencies, electronic transmission, forwarding, or receipt of documents, review of reports, adjudication of bill, and final payment.

Business Day—Monday through Friday, excluding days on which a holiday is observed by this state.

Clearinghouse—a public or private entity, including a billing service, re-pricing company, community health management information system or community health information system, and "value-added" networks and switches, that is an agent of either the insurance carrier or provider and may perform the following functions:

a. processes or facilitates the processing of medical billing information received from a client in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction for further processing of a bill related transaction; or

b. receives a standard transaction from another entity and processes or facilitates the processing of medical billing information into nonstandard format or nonstandard data content for a client entity.

CMS—the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

Complete Electronic Medical Bill—a medical bill that meets all of the following criteria:

a. it is submitted in the correct uniform billing format, with the correct uniform billing code sets,

H. Non-lottery Youth Hunts

1. Bodcau WMA will be open April 14-15 (only youths may hunt).

2. Jackson-Bienville WMA will be open April 14-15 (only youths may hunt).

I. Wildlife Management Area Physically Challenged (Wheelchair Confined) Hunt

1. Jackson-Bienville WMA will be open April 16-22 to holders of valid physically challenged hunter (wheelchair classification) permits.

J. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) turkey hunting schedule: Caney Ranger District, March 24-April 8; all remaining KNF lands, March 24-April 15 (including Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers turkey hunting schedule: Indian Bayou Area, March 17-18 youth and physically challenged lottery only hunt, and lottery hunt only on March 24-25 and March 31-April 1. Old River Control and Lock Areas, March 24-April 8.

3. National Wildlife Refuges: Bogue Chitto NWR, March 24-April 15; Lake Ophelia NWR, March 24-April 8 hunt ends at 12 p.m. each day; Tensas NWR, March 17-18 (youth only), March 24-April 8; Upper Ouachita NWR, March 17 (youth lottery only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2513 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2470 (November 2007), LR 35:90 (January 2009), LR 35:2481 (November 2009), LR 36:2583 (November 2010), LR 37:3541 (December 2011).

Robert J. Barham
Secretary

1112#007

RULE

**Louisiana Workforce Commission
Office of Workers' Compensation**

Electronic Billing (LAC 40:I.Chapter 3)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedures Act, has enacted LAC 40:I, to include Chapter 3 to add the following.

transmitted in compliance with the format requirements described in this Rule;

b. the bill and electronic attachments provide all information required under R.S. 23:1203.2; and

c. the health care provider has provided all information that insurance carrier requested under Title 40 of the Louisiana Administrative Code for purposes of processing the bill.

Electronic—a communication between computerized data exchange systems that complies with the standards enumerated in this Rule.

Electronic Medical Billing and Payment Companion Guide—a separate document which gives detailed information for electronic billing and payment. The guide outlines the workers' compensation industry national standards and Louisiana jurisdictional procedures necessary for engaging in electronic data interchange (EDI) and specifies clarifications where applicable.

Health Care Provider—is defined in R.S. 23:1021.

Health Care Provider Agent—a person or entity that contracts with a health care provider establishing an agency relationship to process bills for services provided by the health care provider under the terms and conditions of a contract between the agent and health care provider. Such contracts may permit the agent to submit bills, request reconsideration, and receive reimbursement for the health care provider services billed.

Implementation Guide—a published document for national electronic standard formats as defined in Section 305 of this Chapter that specifies data requirements and data transaction sets.

Insurance Carrier—the insurer legally responsible for paying the medical bills under workers' compensation, or an agent of this entity.

National Provider Identification Number or NPI—the unique identifier assigned to a health care provider or health care facility by the secretary of the United States Department of Health and Human Services.

Supporting Documentation—documents necessary for the insurance carrier or its agent to process a bill. These include, but are not limited to, any records as required by Title 40 of the Louisiana Administrative Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3542 (December 2011).

§305. Formats for Electronic Medical Bill Processing

A. Where mandated for insurance carriers, beginning July 1, 2013 for electronic transmissions, the following electronic medical bill processing standards shall be used.

1. Billing

a. Professional Billing—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Professional (837), May 2006, ASC X12, 005010X222 and Type 3 Errata to Health Care Claim: Professional (837), June 2010, ASC X12, 005010X222A1.

b. Institutional/Hospital Billing—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Institutional (837), May 2006, ASC X12N/005010X223, Type 1 Errata to Health Care Claim: Institutional (837), ASC X12 Standards for

Electronic Data Interchange Technical Report Type 3, October 2007, ASC X12N/005010X223A1, and Type 3 Errata to Health Care Claim: Institutional (837), June 2010, ASC X12, 005010X223A2.

c. Dental Billing—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Dental (837), May 2006, ASC X12N/005010X224, Type 1 Errata to Health Care Claim: Dental (837), ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, October 2007, ASC X12N/005010X224A1, and Type 3 Errata to Health Care Claim: Dental (837), June 2010, ASC X12, 005010X224A2.

d. Retail Pharmacy Billing—the Telecommunication Standard Implementation Guide, Version D, Release 0 (Version D.0), August 2007, National Council for Prescription Drug Programs and the Batch Standard Batch Implementation Guide, Version 1, Release 2 (Version 1.2), January 2006, National Council for Prescription Drug Programs.

2. Acknowledgment

a. Electronic responses to ASC X12N 837 transactions:

i. the ASC X12 Standards for Electronic Data Interchange TA1 Interchange Acknowledgment contained in the standards adopted under Paragraph A.1 of this Section;

ii. the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Implementation Acknowledgment for Health Care Insurance (999), June 2007, ASC X12N/005010X231; and

iii. the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim Acknowledgment (277CA), January 2007, ASC X12N/005010X214.

b. Electronic responses to NCPDP transactions:

i. the response contained in the standards adopted under Paragraph A.1 of this Section.

3. Remittance—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim Payment/Advice (835), April 2006, ASC X12N/005010X221 and Type 3 Errata to Health Care Claim Payment/Advice (835), June 2010, ASC X12, 005010X221A1.

4. Documentation submitted with an electronic medical bill in accordance with Section 309 of this Chapter (relating to medical documentation): ASC X12N Additional Information to Support a Health Claim or Encounter (275), February 2008, ASC X12, 005010X210.

B. Nothing in this Section shall prohibit insurance carriers and health care providers from using a direct data entry methodology for complying with these requirements, provided the methodology complies with the data content requirements of the adopted formats and these rules.

C. Insurance carriers and health care providers may exchange electronic data in a non-prescribed format by mutual agreement. All data elements required in the OWCA-prescribed formats must be present in a mutually agreed upon format.

D. The implementation specifications for the ASC X12N and the ASC X12 Standards for Electronic Data Interchange may be obtained from the ASC X12, 7600 Leesburg Pike, Suite 430, Falls Church, VA 22043; telephone (703) 970-4480; and fax (703) 970-4488. They are also available

through the Internet at <http://store.X12.org>. A fee is charged for all implementation specifications.

E. The implementation specifications for the retail pharmacy standards may be obtained from the National Council for Prescription Drug Programs, 9240 East Raintree Drive, Scottsdale, AZ 85260; telephone (480) 477-1000; fax (480) 767-1042. They are also available through the internet at <http://www.ncdp.org>. A fee is charged for all implementation specifications.

F. Whenever the formats enumerated in Subsection A of this Section, for billing, acknowledgement, remittance, and documentation are replaced with a newer version, the most recent standard should be used. The requirement to use a new version shall commence on the effective date of the new version as published in the Code of Federal Regulations.

G. The OWCA shall develop an "Electronic Medical Billing and Payment Companion Guide" by January 1, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3543 (December 2011).

§307. Billing Code Sets

A. Billing codes and modifier systems identified below are valid codes for these workers' compensation transactions, in addition to any code sets defined by the standards adopted in Section 305.

1. "CDT-4 Codes"—codes and nomenclature prescribed by the American Dental Association.

2. "CPT-4 Codes"—the procedural terminology and codes contained in the "Current Procedural Terminology, Fourth Edition," as published by the American Medical Association and as adopted in the appropriate fee schedule contained in Title 40 of the Louisiana Administrative Code.

3. "Diagnosis Related Group (DRG)"—the inpatient classification scheme used by CMS for hospital inpatient reimbursement. The DRG system classifies patients based on principal diagnosis, surgical procedure, age, presence of comorbidities and complications, and other pertinent data.

4. "HCPCS"—CMS' Healthcare Common Procedure Coding System, a coding system which describes products, supplies, procedures, and health professional services and which includes the American Medical Association's (AMA's) Physician "Current Procedural Terminology, Fourth Edition," (CPT-4) codes, alphanumeric codes, and related modifiers.

5. "ICD-9-CM Codes"—diagnosis and procedure codes in the International Classification of Diseases, Ninth Revision, Clinical Modification published by the United States Department of Health and Human Services.

6. "ICD-10-CM/PCS Codes"—diagnosis and procedure codes in the International Classification of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System maintained and published by the United States Department of Health and Human Services.

7. "NDC"—National Drug Codes of the Food and Drug Administration.

8. "Physical Therapy"/"Occupational Therapy Codes"—(PT/OT Codes)—Codes specified in Title 40 of the LAC covering physical therapy and occupational therapy services.

9. "Revenue Codes"—the four digit coding system developed and maintained by the National Uniform Billing

Committee for billing inpatient and outpatient hospital services, home health services, and hospice services.

10. "National Uniform Billing Committee codes"—code structure and instructions established for use by the National Uniform Billing Committee (NUBC), such as occurrence codes, condition codes, or prospective payment indicator codes. These are known as UB 04 Codes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3544 (December 2011).

§309. Electronic Medical Billing, Reimbursement, and Documentation

A. Applicability

1. This Section outlines the exclusive process to exchange electronic medical bill and related payment processing data for professional, institutional/hospital, pharmacy, and dental services. This Section does not apply to requests for reconsideration or judicial appeals concerning any matter related to medical compensation or requests for informational copies of medical records.

2. Unless exempted from this process in accordance with Subsection B of this Section, insurance carriers or their agents shall:

a. accept electronic medical bills submitted in accordance with the adopted standards;

b. transmit acknowledgments and remittance advice in compliance with the adopted standards in response to electronically submitted medical bills; and

c. support methods to receive electronic documentation required for the adjudication of a bill, as described in Section 315 of this Chapter.

3. If a health care provider elects to utilize electronic medical bill submission, then the healthcare provider shall:

a. exchange medical bill data in accordance with the adopted standards;

b. submit medical bills as defined by Section 305.A of this Chapter, to insurance carriers that have established connectivity to the health care provider's system or clearinghouse;

c. submit required documentation in accordance with Subsection E of this Section; and

d. receive and process any acceptance or rejection acknowledgment from the insurance carrier.

4. Insurance carriers must be able to exchange electronic data by July 1, 2013 unless exempted from the process in accordance with Subsection B of this Section.

5. The insurance carrier's failure to comply with any requirements of this rule shall result in an administrative violation under LAC 40:109.A.

6. Health care providers who elect not to utilize electronic medical billing pursuant to Section 305.A.1 of this Chapter shall submit paper medical bills for payment pursuant to Title 40 of the Louisiana Administrative Code.

B. Waivers

1. An insurance carrier is waived from the requirement to receive medical bills electronically from health care providers if:

a. the insurance carrier processed 1200 or fewer medical bills for workers' compensation treatment or services in the previous calendar year;

b. written requests for waivers shall be submitted to the OWCA at least 90 days prior to the implementation date and renewed for each calendar year thereafter. Approved waivers shall be limited to the calendar year and must be requested in writing 90 days prior to each subsequent calendar year;

c. the OWCA may grant an exception on a case-by-case basis if the insurance carrier establishes that electronic billing will result in an unreasonable financial burden.

C. Notwithstanding any requirements in Section 305 of this Chapter, to be considered a complete electronic medical bill, the bill or supporting transmissions must:

1. include in legible text all medical reports and records, such as evaluation reports, narrative reports, assessment reports, progress report/notes, clinical notes, hospital records and diagnostic test results that are expressly required by Title 40 of the Louisiana Administrative Code;

2. identify the:

- a. injured employee;
- b. employer, if available;
- c. insurance carrier, third party administrator, managed care organization or its agent;
- d. health care provider;
- e. medical service or product; and
- f. any other requirements as presented in the electronic billing companion guide as promulgated by the OWCA.

3. Use current and valid codes and values as defined in the applicable formats defined in Sections 305 and 307 of this Chapter.

D. Acknowledgment

1. Interchange acknowledgment (TA1) notifies the sender of the receipt of, and certain structural defects associated with, an incoming transaction.

2. An Implementation Acknowledgment (ASCX12N999), or the most currently accepted transaction format, is an electronic notification to the sender of the file has been received and has been:

- a. accepted as a complete and structurally correct file; or
- b. rejected with a valid rejection code.

3. An ASC X12N 277 health care claim status response or acknowledgment transaction (detail acknowledgment) is an electronic notification to the sender of an electronic transaction (individual electronic bill) that the transaction has been received and has been:

- a. accepted as a complete, correct submission; or
- b. rejected with a valid rejection code.

4. An insurance carrier must acknowledge receipt of an electronic medical bill by returning an implementation acknowledgment (ASCX12N999) within one business day of receipt of the electronic submission.

a. Notification of a rejected bill is transmitted using the appropriate acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

b. A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 business days from the date originally submitted if an insurance carrier has acknowledged acceptance of the original complete electronic medical bill. A health care

provider or its agent may submit a corrected electronic medical bill to the insurance carrier after receiving notification of a rejection. The corrected medical bill is submitted as a new, original bill.

5. An insurance carrier must acknowledge receipt of an electronic medical bill by returning an ASC X12N 277 health care claim status response or acknowledgment transaction (detail acknowledgment) within two business days of receipt of the electronic submission.

a. Notification of a rejected bill is transmitted in an ASC X12N 277 response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

b. A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if an insurance carrier has acknowledged acceptance of the original complete electronic medical bill.

6. Acceptance of a complete medical bill is not an admission of liability by the insurance carrier. An insurance carrier may subsequently deny an accepted electronic medical bill if the employer or other responsible party named on the medical bill is not legally liable for its payment.

a. Any subsequent denial of a complete medical bill must occur within the timeframe as provided in R.S. 23:1201(E) from the date of receipt of the complete electronic medical bill.

b. The remittance advice must clearly indicate the reason for the denial.

7. Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement from an employee or insurance carrier as required in R.S. 23:1306.

8. Functional acknowledgment under Section 309.D.3 of this Chapter, and acceptance of a complete, structurally correct file serves as proof of the received date for an electronic medical bill in Section 309.C of this Chapter.

E. Electronic Documentation

1. Electronic documentation must be submitted with the electronic medical bill.

2. Electronic documentation shall be provided pursuant to Section 309.C of this Chapter.

F. Remittance Notification

1. An electronic remittance notification is an explanation of medical benefits (EOMB) or explanation of review (EOR), submitted electronically regarding payment or denial of a medical bill.

2. Upon mutual agreement, an insurance carrier may provide an electronic remittance notification.

3. The electronic remittance notification must contain the appropriate group claim adjustment reason codes, claims adjustment reason codes (CARC) and associated remittance advice remark codes (RARC) as specified by ASC X12 835N implementation guide or for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) reject codes, denoting the reason for payment, adjustment, or denial.

4. The remittance notification must be released within one business day of the payment or denial.

G. A health care provider or its agent may not submit a duplicate paper medical bill earlier than 60 business days

from the date originally submitted unless the insurance carrier has returned the medical bill as incomplete in accordance with Section 311 (employer, insurance carrier, managed care organization, or agents' receipt of medical bills from health care providers). A health care provider or its agent may submit a corrected electronic medical bill to the insurance carrier after receiving notification of a rejection. The corrected medical bill is submitted as a new, original bill.

H. An insurance carrier or its agent may not reject a standard transaction on the basis that it contains data elements not needed or used by the insurance carrier or its agent.

I. A health care provider that is not able to send a standard transaction may use an internet-based direct data entry system offered by an insurance carrier if the insurance carrier does not charge a transaction fee. A health care provider using an internet-based direct data entry system offered by an insurance carrier or other entity must use the appropriate data content and data condition requirements of the standard transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3544 (December 2011).

§311. Employer, Insurance Carrier, Managed Care Organization, or Agents' Receipt of Medical Bills from Health Care Providers

A. Upon receipt of medical bills submitted in accordance with Sections 305, 307, and 309 of this Chapter, an insurance carrier shall evaluate each bill's conformance with the criteria of a complete medical bill.

B. The received date of an electronic medical bill is the date all of the contents of a complete electronic bill are successfully received by the insurance carrier.

C. The insurance carrier may contact the medical provider to obtain the information necessary to make the bill complete.

1. Any request by the insurance carrier or its agent for additional documentation to pay a medical bill shall:

a. be made by telephone or electronic transmission or through web portal access if available unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery;

b. be specific to the bill or the bill's related episode of care;

c. describe with specificity the clinical and other information to be included in the response;

d. be relevant and necessary for the resolution of the bill;

e. be for information that is contained in or in the process of being incorporated into the injured employee's medical or billing record maintained by the health care provider; and

f. indicate the specific reason for which the insurance carrier is requesting the information.

2. If the insurance carrier or its agent obtains the missing information and completes the bill to the point it can be adjudicated for payment, the insurance carrier shall document the name and telephone number of the person who supplied the information.

D. An insurance carrier shall not return a medical bill except as provided in Subsection A of this Section. When returning an ASC X12N 837 medical bill, the insurance carrier shall clearly identify the reason(s) for returning the bill by utilizing the appropriate reason and rejection code identified in the standards identified in Section 305.A of this Chapter.

E. The proper return of an incomplete medical bill in accordance with this Section fulfills the obligation of the insurance carrier to provide to the health care provider or its agent information related to the incompleteness of the bill.

F. Insurance carriers must timely reject bills or request additional information needed to reasonably determine the amount payable.

1. For bills submitted electronically, the rejection of all or part of the bill must be sent to the submitter within two business days of receipt.

2. If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.

G. If an insurance carrier has reason to challenge the coverage or amount of a specific line item on a bill, but has no reasonable basis for objections to the remainder of the bill, the uncontested portion must be paid timely, as in Subsection H of this Section below.

H. Payment of all uncontested portions of a complete medical bill shall be made within 60 calendar days of receipt of the original bill, or receipt of additional information requested by the insurance carrier allowed under the law. Amounts paid after this 60 calendar day review period shall be subject to R.S. 23:1201.F.

I. An insurance carrier shall not return a medical bill except as provided in Section 311.A of this Chapter. When returning a medical bill, the insurance carrier shall also communicate the reason(s) for returning the bill.

J. The insurance carrier's failure to comply with any requirements of this rule shall result in an administrative violation in accordance with LAC 40:109.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3546 (December 2011).

§313. Communication between Health Care Providers and Insurance Carriers

A. Any communication between the health care provider and the insurance carrier related to medical bill processing shall be of sufficient specific detail to allow the responder to easily identify the information required to resolve the issue or question related to the medical bill. Generic statements that simply state a conclusion such as "insurance carrier improperly reduced the bill" or "health care provider did not document" or other similar phrases with no further description of the factual basis for the sender's position do not satisfy the requirements of this Section.

B. Utilization of the ASC X12N Reason Codes, or as appropriate, the NCPDP Reject Codes, by the insurance carrier when communicating with the health care provider or its agent or assignee, provides a standard mechanism to communicate issues associated with the medical bill.

C. Communication between the health care provider and insurance carrier related to medical bill processing shall be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the

sender shall send the information by mail or personal delivery.

D. The insurance carrier's failure to comply with any requirements of this Rule shall result in an administrative violation LAC 40:109.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3546 (December 2011).

§315. Medical Documentation Necessary for Billing Adjudication

A. Medical documentation includes all medical reports and records permitted or required in accordance with Title 40 of the Louisiana Administrative Code.

B. Any request by the insurance carrier for additional documentation to process a medical bill shall conform to the requirements of Section 311.C of this Chapter.

C. It is the obligation of insurance carriers to furnish its agents with any documentation necessary for the resolution of a medical bill.

D. Health care providers, health care facilities, third-party biller/assignees, and claims administrators and their agents must comply with all applicable federal and state rules related to privacy, confidentiality, and security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the La. Workforce Commission, Office of Workers' Compensation, LR 37:3547 (December 2011).

§317. Compliance and Penalty

A. Any electronically submitted bill determined to be complete but not paid or objected to within 60 days shall be subject to penalties per R.S. 1201(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3547 (December 2011).

§319. Effective Date

A. This Chapter applies to all medical services and products provided on or after July 1, 2013 for medical services and products provided prior to July 1, 2013, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:3547 (December 2011).

Curt Eysink
Executive Director

1112#029

Notices of Intent

NOTICE OF INTENT

Department of Children and Family Services Division of Programs Licensing Section

Emergency Preparedness and Evacuation Planning (LAC 67:III.Chapter 73)

In accordance with provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS), Division of Programs, Licensing Section proposes to amend LAC 67:III.Chapter 73, Day Care Centers, Subchapter A, Licensing Class "A" Regulations for Child Care Centers and Subchapter B, Licensing Class "B" Regulations for Child Care Centers.

In order to protect children in child care facilities licensed by DCFS, Section 7328 is being added to Chapter 73, Subchapter A, and Section 7378 to Subchapter B as emergency preparedness and evacuation planning regulations. These regulations will provide specific standards for written multi-hazard plans for child care providers which include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. Sections 7312, 7327, 7365, and 7373, are being amended to remove references to emergency procedures as they will be addressed in the above added sections.

The department finds this amendment necessary to prevent a threat to the health, safety, and welfare of children in licensed care in the event of any emergency. This proposed rule was made active by an Emergency Rule effective December 1, 2011.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A" Regulations for Child Care Centers

§7312. Staff Development and Training

A. - E.7. ...

F. - F. Note. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1114 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2763 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7327. Safety Requirements

A. - N. ...

O. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the

center. Documentation shall include date, time, and signature of staff conducting the visual check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1119 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2767 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7328. Emergency Preparedness and Evacuation Planning

A. The director, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of an emergency. The plan shall include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. The plan shall be appropriate for the area in which the center is located and address any potential disaster due to that particular location. At a minimum, the plan shall be reviewed annually by the director for accuracy and updated as changes occur. Documentation of review by the director shall consist of the director's signature and date. The plan shall be reviewed with all staff at least twice per calendar year. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed. The plan shall also include information regarding handling children with special needs enrolled in the child care center as well as instructions for handling infants through children age two. The plan shall specifically address the evacuation and transportation of children in wheelchairs. The plan shall include but shall not be limited to a system to account for all children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site. The plan shall include a system and back up system to notify the parents or authorized third party release caretakers of children in attendance at the childcare center of the emergency situation. The plan shall include a system to reunify children and parents following an emergency. Parents shall be informed of the details of this emergency plan at the time of enrollment.

B. The multi-hazard emergency and evacuation plan shall include lock down procedures for situations that may result in harm to persons inside the child care center, including but not limited to a shooting, hostage incident, intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the director or public safety personnel. The director shall announce the "lock down" over the public address system or other designated system. The alert may be made using a pre-selected code word. In a "lock down" situation, all children shall be kept in classrooms or other designated safe locations that are away from the danger. Staff members shall account for children and ensure that no one leaves the classroom/safe area. Staff shall secure

center entrances and ensure that no unauthorized individual leaves or enters the center.

1. Staff and children shall remain in the classroom/safe area, locking the classroom door, turning off the lights, and covering the windows. Staff shall encourage children to get under tables, behind cabinets, etc., and, if possible, engage in quiet story time activities with the children until “all clear” is announced.

2. Parent or authorized representative shall be notified of a “lock down” situation at the center no later than at the time of the child’s release on the date of the occurrence.

C. An individualized emergency plan (including medical contact information and additional supplies/equipment needed) shall be in place for each child with special needs.

D. If evacuation of the center is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

1. list of area emergency phone numbers;
2. list of emergency contact information and emergency medical authorization for all children enrolled;
3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parent(s);
4. first aid kit;
5. hand sanitizer;
6. wet wipes;
7. tissue;
8. diapers for children enrolled who are not yet potty trained;
9. plastic bags;
10. battery powered flashlight;
11. battery powered radio;
12. batteries;
13. food for all ages of children enrolled, including infant food and formula;
14. disposable cups; and
15. bottled water.

E. Provider shall maintain a copy of all records, documents, and computer files necessary for the continued operation of the center following an emergency in a portable file and/or offsite location.

F. If the center is located within a ten-mile radius of a nuclear power plant or research center, the center shall also have plans for nuclear evacuation.

G.1. Fire drills shall be conducted at least once per month. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. amount of time to evacuate the center;
- d. problems noted during drill and corrections noted; and
- e. signatures (not initials) of all staff present.

2. The licensing section recommends that at least one fire drill every six months be held at rest time.

H. Tornado drills shall be conducted at least once per month in the months of March, April, May, and June. Drills

shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

1. date and time of drill;
2. number of children present;
3. problems noted during drill and corrections noted; and
4. signatures (not initials) of all staff present.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Subchapter B. Licensing Class “B” Regulations for Child Care Centers

§7365. Center Staff

A. - D.6. ...

7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1639 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2774 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7373. Physical Plant and Equipment

A. - B.9. ...

C. Safety Regulations

1. Drugs, poisons, harmful chemicals, all products labeled “Keep out of the reach of children,” equipment and tools shall be locked away from the children. Whether a cabinet or an entire room, the storage area must be locked.

2. Refrigerated medications shall be in a secure container to prevent access by children and avoid contamination of food.

3. Secure railings shall be provided for:
 - a. flights of more than three steps;
 - b. porches more than 3 feet from the ground.
4. Gates shall be provided at the head or foot of each flight of stairs to which children have access.
5. Accordion gates are prohibited.
6. First Aid Supplies shall be available at the day care center. (Suggestions for first aid supplies may be obtained from the Red Cross.)
7. The center and yard must be clean and free from hazards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1641 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2776 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7378. Emergency Preparedness and Evacuation Planning

A. The director, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of an emergency. The plan shall include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. The plan shall be appropriate for the area in which the center is located and address any potential disaster due to that particular location. At a minimum, the plan shall be reviewed annually by the director for accuracy and updated as changes occur. Documentation of review by the director shall consist of the director's signature and date. The plan shall be reviewed with all staff at least twice per calendar year. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed. The plan shall also include information regarding handling children with special needs enrolled in the child care center as well as instructions for handling infants through children age two. The plan shall specifically address the evacuation and transportation of children in wheelchairs. The plan shall include but shall not be limited to a system to account for all children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site. The plan shall include a system and back up system to notify the parents or authorized third party release caretakers of children in attendance at the childcare center of the emergency situation. The plan shall include a system to reunify children and parents following an emergency. Parents shall be informed of the details of this emergency plan at the time of enrollment.

B. The multi-hazard emergency and evacuation plan shall include lock down procedures for situations that may result in harm to persons inside the child care center, including but not limited to a shooting, hostage incident, intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the director or public safety personnel. The director shall announce the "lock down" over the public address system or other designated system. The alert may be made using a pre-selected code word. In a "lock down" situation, all children shall be kept in classrooms or other designated safe locations that are away from the danger. Staff members shall account for children and ensure that no one leaves the classroom/safe area. Staff shall secure center entrances and ensure that no unauthorized individual leaves or enters the center.

1. Staff and children shall remain in the classroom/safe area, locking the classroom door, turning off the lights, and covering the windows. Staff shall encourage children to get under tables, behind cabinets, etc., and, if possible, engage in quiet story time activities with the children until "all clear" is announced.

2. Parent or authorized representative shall be notified of a "lock down" situation at the center no later than at the time of the child's release on the date of the occurrence.

C. An individualized emergency plan (including medical contact information and additional supplies/equipment needed) shall be in place for each child with special needs.

D. If evacuation of the center is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

1. list of area emergency phone numbers;
2. list of emergency contact information and emergency medical authorization for all children enrolled;
3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parent(s);
4. first aid kit;
5. hand sanitizer;
6. wet wipes;
7. tissue;
8. diapers for children enrolled who are not yet potty trained;
9. plastic bags;
10. battery powered flashlight;
11. battery powered radio;
12. batteries;
13. food for all ages of children enrolled, including infant food and formula;
14. disposable cups; and
15. bottled water.

E. Provider shall maintain a copy of all records, documents, and computer files necessary for the continued operation of the center following an emergency in a portable file and/or offsite location.

F. If the center is located within a ten-mile radius of a nuclear power plant or research center, the center shall also have plans for nuclear evacuation.

G.1. Fire drills shall be conducted at least once per month. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. amount of time to evacuate the center;
- d. problems noted during drill and corrections noted; and
- e. signatures (not initials) of all staff present.

2. The licensing section recommends that at least one fire drill every six months be held at rest time.

H. Tornado drills shall be conducted at least once per month in the months of March, April, May, and June. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

1. date and time of drill;
2. number of children present;
3. problems noted during drill and corrections noted; and
4. signatures (not initials) of all staff present.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? There will be no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule includes regulations that strengthen the measure of protection that the licensing section provides for children that receive licensed out-of-home child care in accordance with R.S. 46:1401 et seq. This rule will establish regulations to provide specific standards for written multi-hazard emergency and evacuation plans for child care providers which include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in licensed out of home care. These regulations will help protect the health, safety, and welfare of children.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

All interested persons may submit written comments through January 26, 2012, to Sammy Guillory, Deputy Assistant Secretary, Department of Children and Family Services, Division of Programs, P.O. Box 94065, Baton Rouge, LA, 70821-9065.

Public Hearing

A public hearing on the proposed Rule will be held on January 26, 2012 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Bureau at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Emergency Preparedness and Evacuation Planning

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

This rule proposes to amend the Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 21, Chapter 73, Day Care Centers, Subchapter A, Licensing Class "A" Regulations for Child Care Centers and Subchapter B, Licensing Class "B" Regulations for Child Care Centers. Section 7328 is being added to Chapter 73, Subchapter A, and Section 7378 to Subchapter B regarding emergency preparedness and evacuation planning regulations. These regulations will provide specific standards that require child care providers to establish written multi-hazard plans which include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care of class "A" and class "B" licensed child care centers. Also, Sections 7312, 7327, 7365, and 7373, are being amended to remove references to emergency procedures as they will be addressed in the added Sections 7328 and 7378 mentioned above. The Department of Children and Family Services (DCFS) has determined this amendment necessary to prevent a threat to the health, safety, and welfare of children in licensed care in the event of any emergency.

DCFS shall develop an informational document regarding this proposed rule and post it to the DCFS web site. In addition, information of this proposed rule will be made available, at a negligible cost to the agency, by notice through the mail to approximately 1,800 child day care centers. The mailing will notify child day care providers that information concerning this proposed rule is posted on the DCFS web site. The notices will be mailed at an estimated one-time cost of \$1,152 (\$576 State, \$576 Federal), which includes printing (\$162), supplies (\$126), and postage (\$864). Mailing costs are routinely included in the department's annual operating budget and will be absorbed within the FY 12 budget appropriation. In subsequent fiscal years, information regarding this proposed rule to newly licensed childcare centers will be provided in the licensing regulation manual available on the department's website at no cost.

The only other cost associated with this rule is the cost for publishing rulemaking and printing policy, which is estimated to be approximately \$4,100. This is a one-time cost that is routinely included in the department's budget.

Therefore, the total cost to implement the proposed rule changes for FY 12 is \$5,252 (\$1,152 for mailings and \$4,100 for rulemaking).

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

Implementation of this rule will have no effect on the revenue collections of state or local government.

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

Implementation of this rule will require licensed childcare providers to prepare an evacuation pack that includes survival essentials for children in care at the child care facility. These items shall include, but are not limited to, food for all ages of children served including infant food and formula, diapers, a first aid kit, battery-powered radio, and bottled water. Although this proposed rule may result in costs to providers, the department cannot determine the exact costs due to unknown

and unpredictable factors such as the child care center capacity, ages of children in care at a particular facility, and the number of children in care at the time of an emergency.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment in the childcare industry.

Sammy Guillory
Deputy Assistant Secretary
1112#059

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Louisiana Economic Development Corporation

Louisiana Seed Capital (LSC) Program and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.Chapters 77 and 87)

Editor's Note: This Notice of Intent is being reprinted to correct a submission error. The original Notice of Intent may be viewed on pages 3287-3288 of the November 20, 2011 edition of the *Louisiana Register*.

The Louisiana Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and as authorized by R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby give notice of their intent to amend, supplement, expand and re-adopt the rules of the Louisiana Seed Capital (LSC) Program, LAC Title 19: Part VII, Subpart 11, Chapter 1, and to adopt new rules for the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program, LAC Title 19.VII.Chapter 87.

The Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and expand certain provisions of and to readopt the rules regarding the Louisiana Seed Capital (LSC) Program and to create the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to these rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will encourage the formation of Louisiana-based venture capital funds intended to provide investment capital to create and grow start-up and early-stage Louisiana businesses. These programs will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. This new program will utilize SSBCI funds to make seed-stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to

women- and minority-owned businesses. These programs will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of business concerns in Louisiana; will help small businesses grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities in all areas of our state. These programs will further help secure the creation or retention of jobs created by businesses in Louisiana that require state assistance in order to start, maintain or expand their operations, and/or increase their capital investment in Louisiana. Without these revisions, re-adoption of rules and adoption of new rules the state may suffer the loss of business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Louisiana Economic Development Corporation

Subpart 11. Louisiana Seed Capital Program

Chapter 77. Louisiana Seed Capital Program

§7701. Purpose

A. The purpose of this Louisiana Economic Development Corporation (LEDC) program is to encourage the formation of Louisiana-based Seed Capital Funds (venture capital funds for start-up and early-stage businesses). This program is intended to provide investment capital to create and grow start-up and early-stage businesses. This program will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. Funding under this program shall be limited to those qualified organizations who agree to invest such funds exclusively in companies based in Louisiana for the purpose of financing any business purpose or process, technique, product, or device which is or may be exploitable commercially, which has advanced beyond the theoretical state, and which is capable of being or has been reduced to practice without regard to whether a patent has or could be granted. This program is not intended for retail or professional services.

B. The LEDC will make the decision as to whether it will invest in the venture capital fund; and the venture capital fund will make the investment decision in eligible individual businesses.

C. The LEDC will provide high-level monitoring of aggregate performance of its portfolio, with monitoring of a small amount of data on each venture capital fund investment; and the venture capital fund will actively monitor each individual business investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:

§7703. Definitions

Board—Board of Directors of Louisiana Economic Development Corporation.

Co-Investment—an investment in which financial investors take part with each other and act jointly by uniting or combining together.

Corporation—Louisiana Economic Development Corporation.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Match Investment—an investment in which a financial investor provides or combines additional funds to equal, meet or complement funds provided by another investor or other investors.

Seed Capital (for the purposes of this program)—

1. a dollar amount of not less than \$25,000 of capital provided to an inventor or entrepreneur to prove a concept and to qualify for start-up capital, which may involve product development and market research, as well as building a management team and developing a business plan, if the initial steps are successful;

2. research and development financing to finance product development for start-up as well as early-stage companies (which may include a company that may already be in business for three years or less);

3. start-up or early-stage financing to companies completing product development and initial marketing which companies may be in the process of organizing or they may already be in business for three years or less, but have sold their product commercially; or

4. first-stage or early-stage financing to companies that have expended their initial capital and require funds to initiate full-scale manufacturing and sales, for costs of inventory, equipment, expansion, modernization, and for working capital purposes.

Venture Capital Fund—also referred to herein as a *Seed Capital Fund*, or the *applicant organization*; a fund that makes and manages a portfolio of investments in individual companies or businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:

§7705. Eligibility for Participation in This Program

A. The applicant organization must be a Louisiana-based venture capital fund organized for the purpose of making seed capital investments in Louisiana businesses.

B. The applicant organization may be organized either for profit or non-profit purposes.

C. The applicant organization must demonstrate that its management personnel have at least three years of experience in managing investments in individual, privately-held companies, utilizing funds provided by others to make such investments.

D. The applicant organization must have a minimum cash investment already on hand sufficient to cover the general and administrative costs for the first and early years of its operations.

E. The applicant organization must have already raised a minimum of \$250,000 to be eligible for co-investments or raised a minimum of \$500,000 to be eligible for a match investment; and must have already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in this program. The minimum funds may be in cash and commitments.

F. The applicant organization must verify the eligibility of portfolio companies, obtain assurances of eligibility from each business, and assurances from each business that proceeds will be used for acceptable business purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:

§7707. Application Requirements for Qualification or Eligibility, and for Co-Investment

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a co-investment, a prospective seed capital fund must first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering two main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the Seed Capital Fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board screening committee or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full Board of Directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit résumés, references, and private placement memoranda for all principal members of the management team that are identified;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit résumés and/or descriptions of firms;

OTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

6. provide evidence of the initial \$250,000 minimum capital required for the applicant fund's eligibility to participate in this program.

D. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. Targeted Market

a. Describe and discuss the types of businesses that the Seed Capital Fund will finance. Discuss the extent to which the Seed Capital Fund intends to specialize in certain industries, or whether a more broad based approach is planned.

b. Describe the size range of businesses that it is contemplated the Seed Capital Fund will finance, with a general indication of where most of the focus is expected.

c. Discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated.

d. Discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices.

e. Provide any market analysis that the applicant deems relevant.

2. Financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments.

3. Marketing Strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance.

4. Screening Process and Evaluation Criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment.

5. Fee Income. Discuss the potential for fee income, and any plans that the Seed Capital Fund might have for generating fee income.

6. Management Assistance. Discuss the plans of the Seed Capital Fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in.

7. Complementary Relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalists and other institutions. This discussion can be based on general types of institutions and/or can identify

specific institutions where complementary relationships have already been discussed.

8. Management Structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team.

9. Idle Funds. Describe plans for the management of the idle funds of the seed capital fund.

10. Tax and Accounting Issues. Discuss relevant tax and accounting issues for the seed capital fund.

11. Financial Projections

a. Provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis.

b. Provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item.

c. Specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions.

d. Specify computer programs used for projections, and specify formulas used.

E. If the applicant fund has been found to be qualified or eligible to participate in this program by the LEDC board of directors, the application for the qualified applicant's co-investment project shall contain, but shall not be limited to, the identical information provided to the eligible seed capital fund requesting the co-investment. The LEDC or its staff may request additional information beyond that which has been provided. After its receipt and review by the LEDC staff, the completed application for the qualified applicant's co-investment project shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:

§7709. Application Requirements for Qualification or Eligibility, and for Match Investment

A. Prior to a Seed Capital Fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a match investment, a prospective seed capital fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the Fund's existing or proposed management team;

2. if applicable, the fund's fund raising abilities, activities and success; and

3. the business plan for the seed capital fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for a match investment will then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit resumes, references, and private placement memoranda for all principal members of the management team that are identified.

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities.

3. describe the responsibilities of any principal management position for which a person has not been identified.

4. specify any directors that have been identified, and submit their resumes.

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms.

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

D. Fund Raising. In or with its application, the applicant shall:

1. specify the amount of LEDC commitment sought;

2. provide evidence of the amount of private capital that has been raised, and specify the ratio of actual cash to commitments raised;

3. describe the basic legal structure of the seed capital fund;

4. if applicable, describe and discuss the applicant's fund raising strategy for the raising of any additional private capital;

5. if applicable, specify the principal investor sources that the applicant fund will be targeting;

6. if applicable, provide the applicant's basic proposal to its prospective private investors, and the expectations and objectives the applicant is specifying. This shall include, for example, representations regarding reasonably expected returns on private equity investment, indirect financial benefits, if any, and social purposes, if applicable;

7. list all specific investors and financing commitments already obtained, including documentation for each. This shall include evidence of the initial \$500,000 minimum capital required for the applicant fund's eligibility to participate in this program;

8. specify whether applicant anticipates taking in all of the LEDC equity investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of equity capital raised.

E. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. Targeted Market

a. Describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned.

b. Describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected.

c. Discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated.

d. Discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices.

e. Provide any market analysis that the applicant deems relevant.

2. Financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments.

3. Marketing Strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance.

4. Screening Process and Evaluation Criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment.

5. Fee Income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income.

6. Management Assistance. Discuss the plans of the Seed Capital Fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in.

7. Complementary Relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed.

8. Management Structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team.

9. Idle Funds. Describe plans for the management of the idle funds of the seed capital fund.

10. Tax and Accounting Issues. Discuss relevant tax and accounting issues for the seed capital fund.

11. Financial Projections

a. Provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis.

b. Provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item.

c. Specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions.

d. Specify computer programs used for projections, and specify formulas used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2253 (October 2000), amended LR 38:

§7711. Application Process

A. All applications under this program must be submitted to the Executive Director, Louisiana Economic Development Corporation, P.O. Box 44153, Baton Rouge, 70804.

1. Application Requirements for Qualification or Eligibility to Participate in this Program and Co-Investment Application or Match Investment Application

a. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the co-investment project may be, but are not required to be, submitted simultaneously for consideration.

b. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the match investment project may be, but are not required to be, submitted simultaneously for consideration.

c. Once a seed capital fund is deemed qualified or eligible to participate in this program, the fund is not required to resubmit a qualification or an eligibility application for subsequent co-investment or match investment requests.

2. All applications received by LEDC will be reviewed by the LEDC staff, and the staff may request additional information beyond that which has been provided.

After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:

§7713. Investments

A. Co-Investment

1. A qualified or eligible fund that has not received a match investment from the LEDC may apply for co-investment funds on a case by case basis. The co-investment of LEDC shall not exceed the lesser of 50 percent of the total round of investment needed or \$250,000.

2. Only investments in Louisiana businesses are eligible for co-investments.

3. Co-investments will be on the same terms and conditions as the seed capital fund has negotiated with the business included in the co-investment project.

B. Match Investment.

1. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$2.00 of funds privately raised by the applicant fund. The maximum LEDC match investment in an eligible fund shall not exceed \$1,000,000.

2. A qualified or eligible fund shall be a Louisiana organized and based seed capital fund. For purposes of this program, *organized and based* means the seed capital applicant fund is registered with the Louisiana Secretary of State's office, and that it maintains a staffed office in Louisiana where investments may be initiated and closed.

3. Match investment funds may be used only for Louisiana businesses.

4. The method of LEDC's investment into the qualified or eligible fund will be equal to the method of investment of the other investors into that fund, i.e., committed capital for committed capital, cash investment for cash investment, or cash and commitment for cash and commitment.

5. The terms of each match investment will be negotiated by LEDC on a case by case basis.

C. Closing

1. Prior to the disbursement of funds, the secretary-treasurer of LEDC and any one of the following: either the chairman of the board, the president, or the executive director of LEDC, shall execute all necessary legal instruments after certification by legal counsel that all appropriate legal requirements have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:

§7715. Reporting

A. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of

LEDC funds shall provide to LEDC the following information:

1. A list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. A statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. A current reconciliation of the fund's net worth; and

4. An annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:

Chapter 87. Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program

§8701. Purpose

A. The purpose for this Chapter 87 Program shall be the same as the purposes previously provided in §7701 of Chapter 77 of Subpart 11 of the Louisiana Seed Capital Program which shall also apply to this Chapter 87 program; and additionally this Chapter 87 program is to establish the Louisiana Seed Capital Program for the federal program entitled the "State Small Business Credit Initiative (SSBCI) Program" and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to make seed stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment and seed investment opportunities located in the underserved markets that will be targeted with SSBCI funds. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups. This program is not intended for retail or professional services.

B. The LEDC wishes to maintain for this Chapter 87 program all of the purposes of §7701 and all of the other Sections and provisions of Chapter 77 of the seed capital program shown above, except where there is a need for the policies of this program to be different from Chapter 77. For this reason, all of the Sections and provisions of Chapter 77 above shall also apply to this Chapter 87, except in those

instances where a different or additional rule or policy is provided below in this Chapter 87.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR

§8703. Definitions

A. All of the same definitions provided in §7703 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§8705. Eligibility for Participation in This Program

A. Except as may be hereinafter provided, all of the eligibility provisions contained in §7705 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 Program, except that co-investments will not be utilized in this Chapter 87 program.

B. The applicant organization must have raised a minimum of \$500,000 in investments or has a minimum of \$2 1/2 Million under management, and already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Match Investment Program.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this Chapter 87 program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. such individual business investments shall not be extended to businesses with more than 750 employees;

3. any investment targeted in this Program shall not exceed the amount of \$ 5,000,000; and

4. any investment extended through this Program shall not exceed the amount of \$ 20,000,000.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§8707. Application Requirements for Qualification or Eligibility, and for Co-Investment

A. None of the provisions contained in §7707 of Chapter 77 of the seed capital program shall apply to this Chapter 87 program. The co-investment provisions of Chapter 77 will not be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§8709. Application Requirements for Qualification or Eligibility, and for Match Investment

A. Except as may be hereinafter provided, all of the provisions contained in §7709 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program.

Only match investments will be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§8711. Application Process

A. Except as may be hereinafter provided, all of the provisions contained in §7711 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 program. Co-investments will not be utilized in this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§8713. Investments

A. Except as may be hereinafter provided, all of the provisions contained in §7713 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program, except that co-investments will not be utilized in this Chapter 87 program. Only match investments will be utilized in this SSBCI Chapter 87 Program.

B. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$1.50 of funds privately raised by the applicant fund. The maximum LEDC match investment in an eligible fund shall not exceed \$1,000,000.

C. LEDC investments made in a qualified seed capital fund will not exceed an initial investment of \$450,000, with two expected follow-up investments, but not to exceed a total investment of \$1,000,000 per fund.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§8715. Reporting

A. Except as may be hereinafter provided, all of the provisions contained in §7715 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

Family Impact Statement

These proposed Rules 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. There should be no known or foreseeable 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; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed rule.

Public Comments

Interested persons may submit written comments to: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Second Floor, Room 229, 1051 North Third Street, Baton Rouge, LA, 70802. All comments must be submitted (mailed and received) not later than 5 p.m., on Tuesday, January 22, 2012.

Stephen M. Moret
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Louisiana Seed Capital Program and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program

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

The proposed rule addresses the state Seed Capital Program and adds rules for a federally based seed capital program through the State Small Business Credit Initiative. The rules define current practice with regard to the existing program and provide new definitions and guidance for applicants with regard to the new program. There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules, since the revisions of the rules for the existing program and the new rules for the new will be managed by existing staff under the current budget. Federal funds are already appropriate and will be utilized for any additional administrative costs in connection with the new program.

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

The revisions to the existing program rules do not change existing fees in the program, so there is no expected impact or effect on revenue collections or state or local governmental units. For seed capital disbursements, federal funds in the amount of \$5.168 million over three years are available and appropriated in the base departmental budget for the new program.

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

The new program will require adherence to the application procedures which will involve submission of paperwork by the applicants. However, recipients will benefit by obtaining access to capital made available to them through the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may slightly increase in participating businesses, employment may be slightly lessened in other competing businesses that do not participate in the program.

Kristy G. Mc Kearn
Undersecretary
1112#034

Greg V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Louisiana Economic Development Corporation

Small Business Loan and Guaranty (SBL and G) Program
and State Small Business Credit Initiative (SSBCI) Program
(LAC 19:VII.Chapters 1 and 3)

Editor's Note: This Notice of Intent is being reprinted to correct a submission error. The original Notice of Intent may be viewed on pages 3289-3290 of the November 20, 2011 edition of the *Louisiana Register*.

The Louisiana Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, LA. R.S. 49:950, et seq., and as authorized by LA. R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby give notice of their intent to amend, supplement, expand and re-adopt the rules of the Small Business Loan and Guaranty (SBL&G) Program provided in LAC Title 19: Part VII, Subpart 1, Chapter 1, and to adopt new rules for the State Small Business Credit Initiative (SSBCI) Program, LAC Title 19: Part VII, Subpart 1, Chapter 3.

The Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and expand certain provisions of and to readopt the rules regarding the Small Business Loan and Guaranty (SBL&G) Program and to create the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to these rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana; will help them grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities, especially for small business enterprises in all areas of our State, including distressed and rural areas. These programs will further help secure the creation or retention of jobs created by small businesses in Louisiana that require state assistance in order to start, maintain or expand their operations, and/or increase their capital investment in Louisiana. Without these revisions, re-adoption of rules and adoption of new rules the state may suffer the loss of small business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 19 CORPORATIONS AND BUSINESS Part VII. Louisiana Economic Development Corporation

Subpart 1. Small Business Loan and Guaranty Program Chapter 1. Loan and Guaranty Policies for the Small Business Loan and Guaranty Program (SBL and GP)

§101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, medium to long-term loans, lines of credit loans, loan guaranties, loan participations and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of helping them grow and expand their businesses and of providing higher levels of employment, income growth, and expanded economic opportunities, especially to small and emerging businesses and disabled person business enterprises and within distressed and rural areas of our State.

B. The corporation will consider sound business loans, lines of credit, loan guaranties and loan participations so long as resources permit. The board of directors of the corporation recognizes that lending money, granting lines of credit, guaranteeing loans or participating in loans carries certain risks and is willing to undertake reasonable exposure.

C. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:445 (June 1989), re-promulgated LR 23:40 (January 1997), LR 26:2255 (October 2000), amended LR 38:

§103. Definitions

Board—Board of Directors of Louisiana Economic Development Corporation.

Borrower—also referred to herein as the *applicant/borrower* or *customer/borrower*; the business person or entity borrowing and accepting the loaned funds from the Lender.

Corporation—Louisiana Economic Development Corporation.

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person, as defined by the federal Americans with Disabilities Act of 1990.

Financial Institution—also referred to herein as a *Bank*, *Financial Lending Institution*, *Lending Institution*, *Commercial Lending Entity*, or *Lender*; includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in §103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

Lead Lender—the bank or other lender that makes or originates the loan with the borrower.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Lender—also referred to herein as the *applicant/lender*; the Financial Institution originating the loan and providing the loan funds to the Borrower.

Line of Credit—the maximum amount of loan credit that a borrower is allowed to borrow over a period of time, whereby funds may be borrowed, provided or extended in various amounts over the agreed term, repaid or partially repaid by the borrower, and which funds may be re-extended by the lender to the borrower and repaid by the borrower over the agreed term of the credit.

Loan—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit loan, loan guaranty and loan participation.

Loan Guaranty or *Guarantee*—an agreement to pay the loan of another borrower, up to any limit in the amount guaranteed as provided in the agreement, in case the original borrower defaults in or is unable to comply with his repayment obligation.

Loan Participation—an agreement to participate as a lender in a loan or to acquire from the lender a share or ownership interest in a loan. A *purchase participation* or *purchase transaction* is one in which the State purchases a portion of a loan originated by a lender; and a *companion loan*, a *parallel loan*, or a *co-lending participation* is one in which the lender originates a loan and the State originates a second loan to the same borrower. (In the latter case, the State's second loan may be subordinate or co-equal to the first loan originated by the lender.) *Loan Participations* enable the state to act as a lender, in partnership with a financial institution lender, to provide small business loans at attractive terms.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

Small and Emerging Business—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Community Outreach Services.

Small Business Concern—as defined by SBA for purposes of size eligibility as set forth by 13 C.F.R. 121.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR23:40 (January 1997), amended LR 26:2255 (October 2000), amended LR 38:

§105. Application Process

A. Any applicant/borrower(s) applying for either a loan, line of credit, loan guaranty or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. Information submitted to LEDC with the application representing the applicant's/borrower's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. The following submission and review policies shall be followed.

1. A completed Louisiana Economic Development Corporation application form must be submitted to LEDC.

2. Small and emerging businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's community outreach services, along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's business enterprise provision shall submit adequate information to support the disabled status.

4. The applicant/lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own analysis and evaluation of the application, independent of the lending institution's analysis and evaluation.

5. The applicant/lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. LEDC staff will review the application and analysis, and then make recommendations. The staff will work with the applicant/lender on terms of the loan, including interest rate, maturity, collateral, other loan terms, and any LEDC loan stipulations or requirements.

7. The LEDC's board screening committee or the board's other designated committee will review only the completed applications submitted by LEDC staff and may approve or disapprove applications within its authority as established by the LEDC board, or will make recommendations to the LEDC board.

8. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution are not required to attend the board screening committee or other designated committee meeting unless requested by LEDC or its staff to do so.

9. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution shall be required to attend the LEDC's Board of Directors meeting wherein the application will be considered by the board.

10. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the application within its authority has the final approval authority for such applications.

11. The applicant/borrower or the lending institution will be notified within five working days by mail or e-mail of the outcome of the application process.

12. An LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within

five working days of approval by the LEDC board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Louisiana Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997), LR 26:2255 (October 2000), amended LR 38:

§107. Eligibility/Ineligibility for Participation in This Program

A. In connection with the business purpose for the requested loan, applicant/borrower(s) shall create in this state at least two new permanent full-time jobs.

B. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident(s) of Louisiana;

2. certified small and emerging businesses (SEBs);

3. disabled person's business enterprises domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident(s) of Louisiana; or

4. Funding requests for any business purpose may be considered, except for the following ineligible businesses or purposes:

a. restaurants (except for regional or national franchises), including grills, cafes, fast food operations, motorized vehicle, trailer, curbside or sidewalk food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises;

b. bars, packaged liquor stores, including any other business or project established for the principal purpose of dispensing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing as its business;

e. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

f. funding for the principal purpose of refinancing existing debt;

g. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

h. funding for the purpose of establishing a park, theme park, amusement park, or camping facility; or

i. funding for the purpose of buying out any family member or reimbursing any family member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:41 (January 1997), LR 26:2255 (October 2000), amended LR 38:

§109. General Loan, Credit, Guaranty and Participation Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making

loans or approving lines of credit, loan guaranties or loan participations:

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan, line of credit, loan guarantee or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan, line of credit, loan guarantee or participation if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

3. The terms or conditions imposed and made part of any loan, line of credit, loan guaranty or loan participation authorized by vote of the corporation board, its board screening committee or its other designated committee shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board, its board screening committee or other designated committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this Program. Such lenders shall bear at least 25 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

B. Interest Rates

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York prime as published in the Wall Street Journal at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding between 1 and 5 percentage points.

3. The applicant/lender may apply for a linked deposit under the Small Business Linked Deposit Program on the term portion of either a guaranteed loan or a participated loan.

C. Collateral

1. The collateral-to-loan ratio will be no less than one-to-one (1:1).

2. The collateral position may be negotiated, but it shall be no less than a sole second position.

3. Collateral Value Determination

a. The appraiser must be certified by recognized organization in the area of the collateral.

b. The appraisal cannot be more than 90 days old.

4. Acceptable collateral may include, but shall not be limited to, the following:

a. fixed assets—business real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guarantees may be used only as additional collateral and will not count toward the 1:1 coverage; if used, signed and dated personal financial statements of the guarantors must also be submitted to LEDC;

d. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value (to be used with personal guarantee only).

5. Unacceptable collateral may include, but shall not be limited to the following:

a. stock in applicant/borrower company and/or related companies;

b. personal items or personal real estate;

c. intangibles.

D. Equity Requirements

1. Equity required will be 20 percent of the loan or line of credit amount for a start-up operation or acquisition, and no less than 15 percent for an expansion. However, if 20 percent is not available for a guarantee the following chart may be applied which provides for a guarantee fee attached to a lesser equity position.

Equity %	Guarantee Fee
19 %	2.20 %
18 %	2.40 %
17 %	2.60 %
16 %	2.80 %
15 %	3.00 %
14 %	3.20 %
13 %	3.40 %
12 %	3.60 %
11 %	3.80 %
10 %	4.00 %

*In no case shall the equity position be less than ten (10%) percent.

2. Equity is defined to be:

a. cash;

b. paid-in capital;

c. paid-in surplus and retained earnings; or

d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

E. Limit on the Amount of LEDC's Guarantee

1. For small business loans, the corporation's loan guarantee shall be:

a. no greater than 75 percent of a loan of up to \$650,000;

b. no greater than 70 percent of a loan of up to \$1,100,000;

c. no greater than 65 percent of a loan of up to \$2,300,000; or

d. if the loan request exceeds \$2,300,000, the guaranty shall not exceed \$1,500,000.

2. For certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be:

a. no greater than 90 percent of a loan of up to \$560,000;

b. no greater than 85 percent of a loan of up to \$875,000;

c. no greater than 75 percent of a loan of up to \$2,000,000; or

d. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

3. For small businesses, the corporation's loan participation shall be no greater than 40 percent, but in no case shall it exceed \$1,500,000.

4. For certified small and emerging businesses, or disabled person's business enterprises, the corporation's loan participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

F. Terms

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, but line of credit loans shall not exceed five years and term loans shall not exceed seven years. The LEDC shall have an opportunity to approve the terms of such loans prior to the closing.

G. LEDC Fees

1. LEDC will charge a guaranty fee not to exceed a maximum amount of 4 percent on the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. LEDC will charge a \$100 application fee, unless the board, the board screening committee or other designated committee waives the application fee.

3. LEDC will share in a pro-rata position in any fees assessed by the lender on a loan participation.

H. Use of Loan Funds (including Line of Credit, Guaranty and Participation Funds)

1. Loan funds may be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be occupied by the applicant/borrower to the extent of at least 51 percent.

2. Loan funds may be used for the purchase of equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC, but will not be considered when the debt:

a. exceeds 25 percent of the total loan, with the following exception:

i. a maximum of 35 percent may be considered on a guaranteed loan, but the guaranteed percentage will be decreased by 5 percent;

b. pays off a creditor or creditors who are inadequately secured;

c. provides funds to pay off a debt to principals of the borrower business; and/or

d. provides funds to pay off family members.

5. Loan funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Loan funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended LR 38:

§111. General Agreement Provisions

A. Guaranty Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan or line of credit, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The loan or line of credit shall not be sold, assigned, participated out, or otherwise transferred without the prior written consent of the LEDC board.

3. If liquidation through foreclosure occurs, the lender will sell the collateral and handle the legal proceedings.

4. There will be a reduction of the guaranty:

a. in proportion to the principal reduction of the amortized portion of the loan or line of credit;

b. if no principal reduction has occurred in any annual period of the loan or line of credit, a reduction in the guaranty amount will be made proportional to the remaining guaranty life.

5. The guaranty will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the guaranty agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the lender and the corporation, as stated in the guaranty agreement.

B. Participation Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lead lender will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead lender may sell other participations with LEDC's consent.

4. Should liquidation through foreclosure occur, the lender will sell the collateral and handle the legal proceedings.

5. The lender is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the participation agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the lender and the corporation, as stated in the participation agreement.

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997), LR 26:2257 (October 2000), amended LR 38:

§113. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower. (See Louisiana Attorney General's Opinion #82-860.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2257 (October 2000), amended LR 38:

§115. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2258 (October 2000), amended LR 38:

Chapter 3. Loan and Guaranty Policies for the State Small Business Credit Initiative (SSBCI) Program

§301. Purpose

A. The purposes for this Chapter 3 Program shall be the same as the purposes previously provided in Section 101 of Chapter 1 of the Small Business Loan and Guaranty Program which shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program); and additionally this Chapter 3 program is to establish Loan and Guaranty Policies for the federal program entitled the State Small Business Credit Initiative (SSBCI) Program and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to include a

broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform lenders, small businesses and trade associations of the program, and to generate increased small business activity, awareness and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The LEDC will also monitor these plans, including the repayment progress of borrowers, the servicing performance of participating lenders, and to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

B. The LEDC wishes to maintain for this Chapter 3 Program all of the purposes of §101 and all of the other Sections and provisions of Chapter 1 of the Small Business Loan and Guaranty Program shown above, except where there is a need for the policies of this Program to be different from Chapter 1. For this reason, all of the Sections and provisions of Chapter 1 above shall also apply to this Chapter 3, except in those instances where a different or additional rule or policy is provided below in this Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§303. Definitions

A. All of the same definitions provided in Section 103 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§305. Application Process

A. Except as may be hereinafter provided, all of the provisions contained in §105 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above Subsection A, in connection with each loan to be enrolled under this Chapter 3 program the financial institution lender shall also be responsible for obtaining and providing to LEDC with the lender's application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI Program. And additionally, each financial institution lender must also obtain and provide to LEDC with its application under this Chapter 3 Program an assurance from the borrower affirming:

1. The loan proceeds must be used for a business purpose. A *business purpose* includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an

eligible place of business that is not for passive real estate investment purposes. The definition of *business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

i. For the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

4. The borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

C. The financial institution lender must also provide to LEDC with its application, in connection with each loan to be enrolled under this Chapter 3 Program, an assurance affirming:

1. the loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender;

3. no principal of the financial institution lender has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§307. Eligibility/Ineligibility for Participation in This Program

A. Except as may be hereinafter provided, all of the provisions contained in §107 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 Program (except that loan participations will not be utilized in this Chapter 3 Program).

B. In addition to the eligibility and ineligibility provisions provided in the Section mentioned in the above Subsection A, applicant/borrowers and loans, lines of credit and loan guarantees in connection with this Chapter 3 Program shall meet the following criteria:

1. the applicant/borrower(s) shall employ 500 employees or less at the time the loan is enrolled in this program;

2. this credit support shall not be extended to applicant/borrower(s) that have more than 750 employees;

3. any loan supported in this program shall not exceed a principal amount of \$5,000,000;

4. any credit extended through this program shall not exceed a principal amount of \$20,000,000;

5. SSBCI funds utilized in this Chapter 3 program will be permitted only for new extensions of credit; that is, funds of the SSBCI Program shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit or other borrowing, that were previously made available as part of a state small business credit enhancement program; and

6. Small Business Administration (SBA) guaranteed loans shall not be purchased in loan participations through this program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§309. General Loan, Credit, Guaranty and Participation Provisions

A. Except as may be hereinafter provided, all of the provisions contained in §109 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Interest Rates

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

C. Equity Requirements

1. To qualify for this Chapter 3 program, the borrower must infuse not less than 15 percent into the equity in an existing or expanding business, or not less than 20 percent into the equity of a start-up operation or an acquisition.

D. Limit on the Amount of LEDC's Guaranty

1. In connection with loans included in this Chapter 3 program, for certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guaranty shall be:

a. no greater than 75 percent of a loan of up to \$2,000,000; or

b. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

E. Terms

1. For loans included in this Chapter 3 program, the term of line of credit loans and term loans shall not exceed three years.

F. LEDC Fees

1. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge a guaranty fee not to exceed a maximum amount of 2 percent of the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge no application fee.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§311. General Agreement Provisions

A. Except as may be hereinafter provided, all of the provisions contained in §111 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§313. Confidentiality

A. All of the provisions contained in §113 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

§315. Conflict of Interest

A. All of the provisions contained in §115 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

Family Impact Statement

These proposed Rules 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. There should be no known or foreseeable 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; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed rule.

Public Comments

Interested persons may submit written comments to: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P. O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to: Capitol Annex Building, Second Floor, Room 229, 1051 North 3rd Street, Baton Rouge, LA, 70802. All comments must be submitted (mailed and received) not later than 5 p.m., on Tuesday, January 22, 2012.

Stephen M. Moret
Secretary

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

**RULE TITLE: Small Business Loan and Guaranty
Program and State Small Business
Credit Initiative Program**

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

The proposed rules amend those for an existing program (Small Business Loan and Guaranty Program). There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. Both programs are expected to be administered by existing staff with no additional appropriations required. Federal funds are already appropriated in the department's base budget for this purpose and will be utilized for any additional administrative costs that may arise in connection with the new program.

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

The revisions to the existing program rules do not change existing fees in the program, so there is no expected impact or effect on the revenue collections of state or local governmental units with regard to the proposed rule as it relates to the Small Business Loan and Guaranty program.

The new program, the State Small Business Credit Initiative Program, provides for a loan guarantee fee not to exceed 2% of the loan guaranteed amount unless waived by the Board of Directors of Louisiana Economic Development Corporation which will be administering the program. The federal funds invested into the program could total as much as \$8 Million payable in increments over a three year period, so the new program could conceivably generate a total of \$160,000 in fees over the next three year term of the federal program. Any fees collected will be placed in the revolving fund and made available for loans and guaranties under the program up to the appropriated amount.

There will be no expected impact or effect on revenue collections for local governmental units with regard to the new or existing programs.

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

The new program will require adherence to the application procedures which will involve submission of paperwork by the applicants. However, recipients will benefit by obtaining access to credit made available to them through the program.

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

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Kristy G. Mc Kearn
Undersecretary
1112#033

Greg V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28: CXI.305, 312, and 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 118—Statewide Assessment Standards and Practices*: §305. Test Security Policy, §312. Administrative Error, and §501. District Test Coordinator Role. These revisions will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security, and Chapter 5, Test Coordinator Responsibilities. New policy language, updates, and edits were made to chapters 3 and 5.

Title 28 EDUCATION

Part CXI. Bulletin 118 Statewide Assessment Standards and Practices

Chapter 3. Test Security §305. Test Security Policy

A. - A.2.f ...

g. Recovery School District. The RSD district test coordinator has oversight over and is responsible for all tasks indicated in Chapter 5, Subchapter A, for all schools in RSD including but not limited to:

- i. all directly served RSD schools; and
- ii. all RSD charter schools (Type 5).

h. participating nonpublic/other schools that utilize tests administered through the SBESE or the LDE.

3. - 4.g ...

h. procedures for ensuring the security of individual student test data in electronic and paper formats—including encryption of student demographics in any email correspondence;

i. to the extent practicable, procedures to assign a different test administrator for a class than the teacher of record for the class, except for teachers testing students with accommodations and younger students, grades 3 through 8;

j. procedures for monitoring of test sites to ensure that appropriate test security procedures are being followed and to observe test administration procedures.

5. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:217 (February 2009), LR 37:858 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:

§312. Administrative Error

A. - G.3. ...

H. LEAs have the right to appeal to SBESE to replace the voided or invalid scores with the results from the administrative error retests for accountability purposes. The appeal must include a description of the testing irregularity; a summary of the LEA's investigation including who conducted the investigation; the findings of the investigation; and a corrective action plan. After review of the submitted documentation by LDOE, the state superintendent will make a recommendation to SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), LR 34:66 (January 2008), LR 34:1351 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 38:

Chapter 5. Test Coordinator Responsibilities

Subchapter A. District Test Coordinator

§501. District Test Coordinator Role

A.1. - 2.d. ...

e. coordinating with the district Section 504 coordinator the submission of student Section 504 data to the student information system (SIS);

f. - x.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1533 (July 2005), amended LR 33:258 (February 2007), LR 34:1352 (July 2008), LR 34:2552 (December 2008), repromulgated LR 35:57 (January 2009), amended LR 35:218 (February 2009), LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 118—Statewide Assessment
Standards and Practices**

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

New and updated policy language will be added to Chapter 3, Test Security, regarding the Test Security Policy, Section 305 and Administrative Errors, Section 312. The new policy language is being added to identify the Recovery School District (RSD) as its own oversight agent before and during statewide testing. Section 305, Test Security Policy will provide the new language stating the responsibilities of RSD as an oversight agent in testing and will edit policy as it relates to ensuring the security of individual student test data provided in electronic and paper formats. Section 312, Administrative Error, will provide new language about a district's right to appeal to the State Board of Elementary and Secondary Education that voided and/or invalid scores results from administrative error retests be used as replacement scores for accountability purposes. Chapter 5, District Test Coordinator Responsibilities, policy language will be updated and edited regarding a change in the role of the district test coordinator. The proposed rule change will have no implementation cost to state or local governmental units.

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

There will be no effect on revenue collections at the state or local governmental levels.

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

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There should be no impact on competition and employment.

Beth Scioneaux
Deputy Superintendent
1112#043

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 119—Louisiana School Transportation
Specifications and Procedures
(LAC 28: CXIII.303, 307, 501, 1901, 2501, and 2507)

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 119—Louisiana School Transportation Specifications and Procedures*: §303. Certification of School Bus Drivers, §307. Retaining School Bus Drivers, §501. Driver Training Program, §1901. Transporting Eligible Students, §2501. Responsibility of Dealers and Manufacturers, and §2507. Lease of School Buses. The proposed policy revisions to Chapter 3, Section 303: Certification of School Bus Drivers, further clarify which individuals are considered school bus drivers other than employees hired by the school board and proposed revisions to Section 307. Retaining School Bus Drivers, adds

a legislative policy based on Act No. 533 of the 2010 Regular Legislative Session, which amends R.S. 17:491.3 and 3996(B) (24) regarding the reporting of an arrest for a violation of any law or ordinance that prohibits operating a school bus while under the influence of alcohol or any abused substance or controlled dangerous substance. The required report shall apply to an arrest occurring after December 31, 2010.

Proposed policy revisions to Chapter 5, Section 501: Driver Training Program, adds provisions to ensure than any person who is employed by a private entity that has contracted with the school district to provide student transportation services are trained.

Proposed policy revisions to Chapter 19, Section 1901: Transporting Eligible Students, eliminates discrepancies and inconsistencies as it relates to transportation of students who resides one mile or less from the school when the school board determines that conditions exist to warrant such transportation.

Proposed policy revisions to Chapter 25, Section 2501: Responsibility of Dealers and Manufacturers, amends the responsibilities of compliance with school bus specifications to include purchasers of schools buses and proposed revisions to Section 2507: Lease of School Buses, amends the policy on the leasing of school buses for transporting students and to add: school bus may be used by the school district to transport students on an assigned bus route and/or for activity trips.

**Title 28
EDUCATION**

**Part CXIII. Bulletin 119—Louisiana School
Transportation Specifications and Procedures
Chapter 3. Selection and Employment of School Bus
Drivers and Attendants (Aides)**

§303. Certification of School Bus Drivers

A. The term *school bus drivers* included in this Section includes anyone who is certified to transport students to and from school and school-related activities. Full-time drivers, substitute drivers (including bus attendants who may also be certified to drive in emergency situations), activity bus drivers (teachers, coaches, custodians, etc.), and any other person who is employed by the school district or by a private entity that has contracted with the school district to provide student transportation services and who at any time transports students must be certified prior to transporting students.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587, R.S. 17:15, R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, R.S. 17:432, R.S. 17:491, R.S. 17:493, R.S. 17:497, R.S. 17: 691, R.S. 32:52, R.S. 32:402, R.S. 32:408, R.S. 32:417, and R.S. 40:963, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:628 (April 1999), amended LR 36:1467 (July 2010), LR 37:2122 (July 2011), LR 38:

§307. Retaining School Bus Drivers

A. - C.2. ...

D. Effective January 1, 2011, and thereafter, in accordance with the terms of R.S. 17:491.3 and 3996(B)(24), a school bus operator shall report his arrest for a violation of any law or ordinance that prohibits operating a vehicle while under the influence of alcohol or any abused substance or controlled dangerous substance.

E. The report shall be made by the operator to a person or persons as specified by the governing authority of the school in rules and regulations required by this Section. Such report shall be made within 24 hours of the arrest or prior to the operator next reporting for his work assignment as a school bus operator, whichever time period is shorter. Such report shall be made by the school bus operator regardless of who owns or leases the vehicle being driven by the operator at the time of the offense for which he was arrested and regardless of whether the operator was performing an official duty or responsibility as a school bus operator at the time of the offense.

F. The required report shall apply to an arrest occurring after December 31, 2010.

1. A school bus operator who fails to comply with the provisions of this Section shall be terminated by the governing authority employing the operator if such operator is serving a probationary term of employment or if the provisions of law relative to probation and tenure of bus operators are not applicable to the operator.

2. A school bus operator employed by a city, parish, or other local public school board who is a regular and permanent employee of the board shall be subject to removal for failure to comply with the provisions of this Section. Written and signed charges alleging such failure shall be brought against the bus operator.

E. The governing authority of each public elementary or secondary school shall adopt rules, regulations, and procedures necessary to administer these provisions. Such rules, regulations, and procedures shall be consistent with these provisions.

F. For the purposes of this Section, "school bus operator" means any employee of a city, parish, or other local public school board or other governing authority of a public elementary or secondary school whose duty it is to transport students in any school bus or activity bus to and from a school approved by the State Board of Elementary and Secondary Education or to and from any school-related activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, and R.S. 17:493.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:642 (April 1999), amended LR 36:1468 (July 2010), LR 37:2122 (July 2011), LR 38:

Chapter 5. Instructional Program for School Bus Drivers

§501. Driver Training Program

A. - C.2. ...

D. LEAs must ensure that all school bus drivers, including any school board employee who drives a bus on an occasional basis to transport students to and from school activities and any person who is employed by a private entity that has contracted with the school district to provide student transportation services, have attended in-service training not less frequently than once every other school year.

E. - J.3. ...

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 25:630 (April 1999), amended LR 36:1468 (July 2010), LR 37:2122 (July 2011), LR 38:

Chapter 19. Transporting Students

§1901. Transporting Eligible Students

A. ...

1. A city, parish, or other local public school board may provide transportation for any student attending a school of suitable grade approved by the state Board of Elementary and Secondary Education within the jurisdictional boundaries of the local board who resides one mile or less from the school when the school board determines that conditions exist to warrant such transportation. Transportation of students residing one mile or less from their school shall be at no cost to the state.

2. Conditions that exist and warrant transportation of a student who resides one mile or less from the school may include but shall not be limited to the residence location of a person convicted of a sex offense and registered as a sex offender, sexually violent predators, and child predators.

B. - C. ...

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 25:634 (April 1999), amended LR 36:1476 (July 2010), LR 38:

Chapter 25. Purchase, Sale, Lease, and Repair of School Buses

§2501. Responsibility of Dealers and Manufacturers

A. The responsibility of compliance with school bus specifications rests with the vendors, manufacturers and purchasers of school buses.

B. - C. ...

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 25:644 (April 1999), amended LR 36:1479 (July 2010), LR 38:

§2507. Lease of School Buses

A. LEAs may lease a school bus owned by any school bus operator employed by the LEA or with whom the LEA has contracted to provide transportation services for students from the school bus operator or by a business who is authorized by the state of Louisiana to sell, lease or operate school buses in the state.

B. The school bus shall be used by the operator to transport students on the operator's assigned bus route, or the school bus may be used by the school district to transport students on an assigned bus route and/or for activity trips.

C. Lease agreements must follow state regulations as described in R.S. 17:158 and R.S. 17:158.7.

D. Lease agreements must specify that every bus included in the lease have been inspected and certified to meet all applicable standard and statutory requirements as enumerated or otherwise referenced in this document.

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 36:1479 (July 2010), amended LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 119—Louisiana School Transportation Specifications and Procedures**

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

The proposed policy revision to Bulletin 119, Louisiana School Transportation Specifications and Procedures are as follows:

Chapter 3, Section 303: Certification of School Bus Drivers, to further clarify which individuals are considered school bus drivers and Section 307: Retaining School Bus Drivers, to add a legislative policy based on Act No. 533 of the 2010 Regular Session, which amends R.S. 17:491.3 and 3996(B)(24) regarding the reporting requirements of school bus operators.

Chapter 5, Section 501: Driver Training Program, to add provisions to ensure school bus drivers are trained.

Chapter 19, Section 1901: Transporting Eligible Students, to eliminate discrepancies and inconsistencies as it relates to transportation of students who resides one mile or less from the school.

Chapter 25, Section 2501: Responsibility of Dealers and Manufacturers, to amend the responsibilities of compliance with school bus specifications to include purchasers of schools buses and Section 2507: Lease of School Buses, to amend the policy on the leasing of school buses for transporting students to and from school.

The adoption of this policy will cost the Department of Education approximately \$164 due to the expense associated with publication of the proposed policy change in the *Louisiana Register*.

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

There will be no effect on revenue collections at the state or local government level.

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

There are no 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 or employment as a result of this Rule change.

Beth Scioneaux
Deputy Superintendent
1112#044

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.Chapters 1, 5-19, 27, and 39)

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 126—Charter Schools: Chapters 1, 5-19, 27, and 39*. The proposed Rules will ensure the greater effectiveness of charter schools throughout the state. Additionally, during the 2011 Regular Legislative Session, several charter school bills were passed into law. The laws allowed for authorizers to grant extended or shortened opening timelines for approved charters, remove requirements regarding the months a school may open, corporate partnerships with charter schools, the allowance of residential charter schools, and for applications to be revised and resubmitted as part of the application process.

Title 28 EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§103. Definitions

A. - F. ...

G. *Management Organization*—a for-profit company that manages academic, fiscal, and operational services on behalf of boards of directors of BESE-authorized charter schools through contractual agreements.

H. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), LR 38:

Chapter 5. Charter School Application and Approval Process

§512. Application Process for Locally Authorized Charter Schools

A. - A.2. ...

3. Prior to the consideration of a charter school proposal by any local school board, each charter applicant shall be afforded the opportunity to revise and resubmit the proposal based on the independent evaluation of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:869 (March 2011), amended LR 38:

**§513. Stages of Application Cycle for BESE-
Authorized Charter Schools**

A. - G. ...

H. Prior to the consideration of a charter school proposal by BESE, each charter applicant shall be afforded the opportunity to revise and resubmit the proposal based on the independent evaluation of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:869 (March 2011), LR 38:

§515. Charter School Application Components

A. - D.48. ...

49. a description of any proposed corporate partnerships as specified in Chapter 39 of this bulletin.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 37:2383 (August 2011), LR 38:

**§517. Consideration of Charter Applications and
Awarding of Charters by BESE**

A. ...

B. BESE shall consider each Type 5 charter school application that is recommended by the State Superintendent of Education, based on a recommendation by the Office of Parental Options and the recovery school district, and may vote to approve or deny the recommended application.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR 38:

Chapter 7. Charter School Performance Contract

§701. Charter School Contract with BESE

A. ...

B. The charter school contract shall define the performance standards to which the charter school will be held accountable and the general terms and conditions under which the charter school will operate. The charter school contract template shall include, but not be limited to, provisions regarding the establishment of the charter school; the operation of the charter school; charter school financial matters; charter school personnel; charter term, renewal and revocation; and other provisions determined necessary by BESE. The charter school contract shall also include exhibits that provide detailed information about the terms and conditions under which the school will operate, including but not limited to, the pre-opening requirements; student discipline policy; student enrollment; and management organization contract.

C. ...

D. Any contracts entered into between a charter operator and a management organization shall:

1. set forth material terms including but not limited to: performance evaluation measures; methods of contract oversight and enforcement by the charter school board; compensation structure and all fees to be paid to the management organization; and conditions for contract renewal and termination;

2. contain provisions relative to the submission of documents, including but not limited to student records and financial information, upon request and in a timely manner. The contract shall specify that any documents not provided by a management organization to the charter operator must be reported by the charter operator to the department. If such documents are financial documents, the department shall notify BESE and the Office of the Louisiana Legislative Auditor. Failure to comply with requests for documents may render the management organization ineligible to contract with any BESE-authorized charter school as a management organization for up to five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011), LR 38:

Chapter 9. Opening of Charter School

§901. Timeline for Charter School Opening

A. A charter school shall begin operation by not later than 24 months after the final approval of the charter, unless such charter school is engaged in desegregation compliance issues and, therefore, must begin operation by not later than 36 months. However, upon request, the chartering authority may extend the time period within which any charter school must begin operation.

B. ...

C. A charter school other than a Type 5 shall not begin operation sooner than eight months after approval of the charter school has been granted, unless the chartering authority agrees to a lesser time period.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR :37:2385 (August 2011), LR 38:

Chapter 11. Ongoing Review of Charter Schools

§1101. Charter School Evaluation

A. - E.6. ...

F. Legal and Contract Performance

1. BESE shall evaluate a charter school's performance based on the Department of Education's oversight and monitoring of the charter school's compliance with its statutory, regulatory, and contractual obligations and all reporting requirements. Type 5 charter schools will be subject to oversight in these areas by the department and the recovery school district, which shall regularly report findings to the Office of Parental Options.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:

Chapter 13. Charter Term

§1303. Third Year Review

A. ...

B. Each Type 2, Type 4, and Type 5 charter school's comprehensive report and its third year evaluation shall be used to determine if the school will receive a two-year extension, as follows.

1. Contract Extension

a. Each charter school shall provide a comprehensive report to its chartering authority at the end of the third year, to be considered in addition to the academic, financial, and legal and contractual performance data collected by the Office of Parental Options or the recovery school district for the charter school's first three years. If such report and performance data reveal that the charter school is achieving the following goals and objectives, the board shall, by January of the school's fourth year, permit the charter school to complete the remainder of its initial five-year term:

B.1.a.i. - B.1.b. ...

2. Schools That Fail to Meet Extension Standards

a. If a charter school fails to meet any of the standards set forth in Paragraph B.1 of this Section, BESE may, at the superintendent's recommendation, take one of the following actions based on information provided by the Office of Parental Options and the recovery school district, if the school is a Type 5 charter school:

2.a.i - 3.b.i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011), LR 38:

Chapter 15. Charter Renewal

§1503. Charter Renewal Process and Timeline

A. - E.1. ...

2. Not later than January of the charter school's fifth year, the state superintendent of education will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, and legal and contractual performance during years one through four of the charter contract.

3. Based on the school's academic, financial, and contractual performance, the State Superintendent of Education may recommend one of three actions:

E.3.a. - F.2. ...

3. Not later than January of the charter school's final contract year, the state superintendent of Education will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, legal and contractual performance during its current charter contract.

4. Based on the school's academic, financial, and legal and contractual performance over the current charter contract term, the Superintendent may recommend one of the following actions:

F.4.a. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:

Chapter 17. Revocation

§1703. Revocation Proceedings

A. Recommendation to Revoke Charter for BESE-Authorized Charter Schools

1. A recommendation to revoke a charter shall be made to BESE by the state superintendent of education based on information provided by the Office of Parental Options and the Recovery School District, if the school is a Type 5 charter school, at least one BESE meeting prior to the BESE meeting at which the recommendation may be considered, except as otherwise provided herein when the health, safety, and welfare of students is at issue.

2. Prior to the BESE meeting at which the superintendent of education will make a recommendation that BESE commence a revocation proceeding, the Department of Education will inform the charter operator that it is requesting such and the reasons therefor and may meet with the charter operator, upon request, to discuss the revocation recommendation.

3. Following the state superintendent of education's recommendation to revoke a charter, BESE shall determine if it will commence a revocation proceeding.

A.4. - G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:872 (March 2011), LR 38:

Chapter 19. Amendments to BESE-Authorized Charters

§1903. Material Amendments for BESE-Authorized Charter Schools

A. A material amendment to a charter is an amendment that makes substantive changes to a charter school's governance, operational, or academic structure. Material amendments include:

1. changes in legal status or management, including the structure of the governing board, or assignment of or changes in management organization;

A.2. - D. ...

E. BESE shall delegate authority to the Department to approve a material amendment regarding Paragraphs A.3 and A.4 of this Section for any charter school meeting-the following conditions, as determined by the department:

E.1. - E.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011), LR 38:

Chapter 27. Charter School Recruitment and Enrollment

§2701. Students Eligible to Attend

A. - D. ...

E. Beginning with the 2011-2012 school year, each elementary and middle charter school, other than a Type 2 charter school, may request from and be granted by its chartering authority the authority to give preference in its enrollment procedures to students residing within the neighborhood immediately surrounding the school. The geographic boundaries of the neighborhood immediately surrounding such school shall be determined by the school's

chartering authority. The recovery school district may grant or assign preference in its unified enrollment process, described in §2709 of this Bulletin, to students residing within geographic boundaries immediately surrounding each school, as determined by the recovery school district. Type 5 charter schools shall not reserve more than 50 percent of spots in each grade level served for such enrollment preference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:875 (March 2011), LR 37:2390 (August 2011), LR 38:

§2707. Application Period

A. ...

B. A student application period shall not be less than one month nor more than three months.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:

§2709. Enrollment of Students, Lottery, and Waitlist

A. - F. ...

G. Any charter school not participating in the recovery school district's unified enrollment system in Paragraph J. of this Section shall maintain a waitlist of applicants not admitted to the charter school as a result of capacity being reached in a program, a grade, or the school.

G.1. - I. ...

J. Type 5 charter schools and traditional public schools in Orleans Parish transferred to the recovery school district pursuant to R.S. 17:10.5 and R.S. 17:10.7 shall comply with any unified enrollment system established by the recovery school district. Other charter schools located within Orleans Parish may participate in the unified enrollment system upon approval by their charter boards. Other traditional public schools in Orleans Parish may participate in the unified enrollment system upon approval by the local school board. The recovery school district may create any policies and procedures to implement a unified enrollment system not prohibited by this chapter, and may conduct one or more central lotteries to enroll students at participating schools, and enroll students applying or requesting transfers after the application period has ended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:

Chapter 39. Corporate Partnerships

§3901. Corporate Partnerships and Enrollment

A. Notwithstanding geographic or other requirements for enrollment contained in this bulletin, a charter agreement may provide, initially or by amendment, for the enrollment of and an enrollment preference for dependent children of permanent employees of a corporate partner.

B. Up to 50 percent of the school's maximum enrollment may be reserved for the enrollment of such children.

C. The charter agreement shall specify both the school's maximum enrollment and the maximum proportion set aside for implementation of this enrollment preference.

D. An enrollment preference established as part of the Corporate Partnership defined in this Chapter shall not be implemented in a way that displaces children enrolled at the school at the time the charter agreement or amendment providing for the preference is authorized.

E. Enrollment at the school shall otherwise be as provided by this Chapter except that the requirement of R.S. 17:3991(B)(1)(a)(i) shall apply to and be based upon only students who are not dependent children of permanent employees of a corporate partner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§3903. Requirements for Corporate Partnerships

A. A corporate partner is any legal entity, whether for profit or not for profit, registered with the secretary of state, except a corporation identified in R.S. 18:1505.2(L)(3), that has, acting individually or as part of a consortium of corporations, donated one or more of the following to the school:

1. the land on which the school is built;
2. the school building or the space the school occupies. If the corporate partner is leasing the building or space to the school, the enrollment preference or board membership may only be provided in the charter agreement if the lease provides that the building or space is made available without cost and if the term of the lease is not less than the duration of the charter agreement;
3. major renovations to the existing school building or other capital improvements including major investments in technology.

B. For purposes of this Chapter, a major renovation to the existing school building means changes that provide significant opportunities for substantial improvement including but not limited to:

1. a structural change to the foundation, roof, floor, or interior or exterior walls or extension of an existing facility to increase its floor area;
2. an extensive alteration of an existing facility, such as a change in its function or purpose, even if such renovation does not include any structural change to the facility.

C. A major investment in technology includes but is not limited to a donation of:

1. hardware;
2. software;
3. internet access;
4. internet hardware;
5. enterprise systems;
6. software licenses;
7. smart board technology; or
8. audiovisual equipment.

D. The value of a major renovation or of an investment of technology shall be equal to at least 50 percent of the per pupil allocation of state funds by the minimum foundation program formula for that year for the parish in which the

school is located multiplied by the school's enrollment as defined in the charter agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§3905. Corporate Partner Representation on Charter Boards

A. A charter agreement may provide, initially or by amendment, for a corporate partner to have representation on its governing or management board; however, such representation may not constitute a majority of the board. Such membership is subject to all other provisions of law except any contrary provision in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 126—Charter Schools

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

The proposed revisions to Bulletin 126 concern management organizations, legislation passed in the 2011 regular legislative session, the proposed RSD Public School Enrollment Process, the monitoring and oversight of Type 5 charter schools, and charter amendments for changes in student enrollment and grade levels served. To the extent that this policy shall allow for the growth or decline of charter schools in the state, state and local per pupil allocations through the state's Minimum Program Foundation formula could change by an undeterminable amount. The RSD has secured funding from

outside resources to ensure the successful implementation of the RSD Public School Enrollment Process. There will be a cost of \$164 associated with publication of the proposed rule change in the *Louisiana Register*.

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

There will be no effect on revenue collections at the state or government level.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy could result in the creation or termination of charter schools within school districts across the state. To the extent that these schools will operate in competition with district schools for students, faculty, and resources, it will have an undetermined effect on competition and employment in the state.

Beth Scioneaux
Deputy Superintendent
1112#045

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
(LAC 28: CXV.2317, 2318, 2325, 2345, 2351, and 2353)

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*: §2317. High Schools, §2318. The College and Career Diploma, §2325. Advanced Placement and International Baccalaureate, §2345. Foreign Languages, §2351. Journalism, and §2353. Mathematics. These policy revisions correct formatting errors, provide more course-taking options for students, and clarify some language in the policy. These revisions were requested by districts and schools.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2317. High Schools

A. - H.4. ...

I. Prior to the beginning of the school year, students in the college and career diploma pathway may switch to the career diploma pathway provided they meet the following requirement.

1. Every student who seeks to pursue a career diploma shall have the written permission of his/her parent or other legal guardian on the career diploma participation form after a consultation with the school guidance counselor or other school administrator. The student and parent must be informed of the advantages and disadvantages of the different diploma pathways. The signature of the student and parent or guardian indicates that a determination has been

made that the pursuit of a career diploma is appropriate and in the best interest of the student. The school principal shall also sign the form acknowledging that appropriate counseling has taken place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:154; R.S. 17:1944; R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 36:1485 (July 2010), LR 37:1137 (April 2011), LR 38:

§2318. The College and Career Diploma

A. - B.7.a. ...

C. Minimum Course Requirements

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

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units:

- i. English I;
- ii. English II;
- iii. English III*;
- iv. English IV* or Business English or Senior Applications in English.

b. Mathematics—3 units:

i. effective for incoming freshmen 2005-2006 to 2007-2008:

(a). all students must complete one of the following:

- (i). Algebra I (1 unit); or
- (ii). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or
- (iii). Integrated Mathematics I (1 unit).

(b). The remaining unit(s) shall come from the following:

- (i). Integrated Mathematics II;
- (ii). Integrated Mathematics III;
- (iii). Geometry;
- (iv). Algebra II;
- (v). Financial Mathematics;
- (vi). Advanced Math—Pre-Calculus;
- (vii). Advanced Math—Functions and Statistics;
- (viii). Pre-Calculus*, Calculus*;
- (ix). Probability and Statistics*;
- (x). Math Essentials; and
- (xi). Discrete Mathematics.

c. Science—3 units:

i. 1 unit of Biology*;

ii. 1 unit from the following physical science cluster:

- (a). Physical Science;
- (b). Integrated Science;
- (c). Chemistry I;
- (d). Physics I*;
- (e). Physics of Technology I;

iii. 1 unit from the following courses:

- (a). Aerospace Science;
- (b). Biology II*;
- (c). Chemistry II*;
- (d). Earth Science;
- (e). Environmental Science*;

- (f). Physics II*;
- (g). Physics of Technology II;
- (h). Agriscience II;
- (i). an additional course from the physical science cluster; or

(j). a locally initiated science elective;

iv. students may not take both Integrated Science and Physical Science;

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

d. Social Studies—3 units:

- i. U.S. History*;
- ii. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise; and

iii. one of the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*;
- (d). AP European History.

e. Health Education—1/2 unit.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Electives—8 units.

h. Total—23 units.

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

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units:

- i. English I;
- ii. English II;
- iii. English III*;
- iv. English IV* or Senior Applications in English.

b. Mathematics—4 units:

i. all students must complete one of the following:

- (a). Algebra I (1 unit);
- (b). Applied Algebra I (1 unit); or
- (c). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units).

ii. Geometry or Applied Geometry;

iii. the remaining unit(s) shall come from the following:

- (a). Algebra II;
- (b). Financial Mathematics;
- (c). Math Essentials;
- (d). Advanced Math—Pre-Calculus;
- (e). Advanced Math—Functions and Statistics;
- (f). Pre-Calculus*;
- (g). Calculus*;
- (h). Probability and Statistics*;
- (i). Discrete Mathematics; or

(j). a locally initiated elective approved by BESE as a math substitute.

c. Science—3 units:

- i. 1 unit of Biology*;

ii. 1 unit from the following physical science cluster:

- (a). Physical Science;
- (b). Integrated Science;
- (c). Chemistry I*;
- (d). Physics I*;
- (e). Physics of Technology I;

iii. 1 unit from the following courses:

- (a). Aerospace Science;
- (b). Biology II*;
- (c). Chemistry II*;
- (d). Earth Science;
- (e). Environmental Science*;
- (f). Physics II*;
- (g). Physics of Technology II;
- (h). Agriscience II;
- (i). Anatomy and Physiology;
- (j). ChemCom;
- (k). an additional course from the physical science cluster; or

(l). a locally initiated elective approved by BESE as a science substitute;

iv. students may not take both Integrated Science and Physical Science;

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

d. Social Studies—3 units:

i. U.S. History*;

ii. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. 1 of the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*;
- (d). AP European History.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Electives—8 units:

i. shall include the minimum courses required to complete a career area of concentration for incoming freshmen 2010-2011 and beyond.

(a). The Area of Concentration shall include one unit of Education for Careers or Journey to Careers.

h. Total—124 units.

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

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units:

- i. English I;
- ii. English II;

iii. English III*;

iv. English IV*.

b. Mathematics—4 units

i. Algebra I, Applied Algebra I, or Algebra I-Pt.

2;

ii. Geometry or Applied Geometry;

iii. Algebra II;

iv. the remaining unit shall come from the following:

(a). Financial Mathematics;

(b). Math Essentials;

(c). Advanced Math—Pre-Calculus;

(d). Advanced Math—Functions and Statistics;

(e). Pre-Calculus*;

(f). Calculus*;

(g). Probability and Statistics*;

(h). Discrete Mathematics;

(i). AP Calculus BC, or

(j). a locally initiated elective approved by BESE as a math substitute.

c. Science—4 units:

i. one unit of Biology*;

ii. one unit of Chemistry*;

iii. two units from the following courses:

(a). Physical Science;

(b). Integrated Science;

(c). Physics I*;

(d). Physics of Technology I;

(e). Aerospace Science;

(f). Biology II*;

(g). Chemistry II*;

(h). Earth Science;

(i). Environmental Science;

(j). Physics II*;

(k). Physics of Technology II;

(l). Agriscience II;

(m). Anatomy and Physiology; or

(n). a locally initiated elective approved by BESE as a science substitute.

iv. Students may not take both Integrated Science and Physical Science;

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

vi. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required science unit:

(a). Advanced Nutrition and Foods;

(b). Food Services II;

(c). Allied Health Services II;

(d). Dental Assistant II;

(e). Emergency Medical Technician-Basic (EMT-B);

(f). Health Science II;

(g). Medical Assistant II;

(h). Sports Medicine III;

(i). Advanced Electricity/Electronics;

(j). Process Technician II;

(k). ABC Electrical II;

(l). Computer Service Technology II;

(m). Horticulture II;

- (n). Networking Basics;
- (o). Routers and Routing Basics;
- (p). Switching Basics and Intermediate Routing;
- (q). WAN Technologies;
- (r). Animal Science;
- (s). Biotechnology in Agriscience;
- (t). Environmental Studies in Agriscience;
- (u). Equine Science;
- (v). Forestry;
- (w). Horticulture;
- (x). Small Animal Care/Management;
- (y). Veterinary Assistant; and
- (z). Oracle Academy Course: DB Programming

with PL/SQL.

d. Social Studies—4 units:

i. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

ii. U.S. History*;

iii. 1 unit from the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*; or
- (d). AP European History.

iv. 1 unit from the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*; or
- (d). AP European History;
- (e). Law Studies;
- (f). Psychology;
- (g). Sociology;
- (h). Civics (second semester—1/2 credit); or
- (i). African American Studies;

NOTE: Students may take two half credit courses for the fourth required social studies unit.

v. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required social studies unit:

- (a). Advanced Child Development;
- (b). Early Childhood Education II;
- (c). Family and Consumer Sciences II;
- (d). ProStart II;
- (e). T and I Cooperative Education (TICE);
- (f). Cooperative Agriculture Education;
- (g). Administrative Support Occupations;
- (h). Business Communication;
- (i). Cooperative Office Education;
- (j). Entrepreneurship—Business;
- (k). Lodging Management II;
- (l). Advertising and Sales Promotion;
- (m). Cooperative Marketing Education I;
- (n). Entrepreneurship—Marketing;
- (o). Marketing Management;
- (p). Marketing Research;
- (q). Principles of Marketing II;
- (r). Retail Marketing;
- (s). Tourism Marketing;
- (t). CTE Internship;

- (u). General Cooperative Education II;
- (v). STAR II.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Foreign language—2 units:

i. shall be 2 units in the same foreign language or two speech courses.

h. Arts—1 unit:

i. 1 unit Art (§2333), Dance (§2337), Media Arts (§2354), Music (§2355), Theatre Arts, (§2369), or Fine Arts Survey;

NOTE: Students may satisfy this requirement by earning half credits in two different arts courses.

ii. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required applied art unit:

- (a). Advanced Clothing and Textiles;
- (b). ABC Carpentry II TE;
- (c). ABC Electrical II TE;
- (d). ABC Welding Technology II;
- (e). Advanced Metal Technology;
- (f). Advanced Technical Drafting;
- (g). Architectural Drafting;
- (h). ABC Carpentry II—T and I;
- (i). ABC Welding Technology II—T and I;
- (j). Cabinetmaking II;
- (k). Commercial Art II;
- (l). Cosmetology II;
- (m). Culinary Occupations II;
- (n). Custom Sewing II;
- (o). Graphic Arts II;
- (p). Photography II;
- (q). Television Production II;
- (r). Upholstery II;
- (s). Welding II;
- (t). ABC Carpentry In Agriscience;
- (u). ABC Electricity in Agriscience;
- (v). ABC Welding Technology Agriscience;
- (w). Agriscience Construction Technology;
- (x). Agriscience Power Equipment;
- (y). Floristry;
- (z). Landscape Design and Construction;
- (aa). Introduction to Business Computer Applications;
- (bb). Accounting II;
- (cc). Business Computer Applications;
- (dd). Computer Multimedia Presentations;
- (ee). Desktop Publishing;
- (ff). Keyboarding Applications;
- (gg). Telecommunications;
- (hh). Web Design I and II;
- (ii). Word Processing; and
- (jj). Digital Media II.

- i. Electives—3 units.
- j. Total—24 units.
- k. The substitutions below are allowed for students attending the New Orleans Center for Creative Arts.

i. NOCCA Integrated English I, II, III, and IV can be substituted for English I, II, III, and IV.

ii. NOCCA Integrated Mathematics I, II, and III can be substituted for Algebra I, Geometry and Algebra II.

iii. NOCCA Integrated Science I, II, III, and IV can be substituted for Environmental Science, Biology, Chemistry, and Physics.

iv. NOCCA Integrated World History I, II, III, and IV can be substituted for World Geography, World History, Civics, and U.S. History.

4. High School Area of Concentration

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

i. Incoming freshmen prior to 2008-2009 can complete an academic area of concentration by completing the current course requirements for the Taylor Opportunity Program for Students (TOPS) Opportunity Award.

ii. Incoming freshmen in 2008-2009 and beyond can complete an academic area of concentration by completing the course requirements for the LA Core 4 curriculum.

iii. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of concentration are identified in the career options reporting system with each LEA designating the career and technical education areas of concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

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

5. Academic Endorsement

a. Graduating seniors who meet the requirements for a College and Career diploma and satisfy the following

performance indicators shall be eligible for an academic endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall complete an academic area of concentration. Students graduating in 2011-2012 and beyond shall complete the following curriculum requirements.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

(a). English—4 units:

- (i). English I;
- (ii). English II;
- (iii). English III*;
- (iv). English IV*.

(b). Mathematics—4 units:

- (i). Algebra I or Algebra I-Pt. 2;
- (ii). Geometry;
- (iii). Algebra II;
- (iv). the remaining unit shall come from the

following:

- [a]. Advanced Math—Pre-Calculus;
- [b]. Advanced Math—Functions and

Statistics;

- [c]. Pre-Calculus*;
- [d]. Calculus*;
- [e]. Probability and Statistics*;
- [f]. Discrete Mathematics; or
- [g]. AP Calculus BC.

(c). Science—4 units:

- (i). Biology*;
- (ii). Chemistry*;
- (iii). 1 units of advanced science from the following courses: Biology II, Chemistry II, Physics, or Physics II;
- (iv). 1 additional science course.

(d). Social Studies—4 units:

(i). Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

- (ii). U.S. History*;
- (iii). 1 unit from the following:
 - [a]. World History*;
 - [b]. World Geography*;
 - [c]. Western Civilization;
 - [d]. AP European History;

(iv). 1 unit from the following:

- [a]. World History*;
- [b]. World Geography*;
- [c]. Western Civilization;
- [d]. AP European History;
- [e]. Law Studies;
- [f]. Psychology;
- [g]. Sociology; or
- [h]. African American Studies.

(e). Health Education—1/2 unit:

(i). JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

(f). Physical Education—1 1/2 units:

(i). shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

NOTE: The substitution of JROTC is permissible.

ii. Assessment Performance Indicator

(a) Students graduating prior to 2013-2014 shall pass all four components of GEE with a score of *Basic* or above, or one of the following combinations of scores with the English language arts score at *Basic* or above:

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

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

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

(i). English II and English III;

(ii). Algebra I and Geometry;

(iii). Biology and U.S. History.

NOTE: Transfer students need only meet this requirement for the EOC tests they are required to take according to the transfer rules found in §1829 of Bulletin 118.

iii. Students shall complete one of the following requirements:

(a). senior project;

(b). one Carnegie unit in an AP course and attempt the AP exam;

(c). one Carnegie unit in an IB course and attempt the IB exam; or

(d). three college hours of non-remedial credit in:

(i). mathematics;

(ii). social studies;

(iii). science;

(iv). foreign language; or

(v). English language arts.

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

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

6. Career/Technical Endorsement

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

i. Students graduating prior to 2011-2012 shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2011-2012 and beyond shall meet the course requirements for the Louisiana Core 4 Curriculum.

ii. Students shall complete the career area of concentration.

iii. Assessment Performance Indicator

(a). Students graduating prior to 2009-2010 shall pass the English language arts, mathematics, science, and social studies components of the GEE at the *Approaching Basic* level or above. Students graduating in 2009-2010 and beyond prior to 2013-2014 shall pass all four components of the GEE with a score of basic or above or one of the following combinations with the English language arts score at basic or above:

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

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

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

(i). English II and English III;

(ii). Algebra I and Geometry;

(iii). Biology and U.S. History.

NOTE: Transfer students need only meet this requirement for the EOC tests they are required to take according to the transfer rules found in §1829 of Bulletin 118.

iv. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration or senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

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

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

v. Students shall achieve a minimum GPA of 2.5.

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

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193 (November 2011), LR 38:

§2325. Advanced Placement and International

Baccalaureate

A. Each high school shall provide students access to at least one advanced placement (AP) or international baccalaureate (IB) course.

B. High school credit shall be granted to a student successfully completing an AP course or an IB course, regardless of his test score on the examination provided by the college board or on the IB exam.

1. Procedures established by the college board must be followed.

2. Courses listed in the program of studies may be designated as advanced placement courses on the student's transcript by following procedures established by the DOE.

a. The chart below lists the college board AP course titles, the IB course titles, and the corresponding Louisiana course titles for which these courses can be substituted.

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
Art History		AP Art History
Biology	Biology II IB	Biology II or Biology I
	Biology III IB	Biology Elective
Calculus AB	Math Methods II IB	Calculus
Calculus BC		AP Calculus BC
Chemistry		Chemistry II or Chemistry I
Computer Science A		AP Computer Science A
Computer Science AB		AP Computer Science AB
Economics: Macro	Economics IB	Economics
Economics: Micro		AP Economics: Micro
English Language and Composition	English III IB	English III
English Literature and Composition	English IV IB	English IV
Environmental Science	Environmental Systems IB	Environmental Science
European History		AP European History
French Language	French IV IB	French IV
	Film Study I IB	Visual Arts Elective
	Film Study II IB	Visual Arts Elective
French Literature	French V IB	French V
German Language		German IV
Government and Politics: Comparative		AP Government and Politics: Comparative
Government and Politics: United States		AP Government and Politics: United States (substitute for Civics)
Human Geography	World Geography IB	World Geography
	Informational Technology IB	Computer Systems/Networking I
Latin Literature		Latin V
Latin: Vergil		Latin IV
	Math Methods I IB	Pre-Calculus
	Music I IB	Music Theory I
Music Theory	Music II IB	Music Theory II
Physics B	Physics I IB	Physics
Physics C: Electricity and Magnetism		AP Physics C: Electricity and Magnetism
Physics C: Mechanics		AP Physics C: Mechanics
	Physics II IB	Physics II
Psychology		Psychology
Spanish Language	Spanish IV IB	Spanish IV
Spanish Literature	Spanish V IB	Spanish V
Statistics		Probability and Statistics
Studio Art: 2-D Design	Art/Design IV IB	Art IV
Studio Art: 3-D Design		AP Studio Art 3-D Design
Studio Art: Drawing	Art Design III IB	Art III
	Theory of Knowledge I IB	Social Studies Elective
	Theory of Knowledge IB	Social Studies Elective
U.S. History	U.S. History IB	U.S. History
World History		World History
	World History IB	Western Civilization

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:3198 (November 2011), LR 38:

§2345. Foreign Languages

A. The foreign language course offerings shall be as follows.

Course Title(s)	Units
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
American Sign Language I, II	1 each
Greek I, II, III, IV	1 each
Chinese I, II, III, IV	1 each
Japanese I, II, III, IV	1 each
Hebrew I, II, III, IV	1 each
Arabic I, II, III, IV	1 each

B. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 273; R.S. 17:284.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1295 (June 2005), amended LR 36:1996 (September 2010), LR 38:

§2351. Journalism

A. The journalism course offerings shall be as follows.

Course Title(s)	Units
Journalism I, II	1 each
Publications I, II (Yearbook)	1 each
Publications I, II (Newspaper)	1 each

B. Teachers must be certified in journalism to teach Journalism.

C. Teachers certified in the area of journalism, English, and/or business education are qualified to teach Publications I and II (Yearbook).

D. Teachers certified in the areas of journalism, and/or English are qualified to teach Publications I and II (Newspaper).

E. Publications I is a prerequisite to Publications II.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 38:

§2353. Mathematics

A. Mathematics Requirements for the College and Career Diploma

1. Louisiana Core 4 Curriculum. Four units of math shall be required for graduation. They shall be the following:

- a. one unit from the following courses: Algebra I, Applied Algebra I, or Algebra I-Pt. 2;
- b. Geometry or Applied Geometry;
- c. Algebra II;
- d. one unit from the following:
 - i. Financial Mathematics;
 - ii. Math Essentials;
 - iii. Advanced Math—Pre-Calculus;
 - iv. Advanced Math—Functions and Statistics;
 - v. Pre-Calculus;

- vi. Calculus;
- vii. Probability and Statistics;
- viii. Discrete Mathematics;
- ix. AP Calculus BC; or
- x. a locally-initiated elective approved by BESE as a math substitute.

2. Louisiana Basic Core Curriculum. Four units of math shall be required for graduation. They shall be the following:

- a. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units);
- b. Geometry;
- c. the remaining units shall come from the following:
 - i. Algebra II;
 - ii. Financial Mathematics;
 - iii. Math Essentials;
 - iv. Advanced Math-Pre-Calculus;
 - v. Advanced Math-Functions and Statistics;
 - vi. Pre-Calculus;
 - vii. Calculus;
 - viii. Probability and Statistics;
 - ix. Discrete Mathematics; or
 - x. a locally-initiated elective approved by BESE as a math substitute.

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

- a. Algebra I (1 unit); or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or
- b. Integrated Mathematics I (1 unit);
- c. the remaining unit(s) shall come from the following:
 - i. Integrated Mathematics II;
 - ii. Integrated Mathematics III;
 - iii. Geometry;
 - iv. Algebra II;
 - v. Financial Mathematics;
 - vi. Advanced Math-Pre-Calculus;
 - vii. Advanced Math-Functions and Statistics;
 - viii. Pre-Calculus;
 - ix. Calculus;
 - x. Probability and Statistics;
 - xi. Math Essentials; and
 - xii. Discrete Mathematics.

4. The mathematics course offerings for the College and Career Diploma shall be as follows.

Course Title(s)	Units
Advanced Math—Pre-Calculus	1
Advanced Math—Functions and Statistics	1
Algebra I, II	1 each
Applied Algebra I	1
Algebra I—Part 1	1
Algebra I—Part 2	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Applied Geometry	1
Integrated Mathematics I, II, III	1 each
Pre-Calculus	1

Course Title(s)	Units
Probability and Statistics	1
Math Essentials	1
AP Calculus BC	1

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 33:2605 (December 2007), LR 34:1609 (August 2008), LR 35:2322 (November 2009), LR 36:1493 (July 2010), LR 38:

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? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

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

These policy revisions to Sections 2317, 2318, 2325, 2345, 2351, and 2353 in *Bulletin 741: Louisiana Handbook for School Administrators* correct formatting errors, provide more course-taking options for students, and clarify some language in the policy. These changes will not result in an increase in costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no 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 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
1112#047

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 (LAC 28: CXV.2318 and 2319)

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*: §2318. The College and Career Diploma and §2319. The Career Diploma. These policy revisions stipulate that the End-of-Course (EOC) test scores shall count as 5 percent of the final grade for students who qualify for LEAP Alternate Assessment, Level 2 (LAA 2). The policy revision also states that entering freshmen in 2010-2011 and beyond who qualify for the LAA2 can meet the assessment requirement for graduation by passing the LAA 2 or by meeting the EOC assessment requirement for graduation. These revisions were requested by a committee of special education practitioners and parents.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

**Chapter 23. Curriculum and Instruction
§2318. The College and Career Diploma**

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

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or American History.

b. Students with disabilities identified under IDEA who meet the LAA 2 participation criteria may meet the assessment requirements by passing the English language areas and mathematics components of the LAA 2 and either the science or social studies component of LAA 2.

3. Students enrolled in a course for which there is an EOC test must take the EOC test.

a. The EOC test score shall count a percentage of the student's final grade for the course.

b. The percentage shall be between 15 percent and 30 percent inclusive, and shall be determined by the LEA.

i. For students with disabilities identified under IDEA who meet the LAA 2 participation criteria prior to taking the first EOC test, the EOC test score shall count for 5 percent of the students' final grade for the course.

c. The grades assigned for the EOC test achievement levels shall be as follows.

EOC Achievement Level	Grade
Excellent	A
Good	B
Fair	C
Needs Improvement	D or F

d. The DOE will provide conversion charts for various grading scales used by LEAs.

4. For students with disabilities who have passed two of the three required end-of-course tests or two of the three required components of the LAA 2 and have exhausted all opportunities available through the end of the 12th grade to pass the remaining required end-of-course test or LAA 2 component, that end-of-course test or LAA 2 component may be waived by the State Superintendent of Education if the Department of Education determines the student's disability significantly impacts his/her ability to pass the end-of-course test.

B.5. - C.6.a.vi. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2-3; R.S. 17:274; R.S. 17:274.1; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 38:

§2319. The Career Diploma

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

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or American History.

b. Students with disabilities identified under IDEA who meet the LAA 2 participation criteria may meet the assessment requirements by passing the English language areas and mathematics components of the LAA 2 and either the science or social studies component of LAA 2.

3. Students enrolled in a course for which there is an EOC test must take the EOC test.

a. The EOC test score shall count a percentage of the student's final grade for the course.

b. The percentage shall be between 15 percent and 30 percent inclusive, and shall be determined by the LEA.

i. For students with disabilities identified under IDEA who meet the LAA 2 participation criteria prior to taking the first EOC test, the EOC test score shall count for 5 percent of the students' final grade for the course.

c. The grades assigned for the EOC test achievement levels shall be as follows.

EOC Achievement Level	Grade
Excellent	A
Good	B
Fair	C
Needs Improvement	D or F

d. The DOE will provide conversion charts for various grading scales used by LEAs.

4. For students with disabilities who have passed two of the three required end-of-course tests or two of the three required components of the LAA 2 and have exhausted all opportunities available through the end of the 12th grade to pass the remaining required end-of-course test or LAA 2 component, that end-of-course test or LAA 2 component may be waived by the state superintendent of education if the Department of Education determines the student's disability significantly impacts his/her ability to pass the end-of-course test.

B.5. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:183.3; R.S. 17:274; R.S. 17:274.1; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 38:

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? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
These policy revisions to Sections 2318 and 2319 in *Bulletin 741: Louisiana Handbook for School Administrators* stipulate that the End-of-Course (EOC) test scores shall count as 5% of the final grade for students who qualify for LEAP Alternate Assessment, Level 2 (LAA 2). The policy revision also states that entering freshmen in 2010-2011 and beyond who qualify for the LAA2 can meet the assessment requirement for graduation by passing the LAA 2 or by meeting the EOC assessment requirement for graduation. These changes will not result in an increase in costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no 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 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
1112#048

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—Criminal Offenses
(LAC 28:CXXXI.903, 906, 909, and 911)

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: §903. Definitions, §906. Procedures and Rules for Issuance of a Denied Certificate, §909. Suspension and Revocation of Certificates due to Fraudulent Documentation Pertaining to Certification, and §911. Procedures and Rules for Reinstatement of Certificates Suspended or Revoked due to Criminal Convictions and/or Submission of Fraudulent Documents.* The proposed revisions to policy will replace the hearing process with the records review process for individuals, whose certification has been denied, suspended, or revoked due to a criminal conviction of a felony. This revision will also stipulate that an individual, who has been denied issuance of a certificate by the board after a records review has been conducted, may not reapply to the board.

Requests for records review will also be denied for failure to disclose convictions, expungements, or for submitting falsified academic records. The proposed revisions will streamline the process for reinstatement or issuance of certificates to individuals who have felony convictions.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel
Chapter 9. Actions Related to Criminal Offenses
and/or the Submission of Fraudulent
Documentation**

§903. Definitions

A. For the purposes of this policy:

Applicant—any person applying for a Louisiana teaching authorization of any kind.

Board—the Board of Elementary and Secondary Education as a whole and/or any of its standing committees.

Convicted or Conviction—any proceedings in which the accused person pleads guilty or no contest, and those proceedings that are tried and result in a judgment of guilty.

Department—the Louisiana Department of Education.

Fraudulent Document—any paper, instrument, or other form of writing that is false, altered, or counterfeit and that is used as a subterfuge or device to induce the issuance of a certificate.

Offense or Crime—those listed in R.S. 15.587.1(C) and any felony offense whatsoever.

Teaching Certificate or Certificate—any license, permit, or certificate issued by the Division of Teacher Certification and Higher Education of the Department of Education.

B. The following crimes are reported under R.S.15:587.1:

1. R.S. 14:30, R.S. 14:30.1, R.S. 14:31, 14:32.6, 14:32.7, 14:32.8, R.S. 14:41 through R.S.14:45, R.S. 14:74, R.S. 14:78, R.S. 14:78.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 14:89.1, R.S. 14:92, R.S. 14:93, R.S. 14:93.3, R.S. 14:106, R.S. 14:282, R.S. 14:286, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses;

2. those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and Those under the *Federal Criminal Code* having analogous elements of criminal and moral turpitude. (Federal Criminal Code provisions are in Title 18 of U.S.C.A.) Specifically:

R.S. 14:283.1	Voyeurism
*R.S. 14:283	Video Voyeurism
R.S. 14:284	Peeping Tom
*R.S. 14:30	First degree murder
*R.S. 14:30.1	Second degree murder
*R.S. 14:31	Manslaughter
*14:32.6	First Degree Feticide
*14:32.7	Second Degree Feticide
*14:32.8	Third Degree Feticide
*14:41	Rape
*R.S. 14:42	Aggravated rape
*R.S. 14:42.1	Forcible rape
*R.S. 14:43	Simple rape
*R.S. 14:43.1	Sexual battery
*R.S. 14:43.2	Aggravated sexual battery
*R.S. 14:43.3	Oral sexual battery

*R.S. 14:43.5	Intentional exposure to the AIDS virus
*R.S. 14:44	Aggravated kidnapping
*R.S. 14:44.1	Second degree kidnapping
*R.S. 14:45	Simple kidnapping
R.S. 14:74	Criminal neglect of family
*R.S. 14:78	Incest
*R.S. 14:78.1	Aggravated Incest
R.S. 14:79.1	Criminal abandonment
*R.S. 14:80	Felony Carnal knowledge of a juvenile
*R.S. 14:81	Indecent behavior with a juvenile
*R.S. 14:81.1	Pornography involving juveniles
*R.S. 14:81.2	Molestation of a juvenile or a person with a physical or mental disability
*R.S. 14:81.3	Computer-aided solicitation of a minor
*R.S. 14:82	Prostitution (In some instances)
*R.S. 14:82.1	Prostitution; Persons under seventeen; Additional offenses
R.S. 14:83	Soliciting for prostitutes
R.S. 14:83.1	Inciting prostitution
R.S. 14:83.2	Promoting prostitution
R.S. 14:83.3	Prostitution by massage
R.S. 14:83.4	Massage; sexual content prohibited
*R.S. 14:84	Pandering
R.S. 14:85	Letting premises for prostitution
R.S. 14:85.1	Letting premises for obscenity
*R.S. 14:86	Enticing persons into prostitution
*R.S. 14:89	Crime against nature
*R.S. 14:89.1	Aggravated crime against nature
* R.S. 14:92	Contributing to the delinquency of juveniles (In some instances)
*R.S. 14:93	Cruelty to juveniles
R.S. 14:93.2.1	Child desertion
*R.S. 14:93.3	Cruelty to the infirm
*R.S. 14:106	Obscenity
R.S. 14:282	Operation of places of prostitution
*R.S. 14:286	Sale of minor children
R.S. 40:966(A)	Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; Manufacture; Distribution
R.S. 40:967(A)	Prohibited acts; Schedule II, penalties; Manufacture; Distribution
R.S. 40:968(A)	Prohibited acts; Schedule III; penalties; Manufacture; Distribution
R.S. 40:969(A)	Prohibited acts; Schedule IV; penalties; Manufacture; Distribution
R.S. 40:970(A)	Prohibited acts; Schedule V; penalties; Manufacture; Distribution

*Certificate issuance/reinstatement will never be considered for crimes marked with an asterisk.

C. Convictions that are set aside pursuant to Articles 893 or 894 of the *Louisiana Code of Criminal Procedures*, expunged, or which are pardoned subject to Louisiana first offender pardon laws nonetheless, shall be treated as convictions for the purpose of denial.

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 32:1830 (October 2006), amended LR 34:2559 (December 2008), LR 38:

§906. Procedures and Rules for Issuance of a Denied Certificate

A. Issuance will never be considered for teachers who have been convicted of a felony for the following crimes: R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:78.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82 (In some instances),

14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92 (In some instances), 14:93, 14:93.3, 14:106, and 14:286.

B. Issuances of certificates shall not be considered until at least three years have elapsed from the date of entry of final conviction.

C. An applicant may apply to the board for issuance of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no further convictions. The applicant must provide a current state and FBI criminal history background check from state police that is clean and clear.

2. There has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide relevant documentation.

D. Applicant Responsibilities

1. Contact the office of the Board of Elementary and Secondary Education and request a records review for issuance of the certificate that was denied due to the submission of fraudulent documentation or due to conviction for a crime listed in R.S. 15:587.1 or for any felony.

2. Provide each applicable item identified above in Section C, evidence that all requirements for certification have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials and/or from other community leaders.

E. State Board Responsibilities

1. The board will consider the request for issuance and documentation provided. The board is not required to conduct a records review for any of the asterisked crimes and may summarily deny a request for issuance of certificate for any of the asterisked crimes.

2. When the board or its designees conduct an issuance records review, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. Only the written documentation provided prior to the records review will be considered.

3. The Board of Elementary and Secondary Education reserves the right to accept or reject any document offered as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for issuance of a teaching certificate.

4. The board shall deny a request for a records review for any applicant who:

- a. failed to disclose prior criminal convictions and/or expungements; or
- b. falsified academic records.

5. The committee of the board shall make a recommendation to the full board regarding whether the applicant's teaching certificate should be issued. Board staff shall notify the applicant of the board's action.

6. The action of the board is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

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 36:1999 (September 2010), amended LR 38:

§909. Suspension and Revocation of Certificates due to Fraudulent Documentation Pertaining to Certification

A. A Louisiana teaching certificate shall be suspended and/or revoked if a teacher presents fraudulent documentation pertaining to his/her certificate to the State Board of Elementary and Secondary Education or the Department of Education.

B. The department shall investigate prior to determining that a teacher has submitted fraudulent documentation pertaining to his/her teaching certificate. Upon confirmation of the information investigated, the department shall notify the teacher by certified mail that his/her certificate has been suspended pending official board action and that a records review shall be conducted by the board to consider revocation.

C. Such records review shall be limited to the issue of whether or not the document submitted was fraudulent. The teacher shall provide the board with any documentation that will refute the fraudulent nature of the document.

D. The committee of the board shall make a recommendation to the full board, based on documentation received from the department and the teacher, whether the teaching certificate should be revoked. The decision of the board shall be transmitted to the local school board and to the teacher affected.

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 32:1831 (October 2006), amended LR 38:

§911. Procedures and Rules for Reinstatement of Certificates Suspended or Revoked due to Criminal Convictions and/or Submission of Fraudulent Documents

A. Reinstatement will never be considered for teachers who have been convicted of a felony for the following crimes: R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:78.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:82 (In some instances), 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92 (In some instances), 14:93, 14:93.3, 14:106, and 14:286.

B. Reinstatements of certificates shall not be considered until at least three years have elapsed from the date of entry of final conviction.

C. An applicant may apply to the board for reinstatement of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no further convictions and/or submissions of fraudulent documentation. The applicant must provide a current state and FBI criminal history background check from state police that is clean and clear.

2. There has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide relevant documentation.

D. Applicant Responsibilities

1. Contact the office of the Board of Elementary and Secondary Education and request a records review for reinstatement of the certificate.

2. Provide each applicable item identified above in Subsection C, evidence that all requirements for certification have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials and/or from other community leaders.

E. State Board Responsibilities

1. The board will consider the request for reinstatement and documentation provided. The board is not required to conduct a reinstatement records review and may summarily deny a request for issuance/reinstatement.

2. If the board or its designees decide to conduct a reinstatement records review, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. Only the written documentation provided prior to the records review will be considered.

3. The Board of Elementary and Secondary Education reserves the right to accept or reject any document as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for reinstatement of a teaching certificate.

4. The board shall deny any request for issuance by any applicant who:

- a. failed to disclose prior criminal convictions and/or expungements; or
- b. falsified academic records.

5. The committee of the board shall make a recommendation to the full Board regarding whether the applicant's teaching certificate should be issued, reinstated, suspended for an additional period of time, or remain revoked. Board staff shall notify the applicant of the board's action.

6. The action of the board is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

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 32:1831 (October 2006), amended LR 34:2560 (December 2008), LR 36:1999 (September 2010), LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

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

The proposed revisions to policy will replace the hearing process with the records review process for individuals, whose certification has been denied, suspended, or revoked due to a criminal conviction of a felony. This revision will also stipulate that an individual, who has been denied issuance of a certificate by the Board of Elementary and Secondary Education (BESE) after a records review has been conducted, may not reapply to BESE. Requests for records review will also be denied for failure to disclose convictions, expungements, or for submitting falsified academic records. 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
1112#054

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—Artist or Talented Certificate (LAC 28:CXXXI.343)

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: §343.*

Artist or Talented Certificate. This proposed policy revision will remove the annual renewal requirement and allow individuals to continue to serve with a valid ancillary artist certificate as long as they remain in the same school district. This change in policy will eliminate the requirement of school districts having to submit paperwork each school year for the renewal of this certificate.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel
Chapter 3. Teaching Authorizations and
Certifications
Subchapter C. Ancillary Teaching Certificates
§343. Artist or Talented Certificate**

A. An Ancillary Artist or Talented certificate is issued to an applicant who has earned an advanced degree in an artistic or talented field, or who has produced evidence of creative accomplishments over an extended period of time. An Ancillary Artist or Ancillary Talented certificate allows the holder to provide artistic and/or creative services in a regular classroom to children at any age level.

B. Artists Certificate (Art, Creative Writing, Drama, Dance, Music, Theatre, Visual Arts)—valid for continuous service in one school system.

1. This certificate allowing the certificate holder to provide artist services is valid only for the period and district of employment.

2. Certification is granted only in the specific artist area requested (art, creative writing, drama, dance, music, theatre, or visual arts).

3. Eligibility requirements:

a. a written request from the Louisiana employing authority indicating that the person will be employed once the certification is granted;

b. substantive evidence of artistic and/or creative accomplishment over an extended period of time, submitted in the form of newspaper articles, brochures, catalogs, playbills, programs, magazines, published music, letters from accomplished peers, etc. (photographs, slides and actual artwork are not acceptable).

4. The person holding such certification is not eligible for tenure.

C. - C.5. ...

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 32:1805 (October 2006), amended LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards
for State Certification of School Personnel
Artist or Talented Certificate**

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

This proposed policy revision will remove the annual renewal requirement and allow individuals to continue to serve with a valid ancillary artist certificate as long as they remain in the same school district. 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
1112#050

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—Educational Leader Practitioner (Residency) Program (LAC 28:CXXXI.240)

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*: §240. Educational Leader Practitioner (Residency) Program. The revised policy to the Educational Leader Practitioner (Residency) Program will expand the number of entry points. University and private providers would be able to admit candidates earlier than present policy allows. Candidates could then finish their coursework and begin residencies earlier in the year. Current certification policy requires all educational leader practitioner candidates to begin training during a summer institute and assume positions as administrative interns at the beginning of the school year. An earlier start time will help residents to be placed in schools to gain experience more readily.

Title 28

EDUCATION

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

Chapter 2. Louisiana Educator Preparation Programs

Subchapter C. Alternate Educational Leader Preparation Programs

§240. Educational Leader Practitioner (Residency) Program

A. - A.1.d.i. ...

2. Leader Preparation (First Session)

a. All leader practitioner candidates will participate in an initial institute training that will build skills in the areas of instructional, organizational, and personal leadership. The *Standards for Educational Leaders in Louisiana* will serve as the basis of the curriculum. The institute will provide a balanced curriculum that includes learning opportunities grounded in practical experience, theory, and research. Topics to be addressed include but are not limited to the following: Leading with a Vision, Using Data to Lead School Improvement, Creating and Leading Effective School Teams, Building a High-Performance Learning Culture and Professional Learning Communities, and Leading and Learning with Technology. Acquired knowledge and skills will be utilized in the planning of residency experiences with a residency supervisor, who is assigned by the program provider. In addition, participants will begin developing their portfolio and Educational leadership development plan.

b. The initial session will include a minimum of 135 contact hours (or 9 credit hours).

3. - 3.e. ...

4. Leader Preparation (Second Session)

a. All leader practitioner candidates will participate in a follow-up institute training that will continue to build skills in the areas of instructional and organizational leadership. The *Standards for Educational Leaders in Louisiana* will serve as the basis of the curriculum. The institute will provide a balanced curriculum that includes learning opportunities grounded in practical experience, theory, and research. Topics to be addressed include but are not limited to the following: Leading a Focused Drive Toward Student Achievement, Organizing the Learning Environment, and Ethical Leadership. In addition, program participants will finalize their portfolio and educational leadership development plan.

b. The second session will include 135 contact hours (or 9 credit hours).

i. An approved program provider may choose to provide a portion of the second session curriculum and contact hours during the first session or academic school year.

ii. A minimum of 45 contact hours (or 3 credit hours) must be provided during the second session.

iii. The provider must provide evidence that the curriculum topics have all been addressed and that the required contact hours/credit hours have been met by the end of the second session.

5. - 7. ...

8. Program requirements must be met by the end of the second session. For certification purposes, approved providers will submit signed statements to the Department of Education indicating that the student completing the Educational Leader Practitioner Program performance-based certification path met the following requirements:

a. passed the School Leaders Licensure Assessment;

b. completed all program coursework (sessions and school year) and the residency;

8.c. - 10. ...

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 33:818 (May 2007), amended LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel—Educational
Leader Practitioner (Residency) Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The revised policy to the Educational Leader Practitioner (Residency) Program will expand the number of entry points. University and private providers would be able to admit candidates earlier than present policy allows. Candidates could then finish their coursework and begin residencies earlier in the year. 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
1112#049

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—Educational Technology Areas
(LAC 28:CXXXI.665)

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: §665. Educational Technology Areas*. Current policy contained in Bulletin 746 allows for certification as an educational technology facilitator by the completion of one of two options. Option 1 consists of completing nine semester hours of graduate level coursework in educational technology and Option 2 is the completion of three online courses in educational technology offered by the Department of Education. The Department is requesting this revision in policy because we are no longer able to offer the online courses to fulfill Option 2 so it will now consist of five online courses offered through Intel Teach Elements. Teachers will be able to complete these online courses with no costs incurred.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel
Chapter 6. Endorsements to Existing Certificates
Subchapter C. All other Teaching Endorsement Areas
§665. Educational Technology Areas**

- A. Educational Technology Facilitation
 - 1. Eligibility requirements:
 - a. valid Type B or Level 2 Louisiana teaching certificate (requires three years of teaching experience);
 - b. complete one of the following options:
 - i. Option A: a minimum of nine semester hours of graduate credit in educational technology (three semester hours per course):
 - (a). design and development of multimedia instructional units;
 - (b). educational telecommunications, networks, and the internet;
 - (c). technology leadership in schools; or
 - ii. Option B: a minimum of five online courses, to include:
 - (a). Intel Teach Elements: Collaboration in the Digital Classroom, which provides teachers with strategies for building collaborative activities using online tools that support connection and sharing in and beyond the classroom.
 - (b). Intel Teach Elements: Project-Based Approaches, which helps teachers improve their understanding and application of project-based approaches in the 21st century classroom.
 - (c). Intel Teach Elements: Assessment in 21st Century Classrooms, which shows teachers ways to improve assessment of 21st century skills with new assessment strategies and tools for assessing 21st century skills.
 - (d). Intel Teach Elements: Thinking Critically with Data, which helps teachers support thinking critically with data quality, display, and interpretation in students' rapidly changing and busy world of information access.
 - (e). Intel Teach Elements: Educational Leadership for the 21st Century, which helps school principals and district administrators support teacher effectiveness for student achievement through technology integration;
 - c. a certified teacher who serves as facilitator of educational technology at the building level may petition the Division of Teacher Certification and Higher Education to be granted an Educational Technology Facilitation endorsement if he/she met one of the following qualifications by August 31, 2002:
 - i. hold certification in computer literacy; earned an additional six semester hours in educational technology courses; and served as a facilitator of educational technology at the school, district, regional, or state level successfully for the past three years as verified by the employing authority; or
 - ii. served as a facilitator of educational technology at school, district, regional, or state level

successfully for the past five years, as verified by the employing authority.

B. Educational Technology Leadership

1. Eligibility requirements:

- a. valid Type A or Level 3 Louisiana teaching certificate (requires five years of teaching experience);
- b. master's degree from a regionally accredited institution of higher education; and
- c. minimum of 21 semester hours of graduate credit, as follows:

i. education technology coursework, nine semester hours:

(a). design and development of multimedia instructional units;

(b). educational telecommunications, networks, and the internet;

(c). technology leadership in schools;

ii. educational technology leadership coursework, 12 semester hours:

(a). technology planning and administration;

(b). professional development for K-12 technology integration;

(c). educational technology research, evaluation, and assessment;

(d). advanced telecommunications and distance education.

2. Persons who have met requirements in Subparagraphs B.1.a and B.1.c of this Section may be issued a non-renewable, non-extendable Educational Technology Leadership provisional certificate that is valid for three years.

3. Certified teachers who served as coordinators of educational technology at the district, regional, and/or state levels may petition the division of teacher certification and higher education to be granted an educational technology leadership certification if they met the following qualifications by August 31, 2002:

a. hold certification in computer literacy; earned an additional nine semester hours in educational technology courses; and served as a coordinator of educational technology above the building level (at the district, regional, or state level) for the past three years, as verified by the employing authority; or

b. served as a coordinator of educational technology above the building level (at the district, regional, or state level) successfully for the past five years, as verified by the employing authority.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1820 (October 2006), amended LR 34:2033 (October 2008), amended LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards
for State Certification of School Personnel
Educational Technology Areas**

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

This revision in policy is being request to fulfill the Option 2 requirement for certification as an Educational Technology Facilitator since the Department is no longer able to offer the course work for this add-on certification area. The policy will now consist of five online courses offered through Intel Teach Elements which can be completed with no costs incurred by the teacher. 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
1112#052

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—Instructional Coaching
(LAC 28:CXXXI.668)

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*: §668. Instructional Coaching. The proposed policy revision will allow for an endorsement to a standard teaching certificate that will focus on teachers interested in becoming school-based coaches, mentors, and teacher leaders who have the potential to be embedded leaders within the school culture, working to enhance classroom teaching and learning through active professional development, collaboration, and mentoring activities. This endorsement will consist of 12 semester hours of graduate level coursework. Teachers have been serving in the capacity of instructional coaches with no certification available for this area. This new endorsement comes from the collaboration between the Pilot Professional Development Program (PPDP) of the Louisiana Systemic Initiatives Program (LaSIP), Louisiana State University, Southern University, and the Board of Regents.

**Title 28
EDUCATION**

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

**Chapter 6. Endorsements to Existing Certificates
Subchapter C. All Other Teaching Endorsement Areas
§668. Instructional Coaching**

A. Eligibility Requirements:

1. valid Type B, Level 2, or higher Louisiana teaching certificate;
2. completion of 12 graduate hours to include the following areas:
 - a. advancing teacher leadership institute, three semester hours;
 - b. promoting instructional coaching institute, three semester hours;
 - c. school improvement and research, three semester hours;
 - d. internship, three semester hours (university and school districts will collaborate to insure meaningful and practical experiences in actual school settings during the course of the educational leadership program).

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 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel
Instructional Coaching**

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

The proposed policy revision will allow for an endorsement to a standard teaching certificate that will focus on teachers interested in becoming school-based coaches, mentors, and teacher leaders who have the potential to be embedded leaders within the school culture, working to enhance classroom teaching and learning through active professional development, collaboration and mentoring activities. This endorsement will consist of 12 semester hours of graduate level coursework. 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)

Teachers who choose to add an endorsement to their teaching certificate will incur costs for graduate level coursework. Costs will depend on the tuition rates and fees at each university offering the courses for this 12 semester hour add-on endorsement.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1112#053

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—Special Education Examiners
(LAC 28:CXXXI.415)

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*: §415. Special Education Examiners (Required by R.S. 17:1941). The proposed policy revision will allow an additional option for educational diagnosticians who have completed a

rigorous national board certification process to receive ancillary certification to serve as educational diagnosticians. Currently there is no policy for individuals who do not want to become certified teachers to serve as educational diagnosticians. This revision will allow individuals who have gone through a rigorous national program the option of requesting this ancillary certificate.

**Title 28
EDUCATION**

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

**Chapter 4. Ancillary School Service Certificates
Subchapter A. General Ancillary School Certificates**

§415. Special Education Examiners

A. - B.2.b. ...

C. Educational Diagnostician—valid for five years.

1. Eligibility Requirements

a. Hold current national certification as an educational diagnostician (NCED) through the National Certification of Educational Diagnostician Board.

2. Renewal Guidelines:

a. may be renewed every five years at the request of the Louisiana employing authority; and

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

c. hold current national certification as an educational diagnostician (NCED) through the National Certification of Educational Diagnostician Board.

3. Reinstatement of a Lapsed Certificate. If certificate holder allows a period of five consecutive calendar years to pass in which he/she is not a regularly employed as an educational diagnostician for at least one semester, or 90 consecutive days, the certificate lapses for disuse. To reinstate a lapsed certificate, the holder must present evidence that he/she earned six semester hours of credit in state-approved courses during the five year period immediately preceding the request for reinstatement (see Chapter 13).

D. - H. 4. ...

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 32:1809 (October 2006), amended LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards
for State Certification of School Personnel
Special Education Examiners**

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

The proposed policy revision will allow an additional option for educational diagnosticians who have completed a rigorous national board certification process to receive ancillary certification to serve as educational diagnosticians. 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
1112#050

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation
of the Children with Exceptionalities Act
Regulations for Students with Disabilities
(LAC 28:XLIII.167, 168, and 169)

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 1706—Regulations for Implementation of the Children with Exceptionalities Act: Subpart 1. Regulations for Students with Disabilities, §167. State Advisory Panel (State Special Education Advisory Panel), §168. Membership, and §169. Duties.* The changes to

Louisiana Administrative Code, Title 28, Part XLIII, Sections 167, 168, and 169 allow the State Special Education Advisory Panel to perform duties outside of its role as BESE's advisory body and as IDEA guidelines recommend, to remove certain references to the "state board" from §167, §168, and §169 of Bulletin 1706, which outline the membership and functions of the State Advisory Panel.

**Title 28
EDUCATION**

**Part. XLIII. Bulletin 1706—Regulations for
Implementation of the Children
with Exceptionalities Act**

Subpart 1. Regulations for Students with Disabilities

Chapter 1. State Eligibility

Subchapter M. State Advisory Panel

**§167. State Advisory Panel (State Special Education
Advisory Panel)**

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:

§168. Membership

A. General. The advisory panel shall consist of members appointed by the state board or state superintendent, shall be representative of the state population, and shall be composed of individuals involved in or concerned with the education of students with disabilities, including:

1. - 11. ...

B. Special Rule. A majority of the members of the panel should be individuals with disabilities or parents of children with disabilities (ages birth through 26).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:

§169. Duties

A. The advisory panel shall perform the following prescribed duties in matters concerning the education of students with disabilities:

1. advise the LDE of unmet needs within the state in the education of students with disabilities;

2. comment publicly on any rules or regulations proposed by the state regarding the education of students with disabilities;

3. advise the LDE in developing evaluations and reporting on data to the secretary under section 618 of the IDEA;

4. advise the LDE in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the IDEA; and

5. advise the state board and the LDE in developing and implementing policies related to the coordination of services for students with disabilities.

B. The advisory panel shall conduct its activities according to procedures prescribed by IDEA guidelines for state special education advisory panels.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:

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? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 1706—Regulations for
Implementation of the Children with Exceptionalities
Act—Regulations for Students with Disabilities**

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

The changes to Louisiana Administrative Code, Title 28, Part XLIII, Sections 167, 168, and 169 allow the State Special Education Advisory Panel to perform duties outside of its role as BESE's advisory body and as IDEA guidelines recommend, remove certain references to the "state board" from §167, §168, and §169 of Bulletin 1706, which outline the membership and functions of the State Advisory Panel.

This action will have no fiscal effect other than an estimated cost of \$165 in the Louisiana Register.

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

This action will have no effect on revenue collections of state and local government units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This action will have no effect on competition and employment.

Catherine Pozniak
Executive Director
1112#056

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for
Nonpublic School Administrators
(LAC 28:LXXIX.2109, 2317, 2321, 2323, and 2331)

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 Nonpublic School Administrators*: §2109. High School Graduation Requirements, §2317. Foreign Languages, §2321. Journalism, §2323. Mathematics, and §2331. Social Studies. These policy revisions change the name of the American history course to U.S. history and provide more course-taking options for students. These revisions were requested by nonpublic schools and the nonpublic school commission.

Title 28

EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study

Chapter 21. Curriculum and Instruction

Subchapter C. Secondary Schools

§2109. High School Graduation Requirements

A. - C.3.e. ...

4. Social Studies—3 units, shall be U.S. history; one-half unit of civics, one-half unit of free enterprise or one full unit of civics or AP American government; and one of the following: world history, world geography, western civilization, or AP European history.

C.5. - D.4. ...

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following:

1. English—4 units, shall be English I, II, III, and IV;

2. mathematics—4 units, shall be:

a. algebra I (1 unit) or algebra I-Pt. 2;

b. geometry;

c. algebra II;

d. the remaining unit shall come from the following: financial mathematics, math essentials, advanced mathematics-pre-calculus, advanced mathematics-functions and statistics, pre-calculus, calculus, probability and statistics, discrete mathematics, AP Calculus BC, or a locally-initiated elective approved by BESE as a math substitute.

3. Science—4 units, shall be:

a. biology;

b. chemistry;

c. two units from the following courses: physical science, integrated science, physics I, physics of technology I, aerospace science, biology II, chemistry II, earth science, environmental science, physics II, physics of technology II, agriscience II, anatomy and physiology, or a locally initiated elective approved by BESE as a science substitute.

i. Students may not take both integrated science and physical science.

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

4. Social Studies—4 units, shall be:

a. 1 unit of civics or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise;

b. 1 unit of U.S. history;

c. 1 unit from the following: world history, world geography, western civilization, or AP European history;

d. 1 unit from the following: world history, world geography, western civilization, AP European history, law studies, psychology, sociology, African American studies, or religion I, II, III, or IV.

5. Health and Physical Education—2 units.

6. Foreign Language—2 units, shall be 2 units from the same foreign language or 2 speech courses.

7. Arts—1 unit, shall be one unit of art (§2305), dance (§2309), media arts (§2324), music (§2325), theatre, or fine arts survey.

NOTE: Students may satisfy this requirement by earning half credits in two different arts courses.

8. Electives—3 units.

9. Total—24 units.

F. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Basic Core Curriculum, the minimum course requirements for graduation shall be the following.

1. English—4 units, shall be English I, II, III, and IV or senior applications in English

2. Mathematics—4 units, shall be:

a. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);

b. geometry;

c. the remaining units shall come from the following: algebra II, financial mathematics, math essentials, advanced mathematics-pre-calculus, advanced mathematics-functions and statistics, pre-calculus, calculus, probability and statistics, discrete mathematics, or a locally initiated elective approved by BESE as a math substitute.

3. Science—3 units, shall be:

a. biology;

b. 1 unit from the following physical science cluster: physical science, integrated science, chemistry I, physics I, physics of technology I;

c. 1 unit from the following courses: aerospace science, biology II, chemistry II, earth science, environmental science, physics II, physics of technology II, agriscience II, anatomy and physiology, an additional course from the physical science cluster, or a locally initiated elective approved by BESE as a science substitute.

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

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

4. Social Studies—3 units, shall be:
 - a. 1 unit of civics and/or AP American government, or 1/2 unit of civics or AP American government and 1/2 unit of free enterprise;
 - b. 1 unit of U.S. history;
 - c. 1 unit from the following: world history, world geography, western civilization, or AP European history.
5. Health and physical education—2 units.
6. Electives—8 units.
7. Total—24 units.

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 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008), LR 36:2849 (December 2010), LR 38:

§2317. Foreign Languages

A. The foreign language course offerings shall be as follows.

Course Title	Unit(s)
Chinese I, II, III, IV	1 each
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Greek I, II, III, IV	1 each
Hebrew I, II, III, IV	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
Japanese I, II, III, IV	1 each
Hebrew I, II, III, IV	1 each
Arabic I, II, III, IV	1 each

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 29:2354 (November 2003), amended LR 31:3086 (December 2005), LR 38:

§2321. Journalism

A. Journalism course offerings shall be as follows.

Course Title	Unit(s)
Journalism I, II	1 each
Publications I, II (Yearbook)	1 each
Publications I, II (Newspaper)	1 each

1. Teachers must be qualified in journalism to teach journalism.
2. Teachers qualified in the areas of journalism, English, and/or business education are qualified to teach Publications I and II (y/Yearbook).
3. Teachers qualified in the areas of journalism, and/or English are qualified to teach Publications I and II (Newspaper).
4. Publications I is a prerequisite to Publications II.

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 29:2354 (November 2003), amended LR 31:3086 (December 2005), LR 38:

§2323. Mathematics

A. Effective for 2009-2010 incoming freshmen, four units of mathematics shall be required for graduations. All students must complete the following:

1. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);
2. geometry;
3. the remaining units shall come from the following:
 - a. algebra II;
 - b. financial mathematics;
 - c. math essentials;
 - d. advanced mathematics I;
 - e. advanced mathematics II;
 - f. pre-calculus;
 - g. calculus;
 - h. probability and statistics;
 - i. discrete mathematics;
 - j. AP Calculus BC; or
 - k. a locally-initiated elective approved by BESE as a math substitute.

B. Three units of mathematics are required for graduation. Effective for incoming freshmen between 2005-2006 and 2008-2009, all students must:

1. complete one of the following:
 - a. algebra I (1 unit); or
 - b. algebra I-pt. 1 and algebra I-pt. 2 (2 units); or
 - c. integrated mathematics I (1 unit);
2. the remaining unit(s) shall come from the following:
 - a. integrated mathematics II;
 - b. integrated mathematics III;
 - c. geometry;
 - d. algebra II;
 - e. financial mathematics;
 - f. advanced mathematics I;
 - g. advanced mathematics II;
 - h. pre-calculus;
 - i. calculus;
 - j. probability and statistics;
 - k. discrete mathematics.

C. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of two entry level courses (designated by E):

1. introductory algebra/geometry (E);
2. algebra I-part 1 (E);
3. algebra I-part 2;
4. integrated mathematics I (E);
5. integrated mathematics II;
6. integrated mathematics III;
7. applied mathematics 1 (E);
8. applied mathematics II;
9. applied mathematics III;
10. algebra I (E);
11. geometry;
12. algebra II;
13. financial mathematics;
14. advanced mathematics I;
15. advanced mathematics II;
16. pre-calculus;
17. calculus;

- 18. probability and statistics; and
- 19. discrete mathematics.

Course Title	Unit(s)
Advanced Mathematics I	1
Advanced Mathematics II	1
Algebra I	1
Algebra I-Part I	1
Algebra I-Part II	1
Algebra II	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I	1
Integrated Mathematics II	1
Integrated Mathematics III	1
Pre-Calculus	1
Probability and Statistics	1
Math Essentials	1
AP Calculus BC	1

D. Financial mathematics may be taught by the Business Education Department.

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 29:2354 (November 2003), amended LR 30:2776 (December 2004), LR 31:3086 (December 2005), LR 34:2101 (October 2008), LR 36:2849 (December 2010), LR 38:

§2331. Social Studies

A. Three units of social studies shall be required for graduation. They shall be (a) U.S. history; (b) one unit of civics, and/or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise; and (c) one of the following: world history, world geography, western civilization, or AP European history. social studies course offerings shall be as follows.

Course Title	Unit(s)
African American Studies	1
American Government	1
U.S. History	1
Civics	1 (or 1/2)
Economics	1
Free Enterprise System	1/2
Law Studies	1
Psychology	1
Sociology	1
Western Civilization	1
World Geography	1
World History	1
AP European History	1

B. Economics may be taught by a teacher qualified in business education.

C. Free enterprise shall be taught by teachers qualified in social studies, business education, or distributive education.

D. One unit of religious studies (§2335) may be used as the fourth social studies course required for the Louisiana Core 4 curriculum.

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 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 34:2102 (October 2008), LR 37:2144 (July 2011), LR 38:

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? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators

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

These policy revisions to Sections 2109, 2317, 2321, 2323 and 2331 in *Bulletin 741: Louisiana Handbook for Nonpublic School Administrators* change the name of the American History course to U.S. History and provide more course-taking options for students. These changes will not result in an increase in costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no 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 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
1112#046

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Organization—Advisory Councils
(LAC 28:1.503)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I, Chapter 5. Organization, Section 503. Advisory Councils. The changes to Louisiana Administrative Code, Title 28, Part I, Sections 503.C.1, C.2 and C.3 include:

Changing “Nonpublic School Commission” to “Nonpublic School Council.”

Expanding membership of the Superintendents’ Advisory Council to include the superintendent of the recovery school district (RSD), and the president of the Louisiana Association of School Superintendents (LASS).

Eliminating BESE’s Special Education Advisory Council (SEAC) and establish the State Special Education Advisory Panel as BESE’s advisory council for policy affecting special education.

Establishing renewable two-year, staggered terms for all council appointments made by board members.

Allowing council members to designate proxies that retain voting privileges.

Strengthening Louisiana residency and attendance requirements.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 5. Organization

§503. Advisory Councils

A. - C.1.c.iv. ...

2. Nonpublic School Council

a. - c. ...

i. Advise the board relative to standards and guidelines affecting nonpublic schools.

2.c.ii. - 3.a. ...

b. Membership: 24 members as follows:

i. two city, parish, or other local public school superintendents recommended by each of the eight elected board members, within his/her district, if possible. The three at-large members should each appoint two city, parish, or other local public school superintendents from BESE Districts 3-8, with no more than one appointment per BESE district. It is recommended that the composition reflect all sizes of systems and be equitable in the regions represented, to the extent possible;

ii. the superintendent of the Recovery School District (RSD) who is appointed by the state superintendent of education;

iii. the president of the Louisiana Association of School Superintendents (LASS), who shall serve as chair of the council;

iv. attendance. Members who cannot attend a meeting may designate a proxy from his/her BESE district to represent him/her;

v. expenses. Members shall not receive reimbursement for travel expenses from the board.

c. - c.ii. ...

4. - 4.c.vii. Repealed.

4. Textbook/Media/Library Advisory Council

a. Authority: per BESE policy.

b. Membership: 14 members as follows:

i. one member of the legislature (state senator), recommended by the Senate President;

ii. one member of the legislature (state representative), recommended by the speaker of the house;

iii. one member recommended by the governor; and

iv. 11 members, one member recommended by each board member, from the following categories:

(a). one teacher, grades K-6;

(b). one teacher, grades 7-12;

(c). one teacher (any grade) or coordinator of technology;

(d). two school librarians;

(e). one curriculum supervisor;

(f). two textbook supervisors;

(g). one parent or business representative;

(h). one LEA superintendent; and

(i). one school principal.

c. Referrals/Responsibilities

i. Advise the board on policy and procedure issues relating to the textbook adoption process.

ii. Consider all matters referred by the board or the LDE.

D. Special Advisory Councils/Task Forces/Commissions/Study Groups. Special advisory groups may be created by the board with a limited charge and scope to study a specific topic as referred by the board. Such groups shall adhere to all advisory council officers, membership, and meetings policies, as described herein.

E Officers. Unless otherwise provided by state or federal law or board policy, each advisory council shall select from among its membership in attendance a chair and a vice-chair. Elections shall be held annually at the first meeting in a fiscal year, and the councils shall report election results to the board.

F. Membership

1. Terms. Unless otherwise provided by state or federal law, persons appointed by board members shall serve two-year staggered appointments at the pleasure of their recommending authority. Persons appointed by organizations and agencies other than BESE shall serve terms determined by the appointing authority. All appointments shall be made in July of the appropriate year, as determined by BESE staff. A council member may be removed without cause by the board member recommending the appointment, by his/her successor, or by the recommending agency at any time. Appointees must maintain employment/qualifications appropriate to the organizational category being represented. Once a member retires, becomes employed in a different capacity, or otherwise fails to maintain eligibility, the member shall become ineligible to continue to serve and shall be replaced.

2. Vacancies. A vacancy in an appointed position shall occur if an appointee, for any reason, is unable to serve the full extent of his/her term. Appointments to fill vacancies shall be considered interim appointments and shall be ratified by the board.

3. Expenses. Members of advisory councils may be entitled to reimbursement for travel expenses if specified by statute or not prohibited by board policy, pending availability of funds. Requests for reimbursement for expenses shall be submitted in accordance with the regulations promulgated by the commissioner of administration in the *Louisiana Travel Guide*.

4. Quorum. Unless otherwise provided, a quorum is a majority of the appointed membership. In the absence of a quorum, the advisory council may take action, but minutes submitted to the board shall indicate that the recommendations are being presented without the required quorum being present. When it is known beforehand that a quorum is unlikely, the council chair shall be so notified and the meeting shall be canceled.

5. Proxy. Any person serving on an advisory council who cannot attend a scheduled meeting may designate a person to attend as his/her proxy, as long as the appointing authority does not object. Proxies shall retain voting privileges. To receive reimbursement for travel and other expenses, a proxy must be properly designated by the active member and recorded in the minutes as being present.

6. Attendance Policy

a. Appointed members are expected to attend all scheduled meetings of an advisory body. Unless otherwise provided, if a member is unable to attend a meeting, a request for an excused absence should be submitted to the council chair or the executive director one week prior to the meeting and a proxy may be named by the appointed member to serve for a total of three meetings. A council member shall be removed and his seat declared vacant if he is no longer a legal resident of Louisiana, fails to remain active in or is no longer employed by the organization or agency he was appointed to represent, or misses more than two meetings, unless excused prior to the meeting by the council chair.

b. The appointing authority for each member shall be notified immediately following each scheduled meeting indicating nonattendance of the appointee. The notification should include:

- i. name of the council member and council on which serving;
- ii. date of the meeting; and
- iii. board policy on attendance.

G. Meetings

1. Each advisory council shall meet as scheduled in order to consider referrals from the board or the LDE. Special meetings shall be by call of the board, and emergency meetings may be called at the discretion of the executive director.

2. When possible, regular meeting dates shall be scheduled one year in advance and shall be determined by the executive director or his/her designee. When meetings cannot be regularly scheduled, the executive director or his/her designee shall set each meeting date in consultation with the chair of each council.

3. Notices of council meetings shall be distributed to council members by the board staff at least 10 days in advance of a meeting, calendar permitting. All council meetings shall be conducted in accordance with the Louisiana Open Meetings Law (R.S. 42:11). In the event that no items have been referred by the Board to an advisory

council for consideration, there are no items pending on an advisory council agenda, and the LDE has no items to bring forward to the advisory council at least 10 days prior to a scheduled meeting, the meeting shall be cancelled and the members shall be notified of the cancellation.

4. In all particulars, except for those listed in these rules and procedures, the business in advisory councils shall be conducted according to *Robert's Rules of Order*.

5. Every motion passed by an advisory council, whether or not made as a recommendation, shall be made as a main motion and must be seconded. All motions must be voted on and roll call votes may be requested by any of the membership in attendance at a meeting.

a. Requests from advisory councils for data/reports must be made in the form of a motion, requesting that the board direct the LDE or BESE staff to provide such information to the council making the request.

6. The minutes and reports of each advisory council shall be presented to the board's executive director for referral to the board. Actions taken in response to referrals shall be forwarded to the appropriate committee(s). A committee, after consideration of the recommendations of the advisory council, shall report its recommendations to the board for final action.

7. All meetings of advisory councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, R.S. 17:11, 34 CFR 300.650-652, and R.S. 17:1954.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008), amended LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:2140 (July 2011), LR 38:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

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

RULE TITLE: Organization—Advisory Councils

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

The changes to Louisiana Administrative Code, Title 28, Part I, Sections 503.C.1, C.2 and C.3 improve the efficacy of BESE councils, while placing a premium on gathering informed stakeholder input from key constituencies. They include establishing the State Special Education Advisory Panel as well as council membership and voting privilege changes.

This action will have no fiscal effect other than an estimated cost of \$165 in the Louisiana Register.

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

This action will have no effect on revenue collections of state and local government units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Catherine Pozniak
Executive Director
1112#055

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Hazardous Waste Technical Corrections and Clarifications (LAC 33:V.108, 109, 307, 1107, 1109, 1111, 1516, 2299, 2519, 2603, 4105, 4139, 4511, 4901 and 4903)(HW110ft)

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 Hazardous Waste regulations, LAC 33:V.108, 109, 307, 1107, 1109, 1111, 1516, 2299, 2519, 2603, 4105, 4139, 4511, 4901 and 4903 (Log #HW110ft).

This Rule is identical to federal regulations found in, 40CFR262.10 and Appendix I; 40CFR261.1(c)(10) and Table 1; 40CFR261.2(c).Table 1; 40CFR261.4(a)(17)(vi); 40CFR261.5(b), (e)-(g)(2); 40CFR261.6(a)(2), (a)(2)(ii), and (a)(3); 40CFR261.6(c)(1) and (d); 40CFR261.7(a)(1) and (2) and (b)(1) and (3); 40CFR261.23(a)(8); 40CFR261.30(c) and (d); 40CFR261.31(a); 40CFR261.32(a).Table; 40CFR261.33(f); 40CFR261.Appendix VII; 40CFR262.10(f), (j)(1), and (k); 40CFR262.11(d); 40CFR262.23(f)-(f)(4); 40CFR262.34(a), (a)(1)(iv)(B), (a)(2), (a)(4) and (5); 40CFR262.34(b), (c)(1) and (2), (d)(4), (f), and (i); 40CFR262.41(b); 40CFR262.42(a)(1) and (2) and (c)-(c)(2); 40CFR262.60(b); 40CFR263.12; 40CFR264.52(b); 40CFR264.56(d)(2); 40CFR264.72(e)(6), (f)(1), (7) and (8); 40CFR264.314(d); 40CFR264.316(b);

40CFR264.552(a)(3)(ii)-(iv), (e)(4)(iv)(F); 40CFR265.52; 40CFR265.56(d)(2); 40CFR265.72(e)(6), (f)(1) and (7) and (8); 40CFR265.314(d); 40CFR265.316(b); 40CFR266.20(b); 40CFR266.22; 40CFR266.70(d); 40CFR266.80(b); 40CFR266.101(c)(1) and (2); 40CFR268.40.Table; 40CFR268.48.UTS Table; and 40CFR270.4(a) 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).

This Rule makes a number of technical changes that correct existing errors in the hazardous waste regulations that occurred over time in numerous final rules published in the Federal Register. Examples of the types of items corrected include typographical errors, incorrect or outdated citations and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to the Department of Transportation (DOT) regulations that have changed since the publication of various RCRA final rules. This action is needed in order for the state hazardous waste regulations to maintain equivalency with the federal regulations.

The basis and rationale for this Rule is 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 V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—
Hazardous Waste**

Chapter 1. General Provisions and Definitions

**§108. Special Requirements for Hazardous Waste
Generated by Conditionally Exempt Small
Quantity Generators**

A. - E. ...

1. a total of one kg of acute hazardous wastes listed in LAC 33:V.4901.B or E; or

2. a total of 100 kg of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in LAC 33:V.4901.B or E.

COMMENT: *Full regulation* means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

F. - F.5. ...

G. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kg or less of hazardous waste during a calendar month to be excluded from full regulation under this Section, the generator must comply with the following requirements:

1. ...

2. the conditionally exempt small quantity generator may accumulate hazardous waste on-site. If it accumulates at any time more than a total of 1000 kg of its hazardous wastes, all of those accumulated wastes are subject to

regulation under the special provisions of LAC 33:V.Chapter 11 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of LAC 33:V.Chapters 3-9, 13-37, 41, 43, 51, and 53, and the applicable notification requirements of LAC 33:V.105.A. The time period of LAC 33:V.1109.E for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kg; and

G.3. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:2554 (November 2010), LR 38:

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

Empty Container—

1.a. any hazardous waste remaining in either of the following is not subject to regulation under

LAC 33:V.Chapters 1-38, 41, 43, 49, or to the notification requirements of LAC 33:V.105.A:

i. - ii. ...

b. any hazardous waste in either of the following is subject to regulation under LAC 33:V.Chapters 1-38, 41, 43, 49, or to the notification requirements of LAC 33:V.105.A:

i. - ii. ...

2.a. a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acutely hazardous waste listed in LAC 33:V.4901.B or E, is empty if:

2.a.i.(a). - 2.b. ...

c. a container or an inner liner removed from a container that has held an acutely hazardous waste listed in LAC 33:V.4901.B or E, is empty if:

i. - iii. ...

*New Hazardous Waste Management Facility or New Facility—*a facility which began operation, or for which construction commenced after November 19, 1980.

Solid Waste—

1.a. - 6. ...

Table 1				
	Use Constituting Disposal	Energy Recovery/ Fuel	Reclamation (Except as Provided in LAC 33:V.105.D.1.q for Mineral Processing Secondary Materials)	Speculative Accumulation
	(1)	(2)	(3)	(4)

[See Prior Text in Spent Materials - Commercial Chemical Products (listed in LAC 33:V.4901.E and F)]				
Scrap metal that is not excluded under LAC 33:V.105.D.1.m.	*	*	*	*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary,

Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§307. Effect of a Permit

A. - A.4. ...

B. A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in LAC 33:V.323.B.2 and 3, or the permit may be modified upon the request of the permittee as set forth in LAC 33:V.321.C.

C. The issuance of a permit does not authorize any injury to persons or property, or invasion of other private rights, or any infringement of state or local law or regulations.

D. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR

16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:435 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 38:

Chapter 11. Generators

Subchapter A. General

§1107. The Manifest System

A. - D.6. ...

7. For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of LAC 33:V.1516.C.6, the generator shall:

a. sign either:

i. Item 20 of the new manifest, if a new manifest is used for the returned shipment; or

ii. Item 18c of the original manifest, if the original manifest is used for the returned shipment;

b. provide the transporter a copy of the manifest;

c. within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

d. retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:89 (January 2007), repromulgated LR 33:281 (February 2007), amended LR 33:2101 (October 2007), LR 34:622 (April 2008), LR 38:

§1109. Pre-Transport Requirements

A. - D. ...

E. Accumulation Time

1. A generator who generates 1,000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

a. - a.iv.(a). ...

b. generators accumulating hazardous waste on-site for 90 days or less without a permit or without having interim status are exempt from all the requirements in LAC 33:V.Chapter 43.Subchapters F and G, except for LAC 33:V.4379 and 4385;

c. the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank;

d. ...

e. the generator complies with the requirements for owners or operators in LAC 33:V.4319,Chapter

43.Subchapters B and C, and with all applicable requirements under LAC 33:V.Chapter 22.Subchapter A.

2. A generator of 1000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the permitting requirements as specified in LAC 33:V.Subpart 1 unless he has been granted an extension to the 90-day period. Such an extension may be granted by the administrative authority if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, or uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the administrative authority on a case-by-case basis.

3. ...

4. A generator may accumulate as much as 55 gallons of hazardous waste listed in LAC 33:V.4901.B, C, D, F, or LAC 33:V.4903, or one quart of acutely hazardous waste listed in LAC 33:V.4901.E in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Paragraph E.1 or 7 of this Section provided he complies with LAC 33:V.2103, 2105, 2107.A and marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

5. A generator who accumulates either hazardous waste or acutely hazardous waste listed in LAC 33:V.4901.B. Table 1 or LAC 33:V.4901.E in excess of the amounts listed in Subparagraph E.4 of this Section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with Paragraph E.1 of this Section or other applicable provisions of this Chapter.

6. - 7.b. ...

c. the generator complies with the requirements of Subparagraphs E.1.c and d of this Section; the requirements of LAC 33:V.Chapter 43.Subchapter B and with all applicable requirements of LAC 33:V.Chapter 22.Subchapter A;

E.7.d. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:2102 (October 2007), LR 34:622 (April 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended LR 38:

§1111. Recordkeeping and Reporting

A. - B.2. ...

C. Exception Reporting

1. A generator of 1000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

2. A generator of 1000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, must submit an exception report to the Office of Environmental Services if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must include:

2.a. - 3.Note. ...

4. For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of LAC 33:V.1516.C.5.a.i-vi.), the generator must comply with the requirements of Paragraph C.1 or 3 of this Section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of Paragraph C.1 or 2 of this Section for a shipment forwarding such waste to an alternate facility by a designated facility:

a. the copy of the manifest received by the generator must have the hand written signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility; and

b. the 35/45/60-day time frames begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

D. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 17:365 (April 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2102 (October 2007), LR 38:

Chapter 15. Treatment, Storage, and Disposal Facilities

§1513. Contingency Plan and Emergency Procedures

A. - B.1. ...

2. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC)

Plan in accordance with 40 CFR Part 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with these requirements. The owner or operator may develop one contingency plan that meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

B.3. - F.9.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2104 (October 2007), LR 34:993 (June 2008), LR 35:1879 (September 2009), LR 38:

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. - C.5.a.v. ...

vi. Sign the generator's/offeror's certification to certify that the waste has been properly packaged, marked, and labeled, and is in condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

5.b. - 6.a. ...

i. Write the facility's EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5, unless the mailing address is different, then write the facility's site address in the designated space for Item 5 of the new manifest.

ii. - vi. ...

b. For full load rejections made while the transporter remains at the facility, the facility may return the rejected shipment to the generator with the original manifest by completing Items 18a and 18b of the original manifest and supplying the generator's information in the Alternate Facility block. The facility must retain a copy of this manifest for its records and give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with Clauses C.6.a.i-vi and Subparagraph C.6.c of this Section.

c. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in LAC 33:V.1111.C.

C.7. - D.7.Comment. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:

Table 2. Treatment Standards for Hazardous Wastes					
Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-Wastewaters
		Common Name	CAS ² Number	Concentration in mg/L ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/L TCLP" or Technology Code ⁴
*** [See Prior Text in D001 ⁹ – K151]					
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. ¹⁰ (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl <i>n</i> -butylcarbamate.)	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	98-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl <i>n</i> -butylcarbamate.)	Phenol	108-95-2
Pyridine	110-86-1			0.014	16
Toluene	108-88-3			0.080	10
Triethylamine	121-44-8			0.081	1.5
Carbon tetrachloride	56-23-5			0.057	6.0
Chloroform	67-66-3			0.046	6.0
Chloromethane	74-87-3			0.19	30
Methomyl	16752-77-5			0.028	0.14
Methylene chloride	75-09-2			0.089	30
Methyl ethyl ketone	78-93-3			0.28	36
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl <i>n</i> -butylcarbamate.)	o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
*** [See Prior Text K159 - U411]					

Footnote 1. - Footnote 12. ...

NOTE: NA means Not Applicable.

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 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:834 (September 1996), LR 23:566 (May 1997), LR 24:301 (February 1998), LR 24:670 (April 1998), LR 24:1732 (September 1998), LR 25:451 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:282 (February 2000), LR 27:295 (March 2001), LR 29:322 (March 2003), LR 30:1682 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR

32:828 (May 2006), LR 32:1843 (October 2006), LR 34:625 (April 2008), LR 34:1014 (June 2008), LR 38:

Chapter 25. Landfills

§2519. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

A. - A.1. ...

2. the inside containers must be overpacked in an open head LDPS specification metal shipping container LAC 33:V.Subpart 2.Chapter 101 of no more than 416-liter (110-gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with LAC 33:V.2515.E, to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material;

3. - 6. ...

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, in LR 10:200 (March 1984), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 38:

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

§2603. Corrective Action Management Units (CAMUs)

A. - A.3.a. ...

b. The requirements in LAC 33:V.2515.B for placement of containers holding free liquids in landfills apply to placement in a CAMU except when placement facilitates the remedy selected for the waste.

c. ...

d. The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with LAC 33:V.2515.C. Sorbents used to treat free liquids in CAMUs must meet the requirements of LAC 33:V.2515.E.

A.4. - E.4.d.v. ...

vi. Alternatives to TCLP. For metal-bearing wastes for which metals removal treatment is not used, the administrative authority may specify a leaching test other than the TCLP (Method 1311, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.C.3.e) to measure treatment effectiveness, provided the administrative authority determines that an alternative leach testing protocol is appropriate for use and that the alternative more accurately reflects conditions at the site that affect leaching.

E.4.e. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1192 (June 2002), amended LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:627 (April 2008), LR 34:1014 (June 2008), LR 38:

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

A. ...

1. The following recyclable materials are not subject to regulation under LAC 33:V.Subpart 1, and are not subject to the notification requirements of LAC 33:V.105 or Section 3010 of RCRA:

a. - d.iii. ...

2. The following recyclable materials are not subject to the requirements of this Section but are regulated under LAC 33:V.4139, 4141, 4143, and 4145, and all applicable provisions as provided in LAC 33:V.Chapters 1, 3, 5, 7, 22, 27, 31, 42, and 43:

a. ...

b. hazardous wastes burned, as defined in LAC 33:V.3001.A, in boilers and industrial furnaces that are not regulated under LAC 33:V.Chapter 31 or 43.Subchapter N;

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended

LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:608 (April 2006), LR 38:

§4139. Recyclable Materials Used in a Manner Constituting Disposal

A. - B.1. ...

2. such products meet the applicable treatment standards in LAC 33:V.Chapter 22.Subchapter A (or applicable prohibition levels in LAC 33:V.2209 or 2215, where no treatment standards have been established), or Section 3004(d) of RCRA for each recyclable material (i.e., hazardous waste constituent) that they contain and the recycler complies with LAC 33:V.2247.E.

C. - D. ...

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:367 (April 1991), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 22:21 (January 1996), repromulgated LR 22:100 (February 1996), amended LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998); amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1684 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:610 (April 2006), LR 38:

Chapter 43. Interim Status Subchapter M. Landfills

§4511. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

A. - A.1. ...

2. The inside containers must be overpacked in an open head LDPS specification metal shipping container (LAC 33:V.Subpart 2.Chapter 101) of no more than 416-liter (110-gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with LAC 33:V.2515.E, to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material.

3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:1057 (December 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1745 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 38:

Chapter 49. Lists of Hazardous Wastes

NOTE: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes)

(LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).

§4901. Category I Hazardous Wastes

A. ...

* * *

1. Each hazardous waste listed in this Chapter is assigned an EPA Hazardous Waste number, which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 or 105.A of the Act and certain recordkeeping and

reporting requirements under LAC 33:V.Chapters 3-38, 41, and 43.

2. The following hazardous wastes listed in LAC 33:V.4901.B are subject to the exclusion limits for acutely hazardous wastes established in LAC 33:V.108: EPA Hazardous Wastes Numbers F020, F021, F022, F023, F026, and F027.

B. - F.Comment. ...

Table 4. Toxic Wastes (Alphabetical Order by Substance)		
EPA Hazardous Waste Number	Chemical Abstract Number	Hazardous Waste (Substance)
[See Prior Text in U394 – A2213 – U249 – Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10 percent or less] ¹ CAS Number given for parent compound only.		

Table 4. Toxic Wastes (Numerical Order by EPA Hazardous Waste Number)		
EPA Hazardous Waste Number	Chemical Abstract Number	Hazardous Waste (Substance)
* * *		
[See Prior Text in U001 – Acetaldehyde (I) – U238 – Ethyl Carbamate (urethane)]		
U239	1330-20-7	Benzene, dimethyl-(I)
* * *		
[See Prior Text in U239 – Xylene(I) – See F027 – 2,4,6-Trichlorophenol]		
¹ CAS Number given for parent compound only.		

G. ...

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
[See Prior Text in EPA Hazardous Waste Number F001 – EPA Hazardous Waste Number K061]
EPA Hazardous Waste Number K062
Hexavalent chromium; lead
EPA Hazardous Waste Number K069
Hexavalent chromium; lead; cadmium
[See Prior Text in EPA Hazardous Waste Number K071 – EPA Hazardous Waste Number K087]
EPA Hazardous Waste Number K088
Cyanide (complexes)
EPA Hazardous Waste Number K093
Phthalic anhydride; maleic anhydride
[See Prior Text in EPA Hazardous Waste Number K094 – EPA Hazardous Waste Number K181]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR

23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007), LR 34:635 (April 2008), LR 34:1020 (June 2008), LR 34:2392 (November 2008), LR 36:2555 (November 2010), LR 38:

§903. Category II Hazardous Wastes

A. - D.7. ...

8. It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2, or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 22:829 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:325 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:644 (April 2008), LR 34:1020 (June 2008), LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting

should reference this proposed regulation by HW110ft. Such comments must be received no later than January 26, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@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 HW110ft. 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.

Public Hearing

A public hearing will be held on January 26, 2012, 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 Perry Theriot 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.

Herman Robinson, CPM
Executive Counsel

1112#038

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Division

OECD Requirements; Export Shipments
of Spent Lead-Acid Batteries
(LAC 33:V.109; 1101; 1113; 1127;
1301; 1516; 1531 and 4145)(HW108ft)

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 Hazardous Waste regulations, LAC 33:V.109; 1101; 1113; 1127; 1301; 1516; 1531 and 4145 (Log #HW108ft).

This Rule is identical to federal regulations found in 40 CFR262.10(d); 40CFR262.55; 40CFR262.58(a)-(b); 40CFR262.80(a)-262.89(d); 40CFR263.10(d); 40CFR264.12(a)(2); 40CFR264.71(a)(3) and (d); 40CFR265.12(a)(2); 40CFR265.71(a)(3) and (d) and 40CFR266.80(a)Table, 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).

This Rule amends existing regulations regarding hazardous waste exports from and imports into the United States. This action is needed in order for the state hazardous waste regulations to maintain equivalency with the federal regulations. The basis and rationale for this Rule is 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 V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—

Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Competent Authorities—the regulatory authorities of concerned countries having jurisdiction over *transboundary movements* of waste destined for *recovery operations*.

* * *

Consignee—repealed.

* * *

Country of Export—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a from which a *transboundary movement of hazardous waste* is planned to be initiated, or is initiated.

Country of Import—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a to which a *transboundary movement of hazardous waste* is planned, or takes place, for the purpose of submitting the waste to *recovery operations* therein.

* * *

Country of Transit—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a and b other than the exporting or importing country across which a *transboundary movement of hazardous waste* is planned or takes place.

* * *

Exporter—the person under the jurisdiction of the *country of export* who has, or will have at the time of the *transboundary movement*, possession or other forms of legal control of the waste and who proposes *transboundary movement* of the *hazardous waste* for the ultimate purpose of submitting it to *recovery operations*. When the United States (U.S.) is the *country of export*, *exporter* is interpreted to mean a person domiciled in the United States.

* * *

Exporting Country—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a from which a *transboundary movement* of waste is planned or has commenced.

* * *

Importer—the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the *country of import*.

Importing Country—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a to which a *transboundary movement* of waste is planned or takes place for the purpose of submitting the waste to *recovery operations* therein.

* * *

Notifier—repealed.

* * *

OECD—Organization for Economic Cooperation and Development.

* * *

Organization for Economic Cooperation and Development (OECD) Area—all land or marine areas under the national jurisdiction of any *OECD* member country listed in LAC 33:V.1113.I.1.a. When the regulations refer to shipments to or from an *OECD* country, this means *OECD* area.

* * *

Recognized Trader—a person who, with appropriate authorization of *concerned countries*, acts in the role of principal to purchase and subsequently sell waste; this person has legal control of such waste from time of purchase to time of sale; such a person may act to arrange and facilitate *transboundary movements* of waste destined for *recovery operations*.

* * *

Recovery Operations—activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses, which include the following operations.

Table 1	
Code	Recovery Operations
R1	Use as a fuel (other than in direct incineration) or other means to generate energy
R2	Solvent reclamation/regeneration
R3	Recycling/reclamation of organic substances that are not used as solvents
R4	Recycling/reclamation of metals and metal compounds
R5	Recycling/reclamation of other inorganic materials
R6	Regeneration of acids or bases
R7	Recovery of components used for pollution abatement
R8	Recovery of components used from catalysts
R9	Used oil re-refining or other reuses of previously used oil
R10	Land treatment resulting in benefit to agriculture or ecological improvement
R11	Uses of residual materials obtained from any of the operations numbered R1-R10
R12	Exchange of wastes for submission to any of the operations numbered R1-R11
R13	Accumulation of material intended for any operation numbered R1-R12

* * *

Transboundary Movement—any movement of waste from an area under the national jurisdiction of one *OECD* member country to an area under the national jurisdiction of another *OECD* member country.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR

10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:

Chapter 11. Generators

Subchapter A. General

§1101. Applicability

A. ...

B. Any person who exports or imports hazardous waste subject to the manifesting requirements of this Chapter, the export requirements for spent lead-acid battery management standards in LAC 33:V.4145, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from the *OECD* member countries listed in LAC 33:V.1113.I.1.a for recovery shall comply with Subchapter B of this Chapter.

C. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998), LR 24:1106 (June 1998), LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:822 (May 2006), LR 38:

§1113. Exports of Hazardous Waste

A. Applicability. Any person who exports hazardous waste to a foreign country, from a point of departure in the state of Louisiana, shall comply with the requirements of this Chapter and with the special requirements of this Section. This Section establishes requirements applicable to exports of hazardous waste. A primary exporter of hazardous waste shall comply with the special requirements of this Section, and a transporter who transports hazardous waste for export shall comply with applicable requirements of LAC 33:V.Chapter 13.

B. ...

C. General Requirements. Exports of hazardous wastes are prohibited except in compliance with the applicable requirements of this Section and LAC 33:V.Chapter 13. Exports of hazardous waste are prohibited unless:

1. notification in accordance with Subsection D of this Section has been provided;

C.2. - D.1.b.viii. ...

2. Notification shall be sent to the Office of Environmental Services, with "Attention: Notification to Export" prominently displayed on the front of the envelope.

NOTE: This does not relieve the regulated community from the requirement of submitting notification to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, as required by 40 CFR 262.53(b) and Paragraph D.1 of this Section.

3. - 4. ...

5. The administrative authority shall provide a complete notification to the receiving country and any transit countries. A notification is complete when the administrative authority receives a notification which the administrative authority determines satisfies the requirements of Paragraph D.1 of this Section. Where a claim of confidentiality is asserted with respect to any notification information required by Paragraph D.1 of this Section, the administrative authority may find the notification not complete until any such claim is resolved in accordance with LAC 33:I.Chapter 5.

6. Where the receiving country consents to the receipt of the hazardous waste, the administrative authority shall forward an EPA Acknowledgement of Consent to the primary exporter for purposes of Paragraph E.8 of this Section. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, the administrative authority shall notify the primary exporter in writing. The EPA will also notify the primary exporter of any responses from transit countries.

E. - E.6. ...

7. In lieu of the requirements of LAC 33:V.1107.A.3, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

a. renotify the United States Environmental Protection Agency of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Paragraph D.3 of this Section and obtain an EPA Acknowledgment of Consent prior to delivery; or

7.b. - 9....

F. Exception Reports. In lieu of the requirements of LAC 33:V.1111.C, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, if any of the following occurs:

F.1. - H.2. ...

I. International Agreements

1. Any person who exports or imports waste considered hazardous under U.S. national procedures, (i.e., meets the definition of *hazardous waste* in LAC 33:V.109, and is subject to either the manifest requirements of this Chapter, the universal waste management standards of LAC 33:V.Chapter 38, or the requirements for spent lead-acid batteries in LAC 33:V.4145) to or from designated member

countries of the OECD, as defined in Subparagraph I.1.a, of this Section for purposes of recovery is subject to Subchapter B of this Section. The requirements of this Section and LAC 33:V.1123 do not apply to such exports and imports.

a. For the purposes of this Subchapter, the designated OECD member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

b. For the purposes of this Subchapter, Canada and Mexico are considered OECD member countries only for the purpose of transit.

2. Any person who exports hazardous waste to or imports hazardous waste from a designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of this Section and LAC 33:V.1123; however, they are not subject to the requirements of LAC 33:V.1127.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:2102 (October 2007), LR 34:72 (January 2008), LR 34:622 (April 2008), LR 38:

Subchapter B. Transboundary Shipments of Hazardous Waste

§1127. Transboundary Shipments of Hazardous Waste for Recovery within the OECD

A. Applicability

1. The requirements of this Subchapter apply to imports and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in LAC 33:V.1113.I.1.a. A waste is considered hazardous under United States national procedures if the waste:

a. meets the definition of *hazardous waste* as defined in 40 CFR 261.3; and

b. is subject to either the manifesting requirements of LAC 33:V.1107, the universal waste management standards of LAC 33:V.Chapter 38, or the export requirements in the spent lead-acid battery management standards of LAC 33:V.4145.

2. Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under

RCRA and any exporter duties, if applicable, under this Subchapter.

B. General Conditions

1. Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the green control procedures or a list of wastes subject to the amber control procedures and by United States national procedures as defined in Paragraph A.1 of this Section. The OECD green and amber lists are incorporated by reference in Paragraph I.4 of this Section.

a. Listed Waste Subject to the Green Control Procedures

i. Green wastes that are not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section are subject to existing controls normally applied to commercial transactions.

ii. Green wastes that are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section are subject to the amber control procedures set forth in this Subchapter.

iii. Green wastes that are sufficiently contaminated or mixed with other wastes subject to amber list controls such that the waste or waste mixture is considered hazardous under United States national procedures must be handled in accordance with the amber list controls.

b. Listed Wastes Subject to the Amber Control Procedures

i. Amber wastes that are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, are subject to the amber control procedures set forth in this Subchapter.

ii. Amber wastes that are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, are subject to the amber control procedures in the United States, even if it is imported to, or exported from, a designated OECD member country listed in LAC 33:V.1113.I.1.a that does not consider the waste to be hazardous. In such an event, the responsibilities of the amber control procedures are as follows:

(a). U.S. Exports. The United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(b). U.S. Imports. The U.S. recovery facility/importer and the United States shall assume the obligations associated with the amber control procedures that normally apply to the exporter and country of export, respectively.

iii. Amber wastes that are not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section but are considered hazardous by an OECD member country are subject to the amber control procedures in the OECD member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD member country that considers the waste hazardous unless the parties make other arrangements through contracts.

NOTE: Some wastes subject to the amber control procedures are not listed or otherwise identified as hazardous under RCRA. Therefore, they are not subject to the amber control procedures of this Subchapter. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the Toxic Substances Control Act) restrict

certain waste imports or exports. Such restrictions continue to apply with regard to this Subchapter.

c. Procedures for Mixtures of Wastes

i. A green waste that is mixed with one or more other green wastes such that the resulting mixture is not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, shall be subject to the green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

NOTE: The regulated community should note that some OECD member countries may require, by domestic law, that mixtures of different green wastes be subject to the amber control procedures.

ii. A green waste that is mixed with one or more amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more amber wastes, such that the resulting waste mixture is considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, are subject to the amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

NOTE: The regulated community should note that some OECD member countries may require, by domestic law, that a mixture of a green waste and more than a *de minimis* amount of an amber waste or a mixture of two or more amber wastes be subject to the amber control procedures.

d. Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

i. if such wastes are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, these wastes are subject to the amber control procedures; or

ii. if such wastes are not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, such wastes are subject to the green control procedures.

2. General Conditions Applicable to Transboundary Movements of Hazardous Waste

a. The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country.

b. The transboundary movement shall be in compliance with applicable international transport agreements.

NOTE: These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

2.c. - 3. ...

a. Re-export of wastes subject to the amber control procedures from the United States, as the importing country, to a third country listed in LAC 33:V.1113.I.1.a may occur only after an exporter in the United States provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification shall comply with the notice and consent procedures in Subsection C of this Section for all concerned countries, and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

i. ...

ii. The transboundary movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

b. Re-export of wastes subject to the amber control procedures from the original importing country to a third country listed in LAC 33:V.1113.I.1.a may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by an exporter in the original importing country in accordance with Subsection C of this Section. The transboundary movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

c. In the case of re-export of amber wastes to a country other than those listed in LAC 33:V.1113.I.1.a, notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in Subparagraphs B.3.a and b of this Section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

4. Duty to Return or Re-Export Wastes Subject to the Amber Control Procedures. When a transboundary movement of wastes subject to the amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The requirements of Paragraph B.3 of this Section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate.

a. Return from the United States to the Country of Export. The U.S. importer shall inform EPA at the specified address in Clause C.2.a.i of this Section of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within 90 days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

b. Return From the Country of Import to the United States. The U.S. exporter shall provide for the return of the hazardous waste shipment within 90 days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Paragraph G.2 of this Section.

5. Duty to Return Wastes Subject to the Amber Control Procedures from the Country of Transit. When a

transboundary movement of wastes subject to the amber control Procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

a. Return from the United States (as Country of Transit) to the Country of Export. The U.S. transporter shall inform EPA at the specified address in Clause C.2.a.i of this Section of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within 90 days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another time frame agreed to by the concerned member countries.

b. Return from the Country of Transit to the United States (as Country of Export). The U.S. exporter shall provide for the return of the hazardous waste shipment within 90 days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Paragraph G.2 of this Section.

6. Requirements for Wastes Destined for and Received by R12 and R13 Facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all amber control procedures for notification and consent as set forth in Subsection C of this Section and for the movement document as set forth in Subsection D of this Section. Additional responsibilities of R12/R13 facilities include:

a. indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place;

b. within three days of receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years;

c. as soon as possible, but no later than 30 days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N. W. Washington, D.C. 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail;

d. when a R12/R13 recovery facility delivers wastes for recovery to a R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but not later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13

facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain;

e. when a R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the initial country of export, amber control procedures apply, including a new notification. If located in a third country other than the initial country of export, amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

7. Laboratory Analysis Exemption. The transboundary movement of an amber waste is exempt from the amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed 25 kgs. Waste destined for laboratory analysis must still be appropriately packaged and labeled.

C. Notification and Consent

1. Applicability. Consent shall be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subchapter. Hazardous wastes subject to amber control procedures are subject to the requirements of Paragraph C.2 of this Section and wastes not identified on any list are subject to the requirements of Paragraph C.3 of this Section.

2. Amber Wastes. The export from the United States of hazardous waste as described in Paragraph A.1 of this Section subject to the amber control procedures are prohibited unless the notification and consent requirements of this Subsection are met.

a. ...

i. Notification. At least 45 days prior to the commencement of each transboundary movement, the exporter must provide written notification, in English, of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Paragraph C.4 of this Section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. When a general notification is used for multiple shipments, each shipment shall be accompanied by a movement document pursuant to Subsection D of this Section.

ii. Tacit Consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to Clause C.2.a.i of this Section within 30 days after the date of

issuance of the acknowledgment of receipt of notification by the competent authority of the importing country, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the 30-day period; renotification and renewal of all consents are required for exports after that date.

iii. Written Consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

b. Transboundary Movements to Facilities Preapproved by the Competent Authorities of the Importing Countries to Accept Specific Wastes for Recovery

i. Notification. The exporter shall provide EPA the information identified in Paragraph C.4 of this Section, in English, at least 10 days in advance of commencing shipment to a preapproved facility. The notification shall indicate that the recovery facility is preapproved, and the notification may apply to a single specific shipment or to multiple shipments as described in Clause C.2.a.i of this Section. This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with the words "OECD Export Notification-Preapproved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Clause C.2.a.i of this Section may cover a period of up to three years. When a general notification is used for multiple shipments, each shipment shall be accompanied by a movement document pursuant to Subsection D of this Section.

ii. Exports to preapproved facilities may take place after seven working days from the issuance of an acknowledgement of receipt of the notification by the competent authority of the country of import, unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

3. Wastes not Covered in the OECD Green and Amber Lists. Wastes destined for recovery operations that have not been assigned to the OECD green and amber lists, incorporated by reference in Paragraph I.4 of this Section but which are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, shall be subject to the notification and consent requirements established for the amber control procedures in accordance with Paragraph C.2 of this Section. Wastes destined for recovery operations, that have not been assigned to the OECD green and amber lists incorporated by reference in Paragraph I.4 of this Section, and are not considered hazardous under U.S. national procedures as defined by Paragraph A.1 of this Section shall be subject to the green control procedures.

4. Notification Information. Notifications submitted under this Section shall include:

a. serial number or other accepted identifier of the notification document;

b. exporter name and EPA identification number (if applicable), address, telephone number, fax number, and email address;

c. importing recovery facility name, address, telephone number, fax number, email address, and technologies employed;

d. importer name (if not the owner or operator of the recovery facility), address, telephone number, fax number, and email address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

e. intended transporters and/or their agents; address, telephone number, fax number, and email address;

f. country of export and relevant competent authority and point of departure;

g. countries of transit and relevant competent authorities and points of entry and departure;

h. country of import and relevant competent authority and point of entry;

i. statement of whether the notification is a single notification or a general notification. If general, include the period of validity requested;

j. date foreseen for commencement of transboundary movement;

k. designation of waste type(s) from the appropriate OECD list incorporated by reference in Paragraph I.4 of this Section, descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type;

l. means of transport envisaged;

m. specification of the *recovery operation(s)* as defined in LAC 33:V.109; and

n. certification/declaration signed by the exporter that states:

"I certify that the above information is complete and correct to the best of my knowledge, legally enforceable written contractual obligations have been entered into, and any applicable insurance or other financial guarantees shall cover the transboundary movement."

Name: _____

Signature: _____

Date: _____

NOTE: The United States does not currently require financial assurance for these waste shipments. However, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

5. Certificate of Recovery. As soon as possible, but no later than 30 days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, email (without a digital signature) or fax followed by mail. The certificate of recovery shall include a signed, written, and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Subsection E of this Section.

D. Tracking Document

1. All United States parties subject to the contract provisions of Subsection E of this Section shall ensure that a movement document meeting the conditions of Paragraph D.2 of this Section accompanies each transboundary movement of wastes subject to the amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subparagraphs D.1.a and b of this Section.

a. For shipments of hazardous waste within the United States solely by water (bulk shipments only) the generator shall forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water (in accordance with the manifest routing procedures in LAC 33:V.1107.D.3).

b. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall forward the movement document with the manifest (in accordance with the routing procedures for the manifest in LAC 33:V.1107.D.4) to the next nonrail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

2. The movement document shall include all information required under Subsection C of this Section for notification and the following:

a. date movement commenced;

b. name (if not exporter), address, telephone number, fax number, and email of primary exporter;

c. ...

d. identification (license, registered name, or registration number) of means of transport, including types of packaging envisaged;

e. ...

f. certification/declaration signed by the exporter that no objection to the shipment has been lodged as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. all necessary consents have been received; or

2. the shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; or

3. the shipment is directed to a recovery facility preauthorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries."

[Delete sentences that are not applicable]

Name:

Signature:

Date:

and

g. appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

3. Exporters also shall comply with the special manifest requirements of LAC 33:V.1113.E.1, 2, 3, 5, and 9; and importers must comply with the import requirements of LAC 33:V.1123.

4. Each United States person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

5. Within three working days of the receipt of imports subject to this Subchapter, the owner or operator of the United States recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and to the competent authorities of the exporting and transit countries. If the concerned U.S. recovery facility is a R12 and R13 *recovery facility* as defined under LAC 33:V.109. *Recovery Operations*, Table 1, the facility shall retain the original of the movement document for three years.

E. Contracts

1. Transboundary movements of hazardous wastes subject to the amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this Section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

2. - 3. ...

a. the person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

b. the person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of waste, and shall provide the notification for re-export.

4. Contracts must specify that the importer will provide the notification required in Paragraph B.3 of this Section prior to re-export of controlled wastes to a third country.

5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

NOTE: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

6. ...

7. Upon request by EPA, United States exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

NOTE: Although the United States does not require routine submission of contracts at this time, OECD Decision C(92)39/FINAL allows member countries to impose such requirements. When other OECD member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD member countries may deny consent for the proposed movement.

F. - F.1. ...

2. A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this Subchapter associated with being an exporter or importer.

G. Reporting and Recordkeeping

1. Annual Reports. For all waste movements subject to this Subchapter, persons (e.g., exporters, recognized traders) who meet the definition of *primary exporter* in LAC 33:V.109 or who initiate the movement document under Subsection D of this Section shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, no later than March 1 of each year, summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under Subsection D of this Section is required to file an annual report for waste exports that are not covered under this Subchapter, he may include all export information in one report, provided the information required in Subparagraph 1.a of this Subsection on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section.) Such reports shall include the following:

a. the EPA identification number, name, and mailing and site address of the exporter filing the report;

b. - c. ...

d. by final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from LAC 33:V.Chapter 49), designation of waste type(s) from OECD waste lists and applicable waste code from the OECD lists incorporated by reference in Paragraph I.4 of this Section, the DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subchapter, and the number of shipments pursuant to each notification;

e. - e.ii. ...

f. a certification signed by the person acting as primary exporter or initiator of the movement document under Subsection D of this Section that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those

individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

2. Exception Reports. Any person who meets the definition of *primary exporter* in LAC 33:V.109 or who initiates the movement document under Subsection D of this Section must file an exception report, in lieu of the requirements of LAC 33:V.1111.C (if applicable), with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20560, if any of the following occurs:

a. he has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States within 45 days from the date it was accepted by the initial transporter;

b. within 90 days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received; or

2.c. - 3. ...

a. Persons who meet the definition of *primary exporter* in LAC 33:V.109 or who initiate the movement document under this Section shall keep the following records:

i. - ii. ...

iii. a copy of any exception reports and a copy of each confirmation of delivery (i.e., movement documentation) sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

iv. a copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.

b. The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

H. - I.1.a. ...

b. is subject to either the Federal RCRA manifesting requirements of this Chapter, the universal waste management standards of LAC 33:V.Chapter 38, or the export requirements in the spent lead-acid battery management standards of LAC 33:V.4145.

2. If a waste is hazardous under Paragraph I.1 of this Section, it is subject to the amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in Subsection B of this Section.

3. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Subsection B of this Section.

4. The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C (2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are

incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:293 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007), LR 34:72 (January 2008), LR 34:1012 (June 2008), LR 38:

Chapter 13. Transporters

§1301. Applicability

A. - E. ...

F. A transporter of hazardous waste subject to the federal manifesting requirements of LAC 33:V.Chapter 11 or subject to the waste management standards of LAC 33:V.Chapter 38 that is being imported from or exported to any of the countries listed in LAC 33:V.1113.I.1.a for purposes of recovery is subject to this Chapter and to all other relevant requirements of LAC 33:V.Chapter 11.Subchapter B including, but not limited to, LAC 33:V.1127.D for movement documents.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), LR 24:1694 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 38:

Chapter 15. Treatment, Storage, and Disposal Facilities

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. - B.3. ...

4. Within three working days of the receipt of a shipment subject to LAC 33:V.Chapter 11.Subchapter B, the owner or operator of the facility shall provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental

Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature.

5. If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-0001. In addition, the facility must, within 30 days:

B.5.a. - D.7.Comment. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:

§1531. Required Notices

A. ...

B. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to LAC 33:V.Chapter 11.Subchapter B shall provide a copy of the movement document bearing all required signatures to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A),

Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed movement document shall be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than 30 days after the completion of recovery and no later than one calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, email (without a digital signature), or fax followed by mail.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), LR 27:294 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2105 (October 2007), LR 38:

Chapter 41. Recyclable Materials

§4145. Spent Lead-Acid Batteries Being Reclaimed

A. ...

If Your Batteries:	And If You:	Then You:	And You:
1. - 5. ...			
6. will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from LAC 33:V.Chapters 3, 5, 7, 9, 13, 15, 17,19, 21, 22, 23, 25, 27, 28, 29, 30, 32, 33, 35, 37, and 43, and the notification requirements at section 3010 of RCRA. You are also exempt from LAC 33:V.Chapter 11, except for LAC 33:V.1103, and except for the applicable requirements in either: (a) LAC 33:V.1125; or (b) LAC 33:V.1113.D "Notification of Intent to Export", LAC 33:V.1113.G.1.a-d, f and G.2 "Annual Reports", and LAC 33:V.1113.H "Recordkeeping".	are subject to LAC 33:V.Chapters 1, 31, 39, 41, and 49 as applicable and LAC 33:V.1103, and either must comply with LAC 33:V.1125.A (if shipping to one of the OECD countries specified in LAC 33:V.1113.I.1.a), or shall: (a) Comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.2, and H. (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in LAC 33:V.1113.A- I.2; and (c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.
7. Will be reclaimed through regeneration or any other means.	Transport these batteries in the U. S. to export them for reclamation in a foreign country.	are exempt from LAC 33:V.Chapters 3, 5, 7, 9, 13, 15, 17,19, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, 41, and 43, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in LAC 33:V.1125 (if shipping to one of the OECD countries specified in LAC 33:V.1113.I.1.a, or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgement of Consent; (b) you must ensure that a copy of the EPA Acknowledgement of Consent accompanies the shipment; and (c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

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

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 13:237 (April 1987), LR 23:579 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:287 (February 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 32:830 (May 2006), LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comment

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW108ft. Such comments must be received no later than January 26, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@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 HW108ft. 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.

Public Hearing

A public hearing will be held on January 26, 2012, 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 Perry Theriot 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.

Herman Robinson, CPM
Executive Counsel

1112#040

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Withdrawal of the Emission Comparable Fuel Exclusion (LAC 33:V.105 and 4909)(HW109ft)

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 Hazardous Waste regulations, LAC 33:V.105 and 4909 (Log #HW109ft).

This Rule is identical to federal regulations found in 40CFR261.4(a)(16); 40CFR261.38-261.38(c), 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).

This Rule withdraws the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel. These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in the same boilers. EPA withdrew this conditional exclusion because the agency has concluded the Emission Comparable Fuel is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusion for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this Rule. This action is necessary for the state hazardous waste regulations to maintain equivalency with the federal regulations. The basis and rationale for this Rule is 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 V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality— Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Wastes that are excluded from regulation are found in this Section.

A. - D.1.p.vi. ...

q. comparable fuels or comparable syngas fuels that meet the requirements of LAC 33:V.4909;

D.1.r. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste

Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:2553 (November 2010), LR 38:

Chapter 49. Lists of Hazardous Wastes

NOTE: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).

§4909. Exclusion of Comparable Fuel and Syngas Fuel

A. Specifications for Excluded Fuels. Wastes that meet the following comparable/syngas fuel requirements are not solid wastes.

B. - C.5. ...

Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Total Nitrogen as N	NA	4900	
Total Halogens as Cl	NA	540	
Total Organic Halogens as Cl	NA	25 or individual halogenated organics listed below	
Polychlorinated biphenyls, total [Aroclors, total]	1336-36-3	Nondetect	1.4
Cyanide, total	57-12-5	Nondetect	1.0
Antimony, total	7440-36-0	12	
Arsenic, total	7440-38-2	0.23	
Barium, total	7440-39-3	23	
Beryllium, total	7440-41-7	1.2	
Cadmium, total	7440-43-9	1.2	
Chromium, total	7440-47-3	2.3	
Cobalt	7440-48-4	4.6	
Lead, total	7439-92-1	31	
Manganese	7439-96-5	1.2	
Mercury, total	7439-97-6	0.25	
Nickel, total	7440-02-0	58	
Selenium, total	7782-49-2	0.23	
Silver, total	7440-22-4	2.3	
Thallium, total	7440-28-0	23	
Benzo[a]anthracene	56-55-3	2400	
Benzenes	71-43-2	4100	
Benzo[b]fluoranthene	205-99-2	2400	
Benzo[k]fluoranthene	207-08-9	2400	
Benzo[a]pyrene	50-32-8	2400	
Chrysene	218-01-9	2400	
Dibenzo[a,h]anthracene	53-70-3	2400	
7,12-Dimethylbenz[a]anthracene	57-97-6	2400	
Fluoranthene	206-44-0	2400	
Indeno(1,2,3-cd)pyrene	193-39-5	2400	
3-Methylcholanthrene	56-49-5	2400	
Naphthalene	91-20-3	3200	
Toluene	108-88-3	36000	

Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Acetophenone	98-86-2	2400	
Acrolein	107-02-8	39	
Allyl alcohol	107-18-6	30	
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	2400	
Butyl benzyl phthalate	85-68-7	2400	
o-Cresol [2-Methyl phenol]	95-48-7	2400	
m-Cresol [3-Methyl phenol]	108-39-4	2400	
p-Cresol [4-Methyl phenol]	106-44-5	2400	
Di-n-butyl phthalate	84-74-2	2400	
Diethyl phthalate	84-66-2	2400	
2,4-Dimethylphenol	105-67-9	2400	
Dimethyl phthalate	131-11-3	2400	
Di-n-octyl phthalate	117-84-0	2400	
Endothall	145-73-3	100	
Ethyl methacrylate	97-63-2	39	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	
Isobutyl alcohol	78-83-1	39	
Isosafrole	120-58-1	2400	
Methyl ethyl ketone [2-Butanone]	78-93-3	39	
Methyl methacrylate	80-62-6	39	
1,4-Naphthoquinone	130-15-4	2400	
Phenol	108-95-2	2400	
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	
Safrole	94-59-7	2400	
Carbon disulfide	75-15-0	Nondetect	39
Disulfoton	298-04-4	Nondetect	2400
Ethyl methanesulfonate	62-50-0	Nondetect	2400
Methyl methanesulfonate	66-27-3	Nondetect	2400
Phorate	298-02-2	Nondetect	2400
1,3-Propane sultone	1120-71-4	Nondetect	100
Tetraethylthiopyrophosphate [Sulfotep]	3689-24-5	Nondetect	2400
Thiophenol [Benzenethiol]	108-98-5	Nondetect	30
O,O-Triethyl phosphorothioate	126-68-1	Nondetect	2400
Acetonitrile [Methyl cyanide]	75-05-8	Nondetect	39
2-Acetylaminofluorene [2-AAF]	53-96-3	Nondetect	2400
Acrylonitrile	107-13-1	Nondetect	39
4-Aminobiphenyl	92-67-1	Nondetect	2400
4-Aminopyridine	504-24-5	Nondetect	100
Aniline	62-53-3	Nondetect	2400
Benzidine	92-87-5	Nondetect	2400
Dibenz[a,j]acridine	224-42-0	Nondetect	2400
O,O-Diethyl O-pyrazinyl phosphoro-thioate [Thionazin]	297-97-2	Nondetect	2400
Dimethoate	60-51-5	Nondetect	2400
p-(Dimethylamino)azobenzene [4-Dimethylaminoazobenzene]	60-11-7	Nondetect	2400
3,3'-Dimethylbenzidine	119-93-7	Nondetect	2400
α,α-Dimethylphenethylamine	122-09-8	Nondetect	2400
3,3'-Dimethoxybenzidine	119-90-4	Nondetect	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	Nondetect	2400
4,6-Dinitro-o-cresol	534-52-1	Nondetect	2400
2,4-Dinitrophenol	51-28-5	Nondetect	2400
2,4-Dinitrotoluene	121-14-2	Nondetect	2400
2,6-Dinitrotoluene	606-20-2	Nondetect	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	Nondetect	2400
Diphenylamine	122-39-4	Nondetect	2400
Ethyl carbamate [Urethane]	51-79-6	Nondetect	100
Ethyleneurea (2-Imidazolidinethione)	96-45-7	Nondetect	110
Famphur	52-85-7	Nondetect	2400

Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Methacrylonitrile	126-98-7	Nondetect	39
Methapyrilene	91-80-5	Nondetect	2400
Methomyl	16752-77-5	Nondetect	57
2-Methylacetonitrile [Acetone cyanohydrin]	75-86-5	Nondetect	100
Methyl parathion	298-00-0	Nondetect	2400
MNNG (N-Methyl-N-nitroso-N'-nitroguanidine)	70-25-7	Nondetect	110
1-Naphthylamine, [α -Naphthylamine]	134-32-7	Nondetect	2400
2-Naphthylamine, [β -Naphthylamine]	91-59-8	Nondetect	2400
Nicotine	54-11-5	Nondetect	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	Nondetect	2400
Nitrobenzene	98-95-3	Nondetect	2400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	Nondetect	2400
5-Nitro-o-toluidine	99-55-8	Nondetect	2400
N-Nitrosodi-n-butylamine	924-16-3	Nondetect	2400
N-Nitrosodiethylamine	55-18-5	Nondetect	2400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	Nondetect	2400
N-Nitroso-N-methylethylamine	10595-95-6	Nondetect	2400
N-Nitrosomorpholine	59-89-2	Nondetect	2400
N-Nitrosopiperidine	100-75-4	Nondetect	2400
N-Nitrosopyrrolidine	930-55-2	Nondetect	2400
2-Nitropropane	79-46-9	Nondetect	2400
Parathion	56-38-2	Nondetect	2400
Phenacetin	62-44-2	Nondetect	2400
1,4-Phenylenediamine, [p-Phenylenediamine]	106-50-3	Nondetect	2400
N-Phenylthiourea	103-85-5	Nondetect	57
2-Picoline [alpha-Picoline]	109-06-8	Nondetect	2400
Propylthioracil [6-Propyl-2-thiouracil]	51-52-5	Nondetect	100
Pyridine	110-86-1	Nondetect	2400
Strychnine	57-24-9	Nondetect	100
Thioacetamide	62-55-5	Nondetect	57
Thiofanox	39196-18-4	Nondetect	100
Thiourea	62-56-6	Nondetect	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	Nondetect	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	Nondetect	57
o-Toluidine	95-53-4	Nondetect	2400
p-Toluidine	106-49-0	Nondetect	100
1,3,5-Trinitrobenzene, [sym-Trinitrobenzene]	99-35-4	Nondetect	2400
Allyl chloride	107-05-1	Nondetect	39
Aramite	140-57-8	Nondetect	2400
Benzal chloride [Dichloromethyl benzene]	98-87-3	Nondetect	100
Benzyl chloride	100-44-77	Nondetect	100
Bis(2-chloroethyl)ether [Dichloroethyl ether]	111-44-4	Nondetect	2400
Bromoform [Tribromomethane]	75-25-2	Nondetect	39
Bromomethane [Methyl bromide]	74-83-9	Nondetect	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	Nondetect	2400
Carbon tetrachloride	56-23-5	Nondetect	39
Chlordane	57-74-9	Nondetect	14
p-Chloroaniline	106-47-8	Nondetect	2400
Chlorobenzene	108-90-7	Nondetect	39
Chlorobenzilate	510-15-6	Nondetect	2400
p-Chloro-m-cresol	59-50-7	Nondetect	2400
2-Chloroethyl vinyl ether	110-75-8	Nondetect	39

Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Chloroform	67-66-3	Nondetect	39
Chloromethane [Methyl chloride]	74-87-3	Nondetect	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	Nondetect	2400
2-Chlorophenol [o-Chlorophenol]	95-57-8	Nondetect	2400
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	Nondetect	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	Nondetect	7.0
Diallate	2303-16-4	Nondetect	3400
1,2-Dibromo-3-chloropropane	96-12-8	Nondetect	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	Nondetect	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	Nondetect	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	Nondetect	2400
3,3'-Dichlorobenzidine	91-94-1	Nondetect	2400
Dichlorodifluoromethane [CFC-12]	75-71-8	Nondetect	39
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	Nondetect	39
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	Nondetect	39
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111-91-1	Nondetect	2400
2,4-Dichlorophenol	120-83-2	Nondetect	2400
2,6-Dichlorophenol	87-65-0	Nondetect	2400
1,2-Dichloropropane [Propylene dichloride]	78-87-5	Nondetect	39
cis-1,3-Dichloropropylene	10061-01-5	Nondetect	39
trans-1,3-Dichloropropylene	10061-02-6	Nondetect	39
1,3-Dichloro-2-propanol	96-23-1	Nondetect	30
Endosulfan I	959-98-8	Nondetect	1.4
Endosulfan II	33213-65-9	Nondetect	1.4
Endrin	72-20-8	Nondetect	1.4
Endrin aldehyde	7421-93-4	Nondetect	1.4
Endrin Ketone	53494-70-5	Nondetect	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	Nondetect	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	Nondetect	39
2-Fluoroacetamide	640-19-7	Nondetect	100
Heptachlor	76-44-8	Nondetect	1.4
Heptachlor epoxide	1024-57-3	Nondetect	2.8
Hexachlorobenzene	118-74-1	Nondetect	2400
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87-68-3	Nondetect	2400
Hexachlorocyclopentadiene	77-47-4	Nondetect	2400
Hexachloroethane	67-72-1	Nondetect	2400
Hexachlorophene	70-30-4	Nondetect	59000
Hexachloropropene [Hexachloropropylene]	1888-71-7	Nondetect	2400
Isodrin	465-73-6	Nondetect	2400
Kepone [Chlordecone]	143-50-0	Nondetect	4700
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58-89-9	Nondetect	1.4
Methylene chloride [Dichloromethane]	75-09-2	Nondetect	39
4,4'-methylene-bis(2-chloroaniline)	101-14-4	Nondetect	100
Methyl iodide [Iodomethane]	74-88-4	Nondetect	39
Pentachlorobenzene	608-93-5	Nondetect	2400
Pentachloroethane	76-01-7	Nondetect	39

Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82-68-8	Nondetect	2400
Pentachlorophenol	87-86-5	Nondetect	2400
Pronamide	23950-58-5	Nondetect	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93-72-1	Nondetect	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	Nondetect	30
1,2,4,5-Tetrachlorobenzene	95-94-3	Nondetect	2400
1,1,2,2-Tetrachloroethane	79-34-5	Nondetect	39
Tetrachloroethylene [Perchloroethylene]	127-18-4	Nondetect	39
2,3,4,6-Tetrachlorophenol	58-90-2	Nondetect	2400
1,2,4-Trichlorobenzene	120-82-1	Nondetect	2400
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	Nondetect	39
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	Nondetect	39
Trichloroethylene	79-01-6	Nondetect	39
Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	Nondetect	39
2,4,5-Trichlorophenol	95-95-4	Nondetect	2400
2,4,6-Trichlorophenol	88-06-02	Nondetect	2400
1,2,3-Trichloropropane	96-18-4	Nondetect	39
Vinyl Chloride	75-01-4	Nondetect	39

D. Implementation. Wastes that meet the comparable or syngas fuel specifications provided by Subsection B or C of this Section are excluded from the definition of solid waste provided that the conditions under this Section are met. For purposes of this Section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator; and the person burning the excluded fuel is called the excluded fuel burner. The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this Section and keeping records necessary to document compliance with those conditions.

1. Notices

a. Notices to State RCRA and CAA Authorized States or Regional RCRA and CAA Administrative Authority in Unauthorized States

i. The generator must submit a one-time notice, except as provided by Clause D.1.a.v of this Section, to the regional or state RCRA and CAA administrative authority in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

- (a). the name, address, and EPA ID number of the person/facility claiming the exclusion;
- (b). the applicable EPA hazardous waste codes that would otherwise apply to the excluded fuel;
- (c). the name and address of the units meeting the requirements of Paragraph D.2 and Subsection E of this Section that will burn the excluded fuel;
- (d). an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by Clause D.1.a.iii of this Section; and

(e). the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of LAC 33:V.4909 have been met for all waste identified in this notification. Copies of the records and information required at LAC 33:V.4909.D.10 are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

ii. If there is a substantive change in the information provided in the notice required under Paragraph D.1 of this Section, the generator must submit a revised notification.

iii. Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008, for newly excluded fuel or for revised notices as required by Clause D.1.a.ii of this Section.

b. Public Notice. Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded under the Resource Conservation and Recovery Act" containing the following information:

- i. the name, address, and EPA ID number of the generating facility(ies);
- ii. the name and address of the burner and the identification of the unit(s) that will burn the excluded fuel;
- iii. a brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;
- iv. an estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and
- v. ...

2. Burning. The exclusion applies only if the fuel is burned in the following units that also shall be subject to federal/state/local air emission requirements, including all applicable CAA MACT requirements:

a. - d. ...

3. Blending to Meet the Specifications. Hazardous waste shall not be blended to meet the comparable fuel specification under Subsection B of this Section, except as provided by Subparagraph D.3.a of this Section.

a. Blending to Meet the Viscosity Specification. A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

- i. as generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of Subparagraph B.1.a and Paragraph B.2 of this Section;
- ii. be blended at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, 43, and LAC 33:V.1109.E; and
- iii. not violate the dilution prohibition of Paragraph D.6 of this Section.

b. Residuals resulting from the treatment of a hazardous waste listed in LAC 33:V.4901 to generate a comparable fuel remain a hazardous waste.

4. - 5.a.i. ...

ii. is performed at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, 43, and LAC 33:V.1109.E, or is an exempt recycling unit in accordance with LAC 33:V.4105.C; and

a.iii. - b. ...

6. Dilution Prohibition for Comparable and Syngas Fuels. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of Subparagraph B.1.a, Paragraph B.2, or Subsection C of this Section.

7. Fuel Analysis Plan for Generators. The generator of an excluded fuel shall develop and follow a written fuel analysis plan that describes the procedures for sampling and analysis of the materials to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

a. ...

i. the parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

ii. ...

iii. the sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

iv. the frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

v. if process knowledge is used in the determination, any information prepared by the generator in making such determination

b. For each analysis, the generator shall document the following:

i. the dates and times samples were obtained, and the dates the samples were analyzed;

ii. - viii. ...

c. Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of Subparagraph D.7.a of this Section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

8. Excluded Fuel Sampling and Analysis

a. General. For wastes for which an exclusion is claimed under the specifications provided by Subsections B and C of this Section, the generator of the waste must test for all the constituents on LAC 33:V.3105, Table 1, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of

constituents with a specification in Table 7 of this Section should not be present:

i. a constituent that triggered the toxicity characteristic for the constituents that were the basis of the listing of the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in LAC 33:V.2223;

ii. - iv. ...

NOTE: Any claim under this Section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

b. Use of Process Knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge in accordance with Subparagraph D.8.a of this Section and must test to determine that all of the constituent specifications of Subsections B and C of this Section, as applicable, have been met.

c. The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

i. the 95 percent upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

ii. the analysis could have detected the presence of the constituent at or below the specification level.

d. - e. ...

f. The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under Paragraph D.7 of this Section.

g. Viscosity Condition for Comparable Fuel. Excluded comparable fuel that has not been blended to meet the kinematic viscosity specifications shall be analyzed as generated.

h. If hazardous waste is blended to meet the kinematic viscosity specifications for comparable fuel, the generator shall:

i. analyze the hazardous waste as generated to ensure that it meets the constituent and heating value specifications of Subsection B of this Section; and

ii. ...

i. Excluded fuel must be retested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties in a manner that may affect conformance with the specifications.

9. Speculative Accumulation. Excluded fuel must not be accumulated speculatively, as defined in LAC 33:V.109.

10. Operating Records. The generator must maintain an operating record on-site containing the following information:

a. - a.i. ...

ii. for each excluded fuel, the EPA hazardous waste codes that would be applicable if the material were discarded; and

iii. ...

b. a brief description of the process that generated the excluded fuel, and if the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;

c. the monthly and annual quantities of each fuel claimed to be excluded;

d. documentation for any claim that a constituent is not present in the excluded fuel as required under Subparagraph D.8.a of this Section;

e. the results of all analyses and all detection limits achieved as required under Paragraph D.7 of this Section;

f. if the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of Paragraphs D.3 and 4 of this Section;

g. if the excluded fuel is to be shipped off-site, a certification from the burner as required under Paragraph D.12 of this Section;

h. the fuel analysis plan and documentation of all sampling and analysis results as required by Paragraph D.7 of this Section that includes the following:

i. - viii. ...

i. if the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

i. the name and address of the facility receiving the excluded fuel for burning;

ii. the quantity of excluded fuel shipped and delivered;

iii. ...

iv. a cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under Paragraph D.7 of this Section; and

v. ...

11. Records Retention. Records must be maintained for a period of three years. A generator must maintain a current fuel analysis plan during that three-year period.

12. Burner Certification to the Generator. Prior to submitting a notification to the state and regional administrative authority, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

a. certifying that the excluded fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under Paragraph D.2 of this Section;

b. identifying the name and address of the facility that will burn the excluded fuel; and

c. certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this Section.

13. Ineligible Waste Codes. Wastes that are listed as hazardous waste because of presence of dioxins or furans, as set out in LAC 33:V.4901.G, Table 6, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

14. Regulatory Status of Boiler Residues. Burning excluded fuel that was otherwise a hazardous waste listed under LAC 33:V.4901.B-D does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

15. Residues in Containers and Tank Systems Upon Cessation of Operations

a. Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 22, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

b. Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under LAC 33:V.4903.B-E.2 or if the fuel were otherwise a hazardous waste listed under LAC 33:V.4901.B-E when the exclusion was claimed.

c. Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under Subsection B or C of this Section are solid wastes subject to regulation as hazardous waste if:

i. the waste exhibits a characteristic of hazardous waste under LAC 33:V.4903.B-E.2; or

ii. the fuel were otherwise a hazardous waste listed under LAC 33:V.4901.B-E. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.

16. Waiver of RCRA Closure Requirements. Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under LAC 33:V.1109.E, are not subject to the closure requirements of LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43; provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this Section, and that afterward will be used only to manage fuel excluded under this Section.

17. Spills and Leaks

a. Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and shall be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under LAC 33:V.4903.B-E.2 or if the fuel were otherwise a hazardous waste listed in LAC 33:V.4901.B-E.

b. For excluded fuel that would have otherwise been a hazardous waste listed in LAC 33:V.4901.B-E and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

18. Nothing in this Section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the U.S. Department of Transportation requirements for hazardous materials in 49 CFR parts 171-180.

NOTICE OF INTENT

Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Tax Qualification Provisions (LAC 58:V.101)

E. Failure to Comply with the Conditions of the Exclusion. An excluded fuel loses its exclusion status if any person managing the fuel fails to comply with the conditions of the exclusion under this Section. The material then must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized state agency may take enforcement action under RCRA section 3008(a).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:489 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:305 (March 2001), LR 28:1010 (May 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 34:644 (April 2008), LR 34:1021 (June 2008), LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW109ft. Such comments must be received no later than January 26, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@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 HW109ft. 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.

Public Hearing

A public hearing will be held on January 26, 2012, 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 Donald Trahan 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.

Herman Robinson, CPM
Executive Counsel

1112#039

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans ("Fund"), pursuant to R.S. 11:363(F), propose to restate and amend LAC 58:V. The restatement and amendment adds deletes Section 101.D of Chapter 1 to conform their rules to the Supreme Court ruling in *LASERS v. McWilliams*, 06-2191 (La. 12/2/08), 996 So.2d 1036 (on rehearing). All currently stated rules of the Fund, unless amended herein, shall remain in full force and effect.

Title 58

RETIREMENT

Part V. Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Chapter 1. Qualified Domestic Relations Orders

§101. Determining Qualified Status of Domestic Relations Orders

A. Intent and Construction. These procedural rules are adopted in order to satisfy the requirements of R.S. 11:291, and shall be construed consistently with this purpose.

B. The purpose of these rules is to establish the trustees' willingness to recognize and enforce any QDRO that meets the requirements set forth herein.

C. It is further intended that the provisions of R.S. 11:291 and 292 be strictly observed. Therefore, the trustees shall not honor the terms of any QDRO:

1. that purports to require the fund to provide any type or benefits, or any option, not otherwise provided under the fund;
2. that requires the fund to provide increased benefits (determined on the basis of actuarial value);
3. that requires payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO;
4. that requires the payment of benefits to an alternate payee prior to the date the participant terminates employment and his retirement benefits commence; or
5. that allow the alternate payee to elect a form of benefit payable in any manner other than over the life of the participant when the order is presented to the fund after the participant has already begun receiving pension benefits.

D. repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans, LR 16:501 (June 1990), amended by the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 23:1304 (October 1997), LR 30:1685 (August 2004), LR 38:

Family Impact Statement

1. Estimated Effect on the Stability of the Family. There is no estimated effect on the stability of the family.
2. Estimated Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their

Children. There is no estimated effect on the authority and rights of parents regarding the education and supervision of their children.

3. Estimated Effect on the Functioning of the Family. There is no estimated effect on the functioning of the family.

4. Estimated Effect on Family Earnings and Family Budget. There is no estimated effect on family earnings and family budget.

5. Estimated Effect on the Behavior and Personal Responsibility of Children. There is no estimated effect on the behavior and personal responsibility of children.

6. Estimated Effect on the Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. There is no estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Any interested person may submit written comments regarding the content of this proposed Rule to Richard J. Hampton, Jr., Secretary-Treasurer and Executive Officer of the Board of Trustees, 3520 General DeGaulle, Suite 3001, New Orleans, LA, before 5:00 p.m., January 20, 2012.

Louis L. Robein
Fund Attorney

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

RULE TITLE: Tax Qualification Provisions

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

There is no anticipated direct material effect on state and local governmental units as a result of the proposed rule. In order to codify its existing practice and in conformance with a 2008 ruling by the Louisiana Supreme Court, the trustees of the New Orleans Firefighters' Pension and Relief Fund is proposing to eliminate the rule that stated that it would not honor a court order requiring the fund to treat the former spouse as the participant's surviving spouse for purposes of the right to receive all or part of any survivor benefits. The Louisiana Supreme Court overruled the current rule and the New Orleans Firefighters' Pension and Relief Fund began complying shortly after the court's ruling.

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

There is no effect on revenue collections of state or local governmental units as a result of the proposed administrative rule.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Louis L. Robein
Fund Attorney
1112#106

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Racing Commission**

Daily Double (LAC 35:XIII.10501)

The Louisiana State Racing Commission hereby gives notice that it intends to amend the following Rule.

The proposed amendment will allow more than two daily doubles to be permitted during any single race card. By allowing wagers on additional daily doubles, the racetrack handle will increase and therefore the revenue to the state of Louisiana will increase as well.

Title 35

HORSE RACING

Part XIII. Wagering

Chapter 105. Daily Double

§10501. Daily Doubles

A. Daily doubles shall be permitted during any single race card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:441 (December 1976), amended LR 3:37 (January 1977), LR 4:282 (August 1978), LR 6:542 (September 1980), LR 12:289 (May 1986), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

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

RULE TITLE: Daily Double

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

There is no anticipated direct material effect on state or local governmental units as a result of the proposed administrative rule change. The proposed administrative rule will allow more than two daily doubles to be permitted during any single race card for all licensed racetracks conducting live racing beginning on November 14, 2011.

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

The proposed rule change may result in an indeterminable increase in revenue collections by state and local governmental units as these entities currently tax all exotic wagers placed at the racetracks in Louisiana. The Fair Grounds Race Track predicts that by allowing wagers on daily doubles, the amount wagered may increase by at least \$20,000 per racing season. Thus, the increased wagers will result in increased revenue collections for state and local governmental units. The proposed rule allows but does not mandate all four of Louisiana's licensed race tracks to offer more than two daily doubles. To the extent Evangeline Downs, Delta Downs and Louisiana Downs also offer more than two daily doubles, state and local government revenue collections will increase by an indeterminable amount.

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

The proposed administrative rule change may result in an indeterminable economic benefit to licensed racetracks in Louisiana by offering two daily double wagers during any single race card, which may result in increased wagering.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment as a result of the proposed administrative rule change.

Charles A. Gardiner III
Executive Director
1112#031

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Racing Commission**

Mandatory Health Screening (LAC 35:I.1304)

The Louisiana State Racing Commission hereby gives notice that it intends to amend the following Rule. The equine medical director of the Louisiana State Racing Commission has advised that the concern regarding Equine Piroplasmiasis remains, but has been narrowed to the strain, Theileria equi. The need for a negative test for Babesia caballi is no longer required due to the extremely low incidence of Babesia caballi, this will significantly reduce the cost of the testing for the owners of the racehorses requiring testing for Equine Piroplasmiasis.

**Title 35
HORSE RACING**

Part I. General Provisions

Chapter 13. Health Rules

§1304. Mandatory Health Screening

A. ...

B. No horse shall be allowed to enter the confines of a racetrack of any association holding a license to conduct a race meeting or race in Louisiana unless it has had an Equine Piroplasmiasis (EP) test taken within 12 months of the date of entry upon the racetrack and/or race, with a negative result for Theileria equi. Record of the negative test shall be attached to registration papers of the horse upon entry to the racetrack. The trainer of the horse is responsible for insuring that a negative Piroplasmiasis test result is in the racing secretary's office as required by this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by Department of Commerce, Racing Commission, LR 14:226 (April 1988), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 37:1393 (May 2011), LR 38:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

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

RULE TITLE: Mandatory Health Screening

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

There is no anticipated direct material impact on state or local governmental units as a result of the proposed equine health rule change.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

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

The proposed equine health rule change will reduce equine drug screening costs to owners of race horses by approximately \$20 per test administered. Currently, each race horse must provide a negative test for Equine Piroplasmiasis for both strains of Babesia caballi and Theileria equi. These tests each have a separate cost. The Equine Medical Director of the Louisiana State Racing Commission has advised that the concern regarding Equine Piroplasmiasis remains, but has been narrowed to the strain, Theileria equi. The need for a negative test for Babesia caballi will no longer be required due to the extremely low incidence of Babesia caballi. This savings is an economic benefit for the race horse owners. The reduction in number of tests may have a minimal economic impact on Veterinarians administering the tests and laboratories testing for both Babesia calalli and Theileria equi.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Charles A. Gardiner III
Executive Director
1112#024

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Racing Commission**

**Nonsteroidal and/or Anti-Inflammatory Medication
(LAC 35:1505)**

The Louisiana State Racing Commission hereby gives notice that it intends to amend the following Rule.

The proposed amendment serves to bring Louisiana into compliance with the requirements of the Thoroughbred Owners and Breeders Association "TOBA". These requirements implemented by TOBA require that in order to maintain graded stakes race accreditation in Louisiana, for all horses entered in a graded stakes race, the maximum post-race analytical test result levels of the blood of such horse, regardless of time of administration, for drug, phenylbutazone shall be 2.0 micrograms per milliliter.

**Title 35
HORSE RACING**

Part I. General Provisions

Chapter 15. Permitted Medication

§1505. Nonsteroidal and/or Anti-Inflammatory Medication

A. No nonsteroidal and/or anti-inflammatory medication may be administered to or used on a horse in training and eligible to be raced at a race meeting in this state except by a licensed veterinarian or a licensed trainer, or under his or her personal order; provided, however, that any such medication given hypodermically may only be administered by a licensed veterinarian. The nonsteroidal, anti-inflammatory medications designated below may be used in training but may not be administered within 24 hours of a race in which a horse is entered. The maximum analytical test result levels of the urine and blood of such horse, regardless of time of administration, shall be as follows, unless otherwise specified herein.

1. Urine Levels

Post-Race Urine Levels	Total of Drug and/or Metabolite
Phenylbutazone	165 micrograms per milliliter
Oxyphenylbutazone	165 micrograms per milliliter

2. Blood Levels

Post-Race Blood Levels	Total of Drug and/or Metabolite
Phenylbutazone	5.0 micrograms per milliliter
Oxyphenylbutazone	5.0 micrograms per milliliter

B. ...

C. For all horses entered in a graded stakes race, the maximum analytical test result levels of the blood of such horse, regardless of time of administration, shall be as follows.

Post-Race Blood Level	Total of Drug and/or Metabolite
Phenylbutazone	2.0 micrograms per milliliter

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 9:547 (August 1983), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Nonsteroidal and/or
Anti-Inflammatory Medication**

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

There is no anticipated direct material effect on state or local governmental units as a result of the proposed administrative rule change. The current drug-testing contract with LSU provides for the drug testing of nearly 8,000 samples annually. The proposed administrative rule will bring Louisiana into compliance with the requirements of the Thoroughbred Owners and Breeders Association (TOBA) effective January 1, 2012, which provide that in order to maintain graded stakes race accreditation in Louisiana, all horses entered in a Graded Stakes Race must meet a maximum post-race blood level of 2.0 micrograms per milliliter for the drug phenylbutazone.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed administrative rule.

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

Trainers, veterinarians and owners could be impacted by the proposed administrative rule in that upon entering a horse in a graded stakes race, the horse will be subject to the proposed rule, which allows a maximum post-race blood level of 2.0 micrograms per milliliter for the drug phenylbutazone.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule change will have no effect on competition and employment.

Charles A. Gardiner III
Executive Director
1112#022

Evan Brasseaux
Staff Director
Louisiana Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Racing Commission

Pick Five (LAC 35:XIII.11001)

The Louisiana State Racing Commission hereby gives notice that it intends to adopt the following Rule.

The proposed Rule allows for an exotic wager which has a carryover of 50 percent of the betting pool when there is not a single ticket winner to the next day's wagering pool.

Title 35

HORSE RACING

Part XIII. Wagering

Chapter 110. Pick Five

§11001. Pick Five

A. The pick five pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator, nor to the rules governing the distribution of such other pools.

B. A pick five pari-mutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the pick five provisions and rules.

C. A pick five may be given a distinctive name by the association conducting the meeting, subject to approval of the commission.

D. The pick five pari-mutuel pool consists of amounts contributed for a selection for win only in each of five races designated by the association with the approval of the commission. Each person purchasing a pick five ticket shall designate the winning horse in each of the five races comprising the pick five.

E. Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the pick five shall race as a single wagering interest for the purpose of the pick five pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the pick five calculation and the selection shall not be deemed a scratch.

F. The pick five pari-mutuel pool shall be calculated as follows.

1. The net amount in the pari-mutuel pool referred to in this Section is defined as the pari-mutuel pool created by pick five wagering on that particular day and does not include any amounts carried over from previous days' betting as provided by in Subparagraph F.3.a and Subparagraph F.4.a below.

2. One hundred percent of the net amount in the pari-mutuel pool is subject to distribution to a single unique winning ticket holder, plus any carryover resulting from provisions of Paragraph F.3 and Paragraph F.4 shall be distributed to the unique winning ticket holder of the single pari-mutuel ticket which correctly designates the official winner in each of the five races comprising the pick five.

3. In the event there is more than one pari-mutuel ticket properly issued which correctly designates the official

winner in each of the five races comprising the pick five, the net pari-mutuel pool shall be distributed as follows.

a. Fifty percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the five races comprising the pick five.

4. In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner in each of the five races comprising the pick five, the net pari-mutuel pool shall be distributed as follows.

a. Fifty percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the most official winners, but less than five, in each of the five races comprising the pick five.

5. Should no distribution be made pursuant to Paragraph F.1 on the last day of the association meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the five races comprising the pick five for that day or night; the provisions of Subsections I and J have no application on said last day.

G. In the event a pick five ticket designates a selection in any one or more of the races comprising the pick and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the amount wagered in the win pool on two or more favorites is identical, the favorite with the lowest number on the program will be designated as the actual favorite.

H. In the event of a dead heat for win between two or more horses in any pick five race, all such horses in the dead heat for win shall be considered as winning horses in that race for the purpose of calculating the pool.

I. No pick five shall be refunded except when all of the races comprising the pick five are canceled or declared as "no contest." The refund shall apply only to the pick five pool established on that racing card. Any net pool carryover accrued from a previous pick five feature shall be further carried over to the next scheduled pick five feature operated by the association.

J. In the event that any number of races less than five comprising the pick five are completed, 100 percent of the net pool for the pick five shall be distributed among holders of pari-mutuel tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick five pool in which less than five races have

been completed. Any net pool carryover accrued from a previous pick five feature shall be further carried over to the next scheduled pick five pool operated by the association.

K. No pari-mutuel ticket for the pick five pool shall be sold, exchanged or canceled after the time of the closing of wagering in the first of the five races comprising the pick five, except for such refunds on pick five tickets as required by this regulation, and no person shall disclose the number of tickets sold in the pick five pool or the number or amount of tickets selecting winners of pick five races until such time as the stewards have determined the last race comprising the pick five each day to be official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1, R.S. 4:149.2, and R.S. 4:149.3.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pick Five

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

There is no anticipated direct material effect on state or local governmental units as a result of the proposed administrative rule. The proposed rule allows for an exotic wager (Pick-5 wager), which has a carryover of 50% of the betting pool when there is not a single ticket winner to the next day's wagering pool for all licensed race tracks conducting live racing beginning on November 14, 2011.

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

The proposed rule change may result in an indeterminable increase in revenue collections by state and local governmental units as the state and local governments tax a percentage of all amounts wagered at licensed racetracks in Louisiana. The Fair Grounds Race Track predicts that the Pick-5 wager may increase the amount wagered at the track by at least \$23,000 per race season for the meet beginning November 24, 2011 and ending on April 1, 2012. The proposed rule allows but does not mandate all four of Louisiana's licensed race tracks to offer the Pick-5 wager. To the extent Evangeline Downs, Delta Downs and Louisiana Downs also offer the Pick-5 wager, state and local government revenue collections will increase by an indeterminable amount.

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

The proposed administrative rule change may result in an indeterminable economic benefit to licensed racetracks in Louisiana by offering the Pick-5 wager, which may result in increased wagering.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment as a result of the proposed administrative rule change.

Charles A. Gardiner III
Executive Director
1112#018

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Racing Commission

Super Six (LAC 35:XIII.10901)

The Louisiana State Racing Commission hereby gives notice that it intends to amend the following Rule.

The proposed amendment serves to correct the language of the Rule to properly state that 70 percent of the net amount in the pari-mutuel pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six. The Rule currently incorrectly provides that 30 percent of the net amount shall be distributed.

Title 35

HORSE RACING

Part XIII. Wagering

Chapter 109. Super Six

§10901. Super Six

A. - F.1. ...

2. Seventy percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders, plus any carryover resulting from provisions of Paragraph F.4, shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six.

F.3. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:542 (September 1980), amended LR 12:11 (January 1986), amended by the Department of Economic Development, Racing Commission, LR 15:8 (January 1989), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at

(504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Super Six**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There is no anticipated direct material effect on state or local governmental units as a result of the proposed rule change. The proposed rule change serves to correct the language of the rule to properly state that 70% of the net amount in the pari-mutuel pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six. The current rule incorrectly states that 30% of the net amount shall be distributed in this manner. However, the rule has always been applied with 70% being distributed and all governmental units and licensed associations treated the 30% as a typographical error. Thus, the proposed administrative rule change merely codifies current practice.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections of state or local government units.
- 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 administrative rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule change will have no effect on competition and employment.

Charles A Gardiner III
Executive Director
1112#020

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Licensing Board for Contractors**

Home Improvement Registration and
New Home Warranty Act
(LAC 46:XXIX.1511 and 1513)

In accordance with the provisions of La. R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2192, which is the Contractor Licensing Law, the Louisiana State Licensing Board for Contractors (LSLBC) hereby gives notice of its intent to update its rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXIX. Contractors

Chapter 15. Residential

§1511. Home Improvement Registration

A. Home improvement contractors are required to register with the Board in order to perform services in an amount of \$7,500 or more, not to exceed \$75,000. Contractors who hold valid commercial or residential licenses with the Board are exempt from this registration requirement. Home improvement contractors are required to submit certificates evidencing workers' compensation coverage in compliance with Title 23 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:

§1513. New Home Warranty Act

A. Pursuant to R.S. 9:3145, a builder shall give the owner written notice of the requirements of the New Home Warranty Act.

B. Failure to provide such written notice shall be grounds for the residential subcommittee to suspend, modify, or revoke the license of the contractor who failed to provide the required notice, subject to the final approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:

Family Impact Statement

There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

1. What effect will this Rule have on the stability of the family? These proposed Rule changes will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule changes will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? These Rule changes will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? These Rule changes will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? These proposed Rule changes will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action is strictly a state administrative and enforcement function of the LSLBC.

Public Comments

Interested persons may submit written comments until 4:30 p.m., January 10, 2012 to the Louisiana State Licensing Board for Contractors, attention Judy Dupuy, Board

Michael McDuff
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Home Improvement
Registration and New Home Warranty Act**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule change will have no impact on state or local governmental expenditures. Implementation of the proposed rule will be carried out using existing staff and funding level. The revisions make technical changes and clarify existing practice. Section 1511 codifies existing interpretations of the Home Improvement Registration requirements of the Contractor Licensing Law. Section 1513 reflects changes made to the New Home Warranty Act by Act 387 of 2008.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of the proposed rule change will not impact revenue collections of state or local governmental units. The proposed rule change does not include any fee increases by the Louisiana State Licensing Board for Contractors.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Contractors will benefit from clarification of Board procedures and requirements, thus resulting in increased efficiency, faster licensing approval and renewal, and satisfactory resolution of issues regarding regulatory requirements.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule change will have no impact on competition or employment in the public or private sectors.

Judy Dupuy
Board Administrator
1112#027

Evan Brasseaux
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Office of the Governor
Public Defender Board**

Service Restriction Protocol
(LAC 22:XV.Chapter 17)

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 17, as authorized by R.S. 15:148. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq. The purpose of these Rules is to establish policies and procedures to ensure that district public defenders' expenditures do not exceed their revenues and that public defense service providers meet the ethical obligations imposed upon them by the Rules of Professional Conduct.

**Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part XV. Public Defender Board

Chapter 17. Service Restriction Protocol

§1701. Purpose, Findings and Intentions

A. On May 25, 2011, the legislative auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with R.S. 24:515.1.F, focused largely upon the fact that 28 of Louisiana's 42 district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009 and ending June 30, 2010.

The report explains, at p. 6, that:

[D]uring 2008 and 2009, the Louisiana Public Defender Board ("Board") received less money than it had requested during the budgeting/appropriations process. To preserve the state's public defender system, the Board reduced, and in some cases, eliminated state funding to local public defender districts that had positive fund balances. This allowed state funding to be directed to those districts with the greatest financial need. Twelve districts were required to use their fund balances to finance operations in 2008 and 28 districts were required to do so in 2009. It was a limited solution that allowed the continuation of the public defense system during lean economic times. At the same time, this seriously depleted most of the local districts' fund balances.

1. As a result of this spending pattern, the Legislative Auditor recommended that the board monitor the fiscal operations and financial position of all district defenders and, further, provide guidance to district defenders to ensure that districts do not spend more money than they collect. In order to comply with the legislative auditor's recommendation to provide guidance to public defenders to ensure that districts do not spend more funds than they receive, the board adopts this service restriction protocol.

B. The board recognizes that excessive caseloads affect the quality of representation being rendered by public defense service providers and thereby compromise the reliability of verdicts and threaten the conviction of innocent persons.

C. The board further recognizes that excessive caseloads impair the ability of public defense service providers to meet the ethical obligations imposed upon all attorneys, public and private, by the Rules of Professional Conduct. The board finds that by breaching the ethical obligations imposed by the Rules of Professional Conduct, a public defense service provider fails to satisfy the state's obligation to provide effective assistance of counsel to indigent defendants at each critical stage of the proceeding.

1. The relevant ethical obligations imposed by the Rules of Professional Conduct include, but are not limited to rules:

- a. 1.1 (requiring competent representation);
- b. 1.3 (requiring "reasonable diligence and promptness" in representation);
- c. 1.4 (requiring prompt and reasonable communications with the client);
- d. 1.7(a)(2) (a "lawyer shall not represent a client if ... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's

responsibilities to another client, a former client or a third person...”);

e. 1.16(a)(1) (requiring a lawyer to “withdraw from the representation of a client if...the representation will result in violation of the Rules of Professional Conduct or law.”);

f. 5.1(a) and (b) (imposing on a “firm” the obligation to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct” and that a “lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct”); and

g. 6.2(a) (a “lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as ... representing the client is likely to result in violation of the Rules of Professional Conduct or other law.”).

2. The board further recognizes that a district or a district defender’s office may be a “firm” for the purposes of Rule of Professional Conduct 5.1(a).

D. When this protocol uses “shall” or “shall not,” it is intended to impose binding obligations. When “should” or “should not” is used, the text is intended as a statement of what is or is not appropriate conduct, but not as a binding rule. When “may” is used, it denotes permissible discretion or, depending on the context, refers to action that is not prohibited specifically.

E. This protocol is intended to be read consistently with constitutional requirements, statutes, the Rules of Professional Conduct, other court rules and decisional law and in the context of all relevant circumstances.

F. This protocol is neither designed nor intended as a basis for civil liability, criminal prosecution or the judicial evaluation of any public defense service provider’s alleged misconduct.

G. If any phrase, clause, sentence or provision of this protocol is declared invalid for any reason, such invalidity does not affect the other provisions of this protocol that can be given effect without the invalid provision, and to this end, the provisions of this protocol are severable. The provisions of this protocol shall be liberally construed to effectuate the protocol’s purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1703. Definitions

A. As used in this Protocol, unless the context clearly indicates otherwise, the following terms shall have the following meanings.

Board—the Louisiana Public Defender Board.

Board Staff—one or more members of the executive staff of the Board as set forth in R.S. 15:150 assigned by the board or the state public defender to perform the duties set forth herein.

Case—case as defined in R.S. 15:174.C.

Caseload—the number of cases handled by a public defender service provider. The caseload of a district is the sum of all public defender service providers’ caseloads in that District.

District—the judicial district in which a district defender supervises service providers and enforces standards and guidelines.

District Defender—district defender means an attorney under contract with the board to supervise public defense service providers and enforce standards and guidelines within a judicial district or multiple judicial districts. Also known as a district public defender or chief indigent defender.

District Indigent Defender Fund—the fund provided for in R.S. 15:168.

Fiscal Crisis—a fiscal crisis means that a district indigent defender fund is unable to support its expenditures with revenues received from all sources and any accrued fund balance. Because a district indigent defender fund may not expend amounts in excess of revenues and accrued fund balance, a district facing a fiscal crisis must restrict public defense services to cut back on or slow the growth of expenditures. Services should be restricted in the manner that the board and the affected district defender determine to be the least harmful to the continuation of public defense services within the district.

Notice—written notice given as provided for herein.

a. Between the district defender and the board or board staff. Notice between a district defender and the board or board staff, as required in this protocol, may be given by mail, facsimile transmission or electronic mail. If notice is given by certified or registered mail, notice shall be effective upon receipt by the addressee. If notice is given by mail that is not sent certified or registered, by facsimile transmission, or by electronic mail, notice shall be effective only after the sending party confirms telephonically with the receiving party that all pages, including attachments, were received by the receiving party.

b. From the District Defender to the Court. Notice from a district defender to the court, as required in this protocol, shall be given by filing notice with the affected district’s clerks(s) of court and hand-delivering copies to the offices of the chief judge and the district attorney of the affected district.

c. From the District Defender to Others. Notice from a district defender to persons not otherwise specified may be given by hand-delivery or by certified or registered mail; notice of shall be effective upon hand-delivery or deposit into the U.S. mail.

Public Defender Service Provider—an attorney who provides legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana constitutions as a district employee or as an independent contractor. Unless the context or surrounding circumstances clearly indicate otherwise, a public defender service provider includes a district defender.

Rules of Professional Conduct—the Louisiana Rules of Professional Conduct.

State Public Defender—the person employed by the board pursuant to R.S. 15:152.

Workload—a public defender service provider’s caseload, including appointed and other work, adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties. Non-caseload factors also include the experience level of the public defense

service provider, waits in courtrooms for judicial priority afforded private-lawyer cases, training functions required of senior lawyers to junior lawyers, travel time to and from jails and prisons where clients are incarcerated, timeliness and ease of access to incarcerated clients, and the number of non-English speaking clients. A workload is excessive when it impairs the ability of a public defense service provider to meet the ethical obligations imposed by the Rules of Professional Conduct. The workload of a district is the sum of all public defender service providers' workloads in that district. The workload of a district is excessive when all non-supervisory public defense service providers within that district have excessive workloads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1705. Applicability of Sections

A. Sections 1707 through 1717 shall apply when a district is facing a fiscal crisis or excessive workload, or both. Section 1719 applies when one or more individual public defender service providers are facing excessive workloads, but the district itself is not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1707. Notice of Impending Fiscal Crisis, Excessive Caseload, or Both

A. When a district defender or board staff projects that a district will experience a fiscal crisis or an excessive workload, or both, during the next 12 months, the district defender or board staff, as the case may be, shall give notice to the other within seven days of making such projection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1709. Discussion of Alternatives; Proposed Service Restriction Plan

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from giving or receiving of the notice specified in §1707, the following steps shall be taken:

1. Within 45 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 60 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from giving or receiving of the notice specified in §1707, the following steps shall be taken:

1. Within 15 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 30 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1711. Comprehensive and Expedited Site Visits

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps shall be taken.

1. Within 90 days of receiving the district defender's proposed service restriction plan, board staff shall conduct a comprehensive site visit. The purpose of the comprehensive site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting comprehensive site visits, board staff should perform any and all such actions that board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be restricted in the district following completion of the comprehensive site visit, the district defender and board staff should consult with the chief judge and district attorney before finalizing the service restriction plan.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps should be taken:

1. Within 45 days of receipt of the district defender's proposed service restriction plan, board staff should conduct an expedited site visit. The purpose of the expedited site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting expedited site visits, board staff may perform any and all such actions the board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be restricted in the district following completion of the expedited site visit, the district

defender and board staff should consult with the chief judge and district attorney prior to finalizing the service restriction plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1713. Factors to be Considered in Development of a Service Restriction Plan

A. Recognition of Diversity of Districts

1. Individual districts have different public defender service delivery methods, funding levels, caseloads, workloads and staff. As a result, service restriction plans should be tailored to each district. In some districts, restricting misdemeanor representation may be the appropriate step, while in others; districts may no longer be able to handle capital cases. However, to the extent possible, all service restriction plans should reflect that the district will continue representation of existing clients.

B. Non-Attorney Support Staff

1. In preparing the final service restriction plan for a district, the district defender and board staff should attempt to preserve the district's support staff to the extent possible.

C. Public Defender Service Provider Considerations

1. Public defender service providers' workloads must be controlled so that all matters can be handled competently. If workloads prevent public defender service providers' from providing competent representation to existing clients, public defender service providers must neither be allowed nor required to accept new clients.

2. Reasonable communications between public defender service providers and their clients are necessary for clients to participate effectively in their representation.

3. Loyalty and independent judgment are essential elements in public defender service providers' client relationships. Conflicts of interest can arise from the public defender service providers' responsibilities to other clients, former clients, third persons or from the public defender service providers' own interest. Loyalty to clients is impaired when a public defender service provider cannot consider, recommend, or carry out appropriate courses of action for clients because of the public defender service providers' other responsibilities or interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1715. Declination of New Appointments; Other Relief

A. If the district defender and board staff agree that the fiscal crisis or excessive workload, or both, is imminent, the district defender and public defense service providers shall begin declining new appointments at an agreed upon time prior to breaching the Rules of Professional Conduct.

B. If the court appoints the district defender or one of the district's public defense service providers following declination of appointments as set forth in §1715.A, the district defender and the district's public defense service providers shall seek continuances in those cases where the defendant is not incarcerated. The district defender and the district's public defense service providers shall continue to provide legal services for incarcerated clients provided they may do so without breaching the Rules of Professional Conduct and after considering the severity of the offense and

the length of time the defendant has been in custody. If the district defender determines that litigation pursuant to State v. Peart, 621 So.2d 780 (La. 1993); State v. Citizen, 04-KA-1841 (La. 4/1/05), 898 So.2d 325 or other related litigation is necessary at this time, the district defender is authorized to take such action after giving notice to the board and board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1717. Finalization of Plan; Dissemination

A. If the fiscal crisis or excessive workload, or both, remains imminent at conclusion of the board staff's site visit, the district defender shall, within 30 days of conclusion of the site visit, submit his or her proposed written final service restriction plan to board staff.

B. Board staff shall have seven days after receipt of the proposed final service restriction plan to review and approve the plan as submitted or approve the plan as modified by board staff. The plan becomes final upon the district defender's receipt of the board staff's approval. If board staff takes no action on the proposed final services restriction plan, the plan is deemed to be approved as submitted on the first business day following the expiration of the seventh day.

C. After the plan has been approved by board staff, the district defender shall give notice of the plan, together with a copy of the plan, to the court in accordance with §1703.A.9.b. and to the state public defender in accordance with §1703.A.9.a.

D. Copies of the notice and the final service restriction plan also shall be sent by the district defender to the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, the chief and/or administrative judge of each court in the district in which public defender service providers deliver legal services to indigent persons in criminal proceedings, and the sheriff and parish president or equivalent head of parish government for each parish in the district in accordance with §1703.A.9.c.

E. The district defender may seek assistance from the court, where appropriate, in recruiting members of the local private bar to assist in the provision of indigent representation.

F. Notices under this §1717 shall include the effective date of the service restriction and should be provided as soon as practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

§1719. Excessive Workloads of Individual Public Defender Service Providers

A. A public defender service provider's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or result in the breach of ethical obligations, and public defense service providers are obligated to decline appointments above such levels.

B. If the district defender becomes aware that one or more of the district's public defender service providers' workloads are, or will become, excessive, the district defender shall take appropriate action. Appropriate action

includes, but is not limited to, transferring non-representational responsibilities within the district, including managerial or supervisory responsibilities to others; transferring cases from one public defender service providers to another; or authorizing the public defender service providers to refuse new cases.

C. If a public defense service provider believes that he or she has an excessive workload, the public defense service provider shall consult with his or her supervisor and seek a solution by transferring cases to a public defense service provider whose workload is not excessive or by transferring non-representational responsibilities. Should the supervisor disagree with the public defense service provider's position or refuse to acknowledge the problem, the public defense service provider should continue to advance up the chain of command within the district until either relief is obtained or the public defense service provider has reached and requested assistance or relief from the district defender. If after appealing to his or her supervisor and district defender without relief, the public defense service provider should appeal to the regional director, if applicable, and the state public defender for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148. HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. The proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons who wish to submit data, views, comments, or arguments may do so by writing to Jean M. Faria, State Public Defender, 500 Laurel St., Ste. 300, Baton Rouge, LA 70801. Written submissions will be accepted through 4:30 p.m. on Friday, January 20, 2012.

Jean M. Faria
State Public Defender

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Service Restriction Protocol

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

There is no anticipated direct material impact on state or local governmental units as a result of the proposed administrative rule. Implementation of the proposed rule will be carried out using existing staff and funding level. On May

25, 2011, the Legislative Auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with R.S. 24:515.1.F, focused largely upon the fact that twenty-eight of Louisiana's forty-two district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009, and ending June 30, 2010. The proposed rule establishes policies and procedures to ensure that a district public defender's office facing an imminent fiscal crisis takes necessary and appropriate steps to comply with the Legislative Auditor's recommendation that expenditures not exceed revenues.

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

There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed administrative rule.

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

There is no anticipated impact to directly affected persons or non-governmental groups as a result of the proposed administrative rule. The proposed administrative rule provides guidelines to a public defender office that projects that the district will experience a fiscal crisis.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment as a result of the proposed administrative rule.

Roger W. Harris
General Counsel
1112#057

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Tax Commission

Ad Valorem Taxation
(LAC 61:V.101, 303, 304, 703, 907, 1101, 1103, 1307,
1503, 2503, 2713, 2717, 3101, 3013, 3105, 3106 and 3107)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2012 (2013 Orleans Parish) tax year.

The full text of this proposed Rule may be viewed in the Emergency Rule Section of this issue of the *Louisiana Register*.

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the Louisiana Tax Commission hereby submits the following Family Impact Statement.

1. The Effect on the Stability of the Family. Implementation of these proposed Rules will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parent Regarding the Education and Supervision of Their Children. Implementation of these proposed Rules will have 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. Implementation of these proposed Rules will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed Rules will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed Rules will have no effect on the behavior and responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in these Proposed Rules. Implementation of these proposed Rules will have no effect on the ability of the family or local government to perform this function.

Public Comments

Interested persons may submit written comments on the proposed Rules until 4 p.m., January 10, 2012, at the following address: Charles Abels, Tax Commission Administrator, Louisiana Tax Commission, P.O. Box 66788, Baton Rouge, LA 70896.

James D. "Pete" Peters
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Ad Valorem Taxation

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

The proposed rules reflect annual changes in valuation procedures for taxation purposes based on the most recent available data. There are no estimated state costs or savings associated with the proposed rules. The impact on local governmental workload and paperwork cannot be quantified, but is expected to be minimal.

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

Local Governmental Units

On average, these revisions will generally increase certain 2012 real and personal property assessments for property of similar age and condition in comparison with equivalent assessments in 2011. However, the assessments of certain property types will decrease compared to prior year. Composite multiplier tables for assessment of most personal property will decrease by an estimated -0.5%. Specific valuation tables for assessment of pipelines will decrease by an estimated -4.5% (onshore -1.5%, offshore by -7.5%). Oil and gas wells will increase by an estimated 1.5% in all regions. Drilling rigs will increase by an estimated 16% on average (Land rigs 9.5% and well service land only rigs 22.5%). Assessed value per acre of Timberland (Use Value) will decrease on average of all 4 classes by an estimated -7.5%. The net effect determined by averaging these revisions is estimated to increase assessments by an estimated 3.5% and estimated local tax collections by \$28,248,500 in FY 12/13 on the basis of the existing statewide average millage. However, these revisions will not necessarily affect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions of Article VII, Section 23 of the state Constitution. Additionally, the proposed rule addresses the Constitutional Amendment that was approved in October, 2011, allowing for a doubling of the homestead

exemption for certain disabled veterans as stated in the amendment. To the extent that the exemption is approved by parishes and claimed, local revenue will decline.

State Governmental Units

Under authority granted by R.S. 47:1838, the Tax Commission will receive state revenue collections in FY 11/12 generated by assessment service fees estimated to be \$458,000 from public service companies and \$108,000 from financial institutions and insurance companies all of which are assessed by the Tax Commission.

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

The affects of these new rules on assessments of individual items of equivalent real and personal property will generally be higher in 2012 than in 2011. Specific assessments will depend on the age and condition of the property subject to assessment. Taxpayers will be impacted based on the changes to the valuation guidelines for assessments as listed in Section II. The magnitude will depend on the taxable property for which they are liable. Regardless of the guidelines adopted by the Tax Commission, all taxpayers continue to have the right to appeal the assessments. Those appealing will be required to provide a court reporter if transcripts are desired but all meetings are streamed live over the Internet and recorded. Compressors (gas rental) and software are delineated as taxable property and the parcel purchase price is now a required data component on the tax roll. The estimated costs that will be paid by affected persons as a result of the assessment and user service fees as itemized above total \$566,000 to be paid by public service property owners, financial institutions and insurance companies for 2011/2012.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The impact on competition and employment cannot be quantified. In as much as the proposed changes in assessments are relatively small and there will no longer be any charges for the updates, the impact is expected to be minimal.

James D. "Pete" Peters
Chairman
1012#080

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Addictive Disorder Regulatory Authority

Addictive Disorder Regulatory Authority
(LAC 46:LXXX.Chapter 9)

Notice is hereby given that the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and intends to amend LAC 46.LXXX.901-923, Disciplinary Procedures of the Addictive Disorder Regulatory Authority.

The Addictive Disorder Practice Act is found at R.S. 37:3386-3390.6. R.S. 37:3390.3 authorizes the Addictive Disorder Regulatory Authority to conduct disciplinary action to deny, revoke or suspend any credential, specialty certification, status of other recognition authorized by the Addictive Disorder Practice Act. R.S. 37:3388.4A(5) and (12) authorize the Addictive Disorder Regulatory Authority to promulgate rules for administration and carrying out provisions of the Addictive Disorder Practice Act. These amendments are adopted in accordance therewith.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXXX. Substance Abuse Counselors

Chapter 9. Disciplinary Procedures

§901. Causes for Administrative Action

A. The ADRA after due notice and hearing as set forth herein and the Administrative Procedure Act, R.S. 49:950 et seq., may deny, revoke or suspend any credential, specialty certification, status or other recognition issued or applied for, or otherwise discipline an applicant for or holder of any credential, specialty certification, status or other recognition on a finding that the person has violated the Addictive Disorders Practice Act, any rules or regulations promulgated by the ADRA, the Code of Ethics, any supervision guidelines, any policy published by the ADRA, or prior final decisions and/or consent orders involving the holder or applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:656 (March 2005), amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§903. Disciplinary Process and Procedures

A. These rules and regulations are designed to supplement and effectuate the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq. regarding the disciplinary process and procedures and are not intended to amend or repeal the provisions of the Administrative Procedure Act. To the extent any of these rules and regulations are in conflict therewith, the provisions of the Louisiana Administrative Procedure Act shall govern.

B. A disciplinary proceeding, including the formal hearing, is less formal than a judicial proceeding. It is not subject to strict rules and technicalities but must be conducted in accordance with considerations of fair play and constitutional requirements of due process.

C. The purpose of a disciplinary hearing is to determine contested issues of law and fact; whether the person committed certain acts or omissions and, if so, whether those acts or omissions violate the Addictive Disorders Practice Act, a rule or regulation of the ADRA, the Code of Ethics, or prior final decisions and/or consent orders involving the holder, or applicant; and to determine the appropriate disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:656 (March 2005), amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§905. Initiation of Complaints

A. Complaints may be initiated by any person.

B. All complaints shall be signed and in writing. Anonymous complaints will not be considered. The executive director of the ADRA and the ADRA member assigned as complaint investigator, shall decide whether to investigate the complaint. If decision is to not investigate, a letter of denial is sent both to the complainant and the person accused of wrongdoing. If the decision is to investigate, the person shall be notified that allegations have been made that

he may have committed a breach of statute, rule or regulation, the Code of Ethics, and/or prior final decisions or consent orders; and that he must respond in writing to the ADRA within a specified time period. After the response to the complaint, if any, and other pertinent information, if available, is reviewed, a determination will be made by the executive director and complaint investigator as to whether or not a disciplinary proceeding is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:656 (March 2005), amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§906. Investigation of Complaints

A. The complaint is investigated by the board member complaint investigator and executive director of the ADRA to determine if there is sufficient evidence to warrant disciplinary proceedings.

B. The ADRA, through its executive director, may issue subpoenas to secure evidence of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§907. Informal Disposition of Complaints

A. Complaints may be settled informally by the ADRA and the person accused of a violation without the necessity of a formal hearing.

B. The following types of informal dispositions may be utilized.

1. Disposition by Correspondence

a. For complaints deemed technical in nature and which are considered less serious (complaints for which the allegations, if taken as true, do not indicate circumstances which pose a risk or threat of harm to a client), the executive director may write to the person explaining the nature of the complaint received. If the person's subsequent response provides a satisfactory explanation, the matter may be closed.

b. If a satisfactory explanation is not forthcoming, the matter shall be pursued through an informal meeting and/or formal hearing.

2. Disposition by Informal Meeting

a. The executive director may hold an informal meeting with the person in lieu of, or in addition to, correspondence for those complaints deemed technical in nature and which are considered less serious. If the situation is satisfactorily explained in the informal meeting, the matter may be closed.

b. The person shall be given adequate notice of the informal meeting, of the issues to be discussed and of the fact that information brought out at the informal meeting may later be used in a formal hearing. The informal meeting shall be conducted by the complaint investigator or executive director or designee.

3. A settlement agreement between the person making the complaint and the person accused of a violation does not preclude disciplinary action by the ADRA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:656 (March 2005); amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§908. Decision to Initiate Formal Complaint

A. A decision to initiate a formal complaint or charge is made if one or more of the following conditions exist:

1. the complaint is sufficiently serious;
2. the person fails to respond to ADRA correspondence concerning the complaint;
3. the person's response to the ADRA letter or investigation demand fails to provide a satisfactory explanation and/or fails to convince that no action is necessary; or
4. an informal meeting is convened, but fails to resolve all of the issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§909. Sworn Complaint and Notification of Hearing

A. A sworn complaint, fixing a time and place for hearing, is filed by the executive director of the ADRA, charging the violation of one or more of the provisions of the Addictive Disorders Practice Act, the rules and regulations promulgated thereto, the Code of Ethics, or prior final decisions and/or consent orders involving the person.

B. Notification of Hearing

1. At least 30 days prior to the date set for the hearing, a copy of the charges and a notice of the time and place of the hearing are sent to the address of record of the person accused. A copy of the notice sent to the person, attached to a certificate signed by the executive director attesting to the date of the mailing, shall constitute proof of notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§911. Formal Hearing [Formerly §909]

A. The ADRA has the authority, granted by R.S. 37:3390.3 et seq., to bring administrative proceedings against persons holding or applying for any credential, specialty certification status or other recognition issued by ADRA.

B. The person has the right to appear and be heard, either in person or by counsel; the right of notice; a statement of what accusations have been made; the right to present evidence and to cross-examine; and the right to have witnesses subpoenaed. If the person does not appear, either in person or through counsel, after proper notice has been given, the person may be considered to have waived these rights and the ADRA may proceed with the hearing without the presence of the person.

C. Except for good cause shown, motions requesting a continuance of a hearing shall be in writing and shall be filed at least five days prior to the date set for the hearing. The motion shall state the reason for the request. The executive director shall grant or deny the request, in writing, within 24

hours. If the request is denied, written reasons for the denial shall be included.

D. The executive director issues subpoenas for the ADRA for disciplinary proceedings, and when requested to do so, may issue subpoenas for the other party.

E. The ADRA, compromised of a quorum of voting members, shall serve as administrative jury to hear and determine the disposition of the pending matter based on the finding(s) of fact and conclusion(s) of law by receiving evidence and reaching a decision and/or ordering sanctions with an affirmative majority record vote of ADRA members participating in the decision process.

F. Legal counsel to the ADRA shall prosecute the pending matter and bear the burden of proof to be presented to the ADRA.

G. An opening statement by legal or special counsel may present a brief position comment with an outline of evidence to be offered. Respondent or respondent's legal counsel may present an opening defense position statement.

H. Testimony shall be received under oath administered by the presiding hearing officer, the executive director, or other staff or board member designated by the hearing officer.

I. All parties shall be afforded an opportunity to present evidence on all issues of fact and argue on all issues of law and respond by direct testimony, followed with cross examination as may be required for a full and true disclosure of the facts. The direct presentation of evidence shall be introduced by the legal or special counsel and shall be followed by the respondent in proper person or by legal counsel by direct or cross-examination and/or rebuttal.

J. Witnesses may be directly examined and cross-examined. Additionally, witnesses and/or respondents may be questioned during an administrative hearing by members of the ADRA.

K. Closing arguments may be made by respondent in proper person or by legal counsel followed by closing arguments from prosecuting legal or special counsel.

L. A stenographic or audio recording of the hearing shall be made and upon payment by the requesting party a transcript kept on file with the ADRA.

M. The Chairman of the ADRA, or his or her designee, shall preside at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:656 (March 2005), amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§913. Decision

A. The ADRA's decision shall be based on finding(s) of fact and conclusion(s) of law. The decision shall be based on a preponderance of the evidence presented at a formal hearing, together with the determination of any appropriate sanctions, by an affirmative majority record vote of the ADRA members participating in the decision process. Decisions shall be recorded and made part of the record.

B. The ADRA order shall be rendered at the open hearing or taken under advisement and rendered within thirty days of the hearing and then served personally or domiciliary at the respondent's last known address by

regular, registered, or certified mail, or by a diligent attempt thereof.

C. Every order of the ADRA shall take effect immediately on its being rendered unless the ADRA in such order fixes a stay of execution of a sanction for a period of time against an applicant or holder. Such order, without a stay of execution, shall continue in effect until expiration of any specified time period or termination by a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§915. Rehearing

A. The ADRA may reconsider a matter which it has decided. This may involve rehearing the case, or it may involve reconsidering the case on the basis of the record. Such reconsideration may occur when a party who is dissatisfied with a decision of the ADRA files a motion requesting that the decision be reconsidered by the ADRA.

B. A motion by a party for reconsideration or rehearing must be filed within 10 days after notification of the ADRA decision. The motion shall set forth the grounds for the rehearing, which include one or more of the following:

1. the decision is clearly contrary to the law and evidence;
2. there is newly discovered evidence by the party since the hearing which is important to the issues and which the party could not have discovered with due diligence before or during the hearing;
3. there is a showing that issues not previously considered ought to be examined in order to dispose of the case properly; or
4. it would be in the public interest to further consider the issues and the evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§917. Consent Order [Formerly §911]

A. An agreement may be entered into between the ADRA and the person against whom a complaint has been filed. The agreement is not effective until reduced to writing and signed by the person, the executive director of the ADRA and all counsel of record, and approved by the ADRA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:659 (March 2005), repromulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§919. Withdrawal of a Complaint [Formerly §913]

A. A complainant may withdraw a complaint at any time. The ADRA, however, may continue the investigation if it is determined that the issues are of such importance as to warrant further review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:659 (March 2005), repromulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§921. Refusal to Respond or Cooperate with the ADRA [Formerly §915]

A. The application for and/or acceptance of a credential or certification issued by the ADRA obligates the holder thereof to respond to any request for information, or otherwise cooperate with any investigation conducted by the ADRA.

B. Any person refusing to reply to an ADRA inquiry or otherwise cooperate with the ADRA is subject to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:659 (March 2005), amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§923. Judicial Review of Adjudication [Formerly §917]

A. Any person whose credential, certification, status, or application, has been denied, revoked or suspended or who has been otherwise disciplined by the ADRA shall have the right to have the proceedings of the ADRA reviewed by the Nineteenth Judicial District Court, provided that such petition for judicial review is made within 30 days after the notice of the decision of the ADRA. If judicial review is granted, the ADRA's decision is enforceable in the interim unless the court orders a stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:659 (March 2005); amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§925. Appeal [Formerly §919]

A. A person aggrieved by any final judgment rendered by the state district court may obtain a review of said final judgment by appeal to the appropriate circuit court of appeal. Pursuant to the applicable Section of the Administrative Procedure Act, R.S. 49:950 et seq., this appeal shall be taken as in any other civil case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:659 (March 2005), repromulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§927. Emergency Action [Formerly §921]

A. If the executive director of the ADRA finds that public health, safety and welfare requires emergency action and incorporates a finding to that effect in an order, a summary suspension of a certificate or registration, or counselor or prevention specialist in training status, may be ordered pending proceedings for disciplinary action. Such

proceedings shall be promptly instituted and a formal hearing held, after due notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 31:659 (March 2005); amended by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

§929. Public Record

A. All consent orders and final decisions rendered in disciplinary action shall be public record and must be posted on the ADRA website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(3) and La. R.S. 37:3390.3(B) and La. R.S. 37:3389(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to LaMiesa D. Bonton, Executive Director, Addictive Disorder Regulatory Authority, 628 N. Fourth Street, Bin #16, Baton Rouge, LA 70802. All comments must be received no later than 5 p.m., on January 9, 2012.

LaMiesa D. Bonton
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Addictive Disorder Regulatory Authority

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

Other than the rule publication costs, which are estimated to be \$328 in FY 12, it is not anticipated that the proposed rule amendments will result in any material costs to the Addictive Disorder Regulatory Authority (ADRA) or any state or local governmental unit. The rule proposes to eliminate repetition and unnecessary provisions for clarification. The primary changes include: (1) Redesignation of authority for investigation from the Executive Director and a contracted attorney to a Complaint Investigator and the Executive Director; and (2) exclusion of anonymous complaints. The Complaint Investigator will be a member of the board. As such, the board anticipates saving approximately \$1,050 in FY 12 and \$2,100 in subsequent years from attorney contract costs.

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

There is no estimated effect on revenue collections of state or local governmental units. The proposed amendment simply reorganizes the existing Rule 9 regarding Disciplinary Procedures. Repetition and unnecessary provisions were eliminated for clarification.

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

Licensees will benefit from the clarification of rules. There will be no impact on receipts or income resulting from this rule change to any group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition and employment in the public and private sectors.

LaMiesa D. Bonton
Executive Director
1112#068

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Dentistry

Continuing Education Requirements
(LAC 46:XXXIII.1611 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 and 1615. No preamble has been prepared.

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. - I. ...

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 six years.

J.1. - L. ...

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 35:1237 (July 2009), LR 36:2038 (September 2010), LR 37:2151 (July 2011), LR 38:

§1615. Approved Courses

A. Courses sponsored or approved by the following organizations shall be accepted by the board:

1. - 8. ...

9. the American Red Cross as a provider of the cardiopulmonary resuscitation course "Red Cross Professional Rescue Course;"

10. the Accreditation Council for Continuing Medical Education (ACCME).

B. - C. ...

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 35:1238 (July 2009), LR 38:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Public Comments

Interested persons may submit written comments on these proposed Rule 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.

Peyton Burkhalter
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Continuing Education Requirements

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There will be a one-time cost of \$500 in FY 12 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections by the board. Under §1611, the board will audit anesthesia continuing education credits every six years, as opposed to every five years, in order to better align with the audits of regular continuing education credits. This will make the auditing process more efficient but have no effect on revenue for the board or continuing education requirements for licensees.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Under §1615, dentists may receive an economic benefit for continuing education credits since they will now be able to use medical courses approved by the Accreditation Council for Continuing Medical Education for their required credits and will not have to pay extra money for continuing education credits.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

Peyton B. Burkhalter
Executive Director
1112#035

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board for Hearing Aid Dealers

Offices of the Board, Ethics and Licenses
(LAC 46:XXXIX.101, 301, and 901)

Under the authority of R.S. 37:2456, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals,

Board for Hearing Aid Dealers, proposes to amend LAC 46:XXXIX.101, 301 and 901, to change the physical address of the administrative office and clarify the supervision of temporary training permit holders.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIX. Hearing Aid Dealers

Chapter 1. Organization of Board for Hearing Aid Dealers

§101. Offices of the Board

A. The offices of the Louisiana Board for Hearing Aid Dealers shall be at 100 South Pavilion Circle, Room 107, West Monroe, LA 71292. It may have offices at such other places as the board may designate from time to time or as the business of the board may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 38:

Chapter 3. Ethics

§301. Unethical Conduct

A. It shall be the responsibility of each holder of a license, temporary training permit, or certificate of endorsement under R.S. 37:2441-2465 to be familiar with and to avoid commission of any of the acts regarded as unethical practices by the Act. Full responsibility for the ethical conduct of a temporary training permit holder shall rest with the license or certificate holders who sponsored his application for a temporary training permit; provided, however, that such sponsoring license or certificate holders may relieve themselves of such responsibility by discharging the holder of the temporary training permit, returning said license by registered mail, to the board, together with a letter explaining fully the circumstances under which the temporary training permit holder was separated from the employment of the sponsor(s). If the certificate cannot be returned, full explanation shall be included in same letter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1048 (June 2006), LR 38:

Chapter 9. License

§901. Display of License

A. On his application to the board each hearing aid dealer shall state the name and location of the office or place of business where his license or certificate will be regularly displayed. Such office shall be accessible to the public during reasonable business hours and shall contain adequate equipment and supplies for serving the needs of the licensee's clientele and such office and equipment shall at all times be kept in a sanitary condition.

B. In any case where the office of a license or a certificate holder is to be removed from the address shown in the files of the secretary-treasurer of the board, notice of such change must be filed with the secretary-treasurer, together with the new address, within five working days of such removal. Failure to give such notice shall be deemed just cause by the board to refuse him renewal of license.

C. An identification card will be issued to each license or certificate holder which shall list the location of the office where his certificate is displayed and which he shall be required to keep in his possession at all times during the performance of his duties. On the request of any client or prospective client, a board member, or any peace officer, he shall permit identification card to be inspected for the purpose of identification.

D. In any case where a temporary training permit holder is separated from the employment of his sponsor(s) for any cause, he shall surrender his identification card to his sponsor(s) for return to the board with his temporary permit. Upon application of a new sponsor and/or co-sponsor, a new identification card will be issued to the temporary training permit holder and his certificate shall be forwarded to his new sponsor and/or co-sponsor.

E. All persons holding temporary training permits must work out of the office of the sponsor or co-sponsor, where the sponsor or co-sponsor is permanently and regularly located, and must be directly supervised by the fully licensed sponsor or co-sponsor. Exceptions to this ruling must be hardship cases, such as death or disabling illness of sole owner of business. Each case to be handled individually by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2443 and R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1048 (June 2006), LR 38:

Family Impact Statement

The proposed amendment should not have any know or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

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

Public Comments

Any interested person may submit written date, views, arguments or comments regarding this proposed Rule to John Casanova, Chairman, P.O. Box 6016, Monroe LA 71211. All comments must be submitted no later than 4:30 p.m., Tuesday, January 10, 2012.

Resa Brady
Administrative Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Offices of the Board, Ethics and Licenses**

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

Other than the rule publication costs, which are estimated to be \$1,500 in FY 12, it is not anticipated the proposed rule amendments will result in any material costs or savings to the Board of Hearing Aid Dealers (BHAD) or any state or local governmental unit.

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

There is no estimated effect on revenue collections of state or local governmental units.

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

The proposed rule implements a change of physical address for the Administrative Office. The proposed rule implements the addition of a potential co-sponsor for the temporary training program. For clarification, the proposed rule adds the requirement that temporary training permit holders work under the direct supervision of their sponsor or co-sponsor out of their place of business. These changes will have no impact on costs to directly affected persons or non-governmental groups.

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

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

Resa Brady
Administrative Secretary
1112#111

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Direct Service Worker Registry
(LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 92 as authorized by R.S. 37:1031-1034 and R.S. 40:2179-2179.2. 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 306 of the 2005 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 establishment and maintenance of the Direct Service Worker (DSW) Registry and defined the qualifications and requirements for direct service workers (*Louisiana Register*, Volume 32, Number 11). The November 20, 2006 Rule was amended to further clarify the provisions governing the DSW registry (*Louisiana Register*, Volume 33, Number 1). The department amended the provisions governing the training curriculum for direct service workers to require that licensed providers and other state approved training entities that wish to conduct training for direct service workers, and do not have an approved training curriculum, must use the department-approved training curriculum (*Louisiana Register*, Volume 35, Volume 11).

House Concurrent Resolution (HCR) 94 of the 2010 Regular Session of the Louisiana Legislature suspended LAC.48.I.9201-9203 and directed the department to adopt new provisions governing the DSW Registry which will

eliminate duplicative regulations and streamline the DSW process. In compliance with the directives of HCR 94, the department promulgated an Emergency Rule which amended the provisions governing the DSW Registry in order to create a more manageable and efficient DSW process (*Louisiana Registry*, Volume 37, Number 4).

Act 451 of the 2005 Regular Session of the Louisiana and Act 299 of the 2011 Regular Session of the Louisiana Legislature direct the department and the Louisiana State Board of Nursing to establish provisions regarding direct service workers as medication attendants. In compliance with Acts 451 and 299, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions governing medication administration and the performance of noncomplex nursing tasks by direct service workers. This proposed Rule will also continue the provisions of the April 20, 2011 Emergency Rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Health Standards

Chapter 92. Direct Service Worker

Registry Subchapter A. General Provisions

§9201. Definitions

Able to Self-Direct the Services—a person's ability to make decisions about his or her own care and actively participate in the planning and directing of that care.

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse;
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the health, moral or emotional well-being of the individual being supported is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

Board—the Louisiana State Board of Nursing.

Daily Monitoring—activities pursued on a daily basis by a family member, direct service worker and/or other health care providers for the purposes of collecting critical information needed to assure the individual's welfare. Monitoring activities may include, but are not limited to face-to-face home visits with the person receiving assistance or services and/or daily telephone calls with the individual.

Employer—an individual or entity that pays an individual wages or a salary for performing a job.

Finding—allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department following a decision by an administrative law judge or a court of law after all appeal delays afforded by law or allegations of abuse, neglect, exploitation or extortion that

are placed on the registry by the department as a result of failure to timely request an appeal in accordance with the provisions of this Rule.

Health Standards Section—the Department of Health and Hospitals, Bureau of Health Services Financing's Health Standards Section.

Home and Community-Based Services—those services as defined in R.S. 40:2120.2 or a successor statute. For the purposes of this Rule, home and community-based services do not include services provided in day or residential congregate care settings including, but not limited to, the following:

1. nursing facilities;
2. hospice care facilities;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers; or
7. any other 24-hour facility licensed by the department or the Department of Children and Family Services, exclusive of center-based respite facilities.

Independent Living Environment—a person's residence which may include the person's home, apartment, trailer or other unlicensed residence and includes where the person works, attends school or engages in community activities.

Neglect—the failure, or willful forsaking of an adult by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his/her well-being.

Noncomplex Task—a health-related task with predictable results that can be safely performed according to exact directions with no need to alter the standard procedure.

Person-Specific Training—a set of knowledge, skills and abilities that pay close attention to the person's strengths, age, disabilities, health care needs and related factors in order to meet the unique needs of the person receiving care.

Plan of Care—a plan that describes the assistance or services to be provided to a person receiving home and community-based services, as defined herein. The plan also describes who shall provide the assistance and the frequency and/or duration of the services that will be provided.

Provider—

1. an entity that furnishes care and services to consumers and has been licensed by the department to operate in the state;
2. in the case of an authorized departmental self-directed program, provider shall be the entity or individual as specified by the program employing the direct service worker.

Registered Nurse—any individual possessing a valid, active and unencumbered Louisiana license to practice nursing as a registered nurse (RN).

Stable and Predictable—a situation in which the person's clinical and behavioral status is determined by a licensed RN to be non-fluctuating and consistent. A stable and predictable condition involves long term health care needs which are recuperative in nature and do not require the regular scheduled presence of a RN or licensed practical nurse (LPN).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9202. Introduction

A. The Department of Health and Hospitals (DHH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, exploitation or extortion have been substantiated by the department, and administrative law judge, or a court of law.

B. The Direct Service Worker Registry will contain the following items on each individual for whom a finding has been placed:

1. name;
 - a. - i.v. Repealed.
2. address;
3. Social Security number;
4. state registration number;
5. an accurate summary of finding(s); and
6. information relative to registry status which will be available through procedures established by the Health Standards Section (HSS).

C. Employers must use the registry to determine if there is a finding that a prospective hire has abused or neglected an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Training and Competency Requirements

§9211. General Provisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9213. Trainee Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9215. Training Curriculum

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:96 (January 2007), LR 35:2437 (November 2009), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9217. Training Coordinators

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9219. Competency Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9221. Compliance with Training and Competency Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter C. Provider Participation

§9231. Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, a licensed provider shall:

1. assure that the individual is at least 18 years of age, and that they have the ability to read, write and carry out directions competently as assigned; and

2. access the registry to determine if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

B. The provider shall check the registry every six months to determine if any currently employed direct service worker or trainee has been placed on the registry with a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

1. The provider shall maintain printed confirmation from the registry web site as verification of compliance with this procedure.

C. - E.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

§9241. General Provisions

A. Unless authorized to provide medication administration or non-complex tasks by another state law or regulation, all direct service workers providing medication

administration or non-complex tasks shall comply with the provisions of Subchapter D of this Rule.

B. In order to perform any of the authorized procedures specified in this Subchapter, the direct service worker shall not have a finding placed against him/her on the DSW Registry. Any direct service worker who has had a finding placed against him/her on the Direct Service Worker Registry shall not perform any of the authorized procedures specified in this Subchapter.

C. The medication administration and non-complex tasks authorized by this Subchapter may be performed only in home and community-based settings by DSWs who meet the requirements of this Subchapter. The requirements of this Subchapter are in addition to the general training, competency, and provider requirements which generally govern direct service workers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks

A. A registered nurse shall authorize and monitor medication administration and noncomplex tasks performed by the direct service workers. In order for the RN to authorize these tasks, the direct service worker shall:

1. be employed or contracted by an agency licensed by the Health Standards Section or employed as part of an authorized departmental self-directed program; and
2. attend to an individual who:
 - a. is receiving home and community-based services;
 - b. is able to self-direct the services or resides in a residence where there is daily monitoring by a family member or other health care provider;
 - c. has an approved current plan of care; and
 - d. receives periodic assessment by a RN based on the person's health status and specified within the plan of care; in no case shall the periodic assessment be less than annually.

B. A registered nurse may delegate to a licensed practical nurse components of the training and supervision of the DSW provided that the RN shall retain the responsibility and accountability for all acts of delegation and ensuring authorization and competency validation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9245. Training Requirements for the Performance of Medication Administration and Noncomplex Tasks

A. Person-Specific Training. Direct service workers shall receive person-specific training from a RN who has assessed the health status of the person and who has determined that the direct service worker can competently perform the tasks in a safe, appropriate manner for this person.

1. The RN's determination of competency shall be certified by the RN in writing, and the written certification shall be maintained in the direct service worker's personnel file. The RN's determination of competency shall not be delegated.

2. This training shall be repeated if the RN does not certify that the direct service worker has demonstrated a sufficient level of competency in the subject matter.

3. Based on the nursing assessment and clinical judgment, the RN shall provide additional person-specific training when the person receiving care has a change in health status or physician orders and yet remains in a stable, predictable condition. Examples include, but are not limited to:

- a. changes in physician orders concerning health care tasks to be performed;
- b. changes in physician orders regarding routine medications; or
- c. new physician orders for short-term use of medication for a minor acute health condition.

B. Medication Administration Training. Direct service workers shall attain proficiency in the fundamentals of medication administration. Direct Service Staff shall receive 16 hours of medication administration training which has been coordinated and approved by an RN and which shall include the following.

1. Medication Administration Core Curriculum:
 - a. legal aspects of administering medication;
 - b. roles and responsibilities of medication administration;
 - c. medical terminology;
 - d. classification and identification of drugs;
 - e. measuring medications;
 - f. effects and side effects;
 - g. distribution and routes of medication;
 - h. drug interactions;
 - i. handling and storage of medicines;
 - j. six fundamental rights of administering medication:
 - i. give the right medication;
 - ii. give the right dose;
 - iii. give the medication to the right individual;
 - iv. give the medication by the right route;
 - v. give the medication at the right time; and
 - vi. provide the right documentation.

2. Documentation Training. Direct service workers shall attain proficiency in documentation which includes:

- a. the contents of chart or record;
- b. the importance of record keeping;
- c. the rules for charting, including time limits;
- d. documenting vital signs, as applicable;
- e. documenting the condition of the person receiving care and significant changes; and
- f. the name of medication, dose, route and time of administration.

3. Skill Proficiency Training. Direct service workers shall attain proficiency in the following skill areas, either by physical or verbal demonstration to the RN:

- a. universal precautions and infection control;
- b. vital signs, as applicable:
 - i. counting pulse;
 - ii. counting respirations;
 - iii. taking blood pressure; and
 - iv. taking oral, rectal, or axillary temperature.

C. A direct service worker who has not completed didactic training and demonstrated competency in accordance with guidelines established and approved by the

Department of Health and Hospitals and the Louisiana Board of Nursing shall not be allowed to perform medication administration or any noncomplex tasks covered by this Rule.

D. Any direct service worker currently employed to perform the procedures authorized by this Chapter shall complete the training required by this Subchapter no later than 12 months after promulgation of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9247. Annual Competency Evaluation

A. The direct service worker shall undergo an annual competency evaluation performed by a RN to determine whether he/she is competent to perform the authorized person-specific medication administration and noncomplex tasks safely and appropriately.

B. The RN shall use professional judgment in assessing whether or not the tasks are being performed correctly and safely by the DSW.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9249. Authorized Medication Administration and Noncomplex Tasks

A. Direct service workers who meet the requirements of this Rule, including training and competency assessment, and who are so authorized may perform medication administration and non-complex tasks authorized by this Subchapter. Such a direct service worker may perform the following tasks for a person who is in stable condition only when the tasks may be performed according to exact directions, there is no need to alter the standard procedure, and the results are predictable:

1. administration of oral and topical medication, ointments, suppositories or a pre-measured dosage unit provided by the manufacturer of an oral inhalant aerosol, as ordered by an authorized prescriber;

a. any medication administered by a direct service worker under these provisions shall be in a container which meets acceptable pharmaceutical standards and is marked with:

- i. clear instructions;
- ii. the prescriber's name;
- iii. the prescription number, if any;
- iv. the name of the medication;
- v. the dosage;
- vi. the route;
- vii. the frequency; and
- viii. the time to be administered, if applicable;

2. provision of routine hydration, nutrition or medication by way of an established gastro-tube; and

3. other noncomplex tasks as identified by guidelines established and approved by the Department of Health and Hospitals and the Louisiana Board of Nursing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9251. Direct Service Worker Responsibilities

A. The responsibilities of the direct service worker include, but are not limited to:

1. following the exact instructions of the RN in the performance of all authorized procedures;

2. notifying the employer or the RN when the health status of the person receiving assistance changes so the RN can reassess to determine whether or not the procedures can still be performed by the direct service worker in a safe manner;

3. notifying the employer or the registered nurse when the prescribed procedures or medications or dosages change so additional person-specific training can be conducted by the RN if applicable; and

4. notifying the employer, the RN, and the person receiving assistance or services if a finding has been placed against him/her on the Direct Service Worker Registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9253. Registered Nurse Responsibilities

A. The responsibilities of the registered nurse include, but are not limited to:

1. assuring that during person-specific trainings and required evaluations, the direct service worker performs the authorized medication administration and non-complex tasks according to exact directions making certain there is no need to alter the standard procedures and the results are predictable;

2. assuring no direct service worker is authorized to perform medication administration and noncomplex tasks if the health status of the person receiving services is not stable and predictable;

3. assuring that the direct service worker demonstrates a sufficient level of competency in the subject matter as set forth in training;

4. assisting in the development of the plan of care for the person receiving assistance or services;

5. assisting the person's planning team to determine the frequency needed for RN assessments of the health status of the person receiving assistance or services;

6. at least annually, completing the competency evaluation of the direct service worker; and

7. completing and submitting the required documentation to the licensed agency employing the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9255. Employer Responsibilities

A. The responsibilities of the employer employing the direct service worker include, but are not limited to:

1. assuring that only direct service workers authorized under these provisions, or other provisions authorized through state laws or regulations, perform medication administration and noncomplex tasks;

2. assuring that the direct service worker performs the authorized procedures as trained by the RN and written in the plan of care;

3. maintaining all of the required documentation in the agency's permanent files;

4. assuring that the registered nurse assesses the health status of the person receiving assistance at least annually, or if required, more frequently as determined by the assessment of the RN and as specified in the plan of care;

5. assuring that the direct service worker received the required training and annual competency evaluation;

6. assuring that the direct service worker does not have a finding placed against him/her on the DSW Registry;

7. assuring that no direct service worker whose authorization has terminated continues to perform the procedures that had been previously authorized;

8. notifying the RN of any changes in the health status of the person receiving services or any concerns regarding the ability of the direct service worker to continue to perform the authorized procedures safely;

9. cooperating with the Health Standards Section during any monitoring of these provisions including, but not limited to:

a. providing access to required documentation; and

b. providing access to the direct service worker and supervisory staff; and

10. assisting the Health Standards Section with obtaining access to persons receiving assistance and their guardians.

B. The employer shall maintain the following documentation within its permanent files:

1. documentation by the RN to show that the person is able to self-direct the services or resides in a residence where there is daily monitoring by a family member, a direct service worker, or other health care provider;

2. a current plan of care for the person receiving services;

3. copies of the RN assessments of the person's health status;

4. documentation that the direct service worker does not have a finding placed against him/her on the DSW Registry;

5. documentation that the direct service worker has met the training requirements, including the additional person-specific training required when tasks or medications or dosages change, as determined by the RN;

6. documentation that the direct service worker has met the medication administration training requirements, including documentation that the RN conducting the training has assessed the proficiency and determined that the direct service worker exhibits sufficient proficiency to be able to administer medications safely and/or to perform non-complex tasks safely;

7. a statement signed by the RN who conducted the annual competency evaluation specifying when it was conducted and what tasks the direct service worker is authorized to perform; and

8. if applicable, a statement regarding termination of authorization with the date that authorization was terminated and the reason for termination. If the termination is due to a RN assessment of the health status of the person receiving assistance or the competency of the direct service worker, the statement shall be written and signed by the RN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9257. Liability

A. Any registered nurse who has properly trained and documented that a direct service worker is competent to perform the prescribed tasks shall not be liable for any civil damages as a result of any act or omission of the direct service worker.

B. Any physician licensed to practice medicine by the Louisiana State Board of Medical Examiners, whether or not the physician developed the person's plan of care, including but not limited to the prescribed medical regime, who is rendering professional medical care services shall not be liable for any civil damages as a result of any negligent or intentional act or omission of the direct service worker or licensed agency.

C. Notwithstanding any other provision of law, licensed agencies that employ direct service workers shall be liable for acts or omissions of the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9259. Termination of Authorization to Perform Services

A. Authorization for a direct service worker to perform medication administration and noncomplex tasks shall terminate for any of the following reasons.

1. The condition of the person for whom the direct service worker is performing the tasks has become unstable.

2. A registered nurse certifies that the direct service worker can no longer perform the prescribed tasks safely.

3. The direct service worker has a finding placed against him/her on the DSW Registry.

4. The direct service worker failed to comply with any provision of the enabling statute.

5. Additional person-specific training by a RN was not completed after the tasks to be performed or the types of medications to be administered changed.

6. The annual competency evaluation was not completed.

7. The person receiving assistance or their guardian has requested that the direct service worker no longer be authorized to administer or perform the authorized procedures for the person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9261. Violations and Noncompliance

A. The Health Standards Section is responsible for investigation of complaints and noncompliance with these provisions.

B. If a direct service worker is found to be administering medication or performing noncomplex tasks in a manner not consistent with these provisions or other state regulations, the HSS shall require that the direct service worker immediately cease performing such procedures.

C. If the professional performance of a registered nurse or a licensed practical nurse is found to be questionable by the Health Standards Section, a referral shall be made to the respective professional licensing board for review and consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter E. Violations

§9271. Disqualification of Training Programs

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9273. Allegations of Direct Service Worker Wrong-Doing

A. The department, through the Division of Administrative Law, or its successor, has provided for a process of the review and investigation of all allegations of wrong-doing by direct service workers. Direct service workers and trainees must not:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9277. Informal Dispute Resolution

A. When a direct service worker feels that he/she has been wrongly accused, the following procedure should be followed:

1. The direct service worker may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the department's notice of violation. The request for an IDR must be made to the department in writing.

2. - 4e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter F. Administrative Hearings

§9285. General Provisions

A. ...

1. The request for an administrative hearing must be made in writing to the Division of Administrative Law, or its successor.

2. ...

3. Unless a timely and proper request is received by the Division of Administrative Law or its successor, the findings of the department shall be considered a final and binding administrative determination.

a. ...

B. When an administrative hearing is scheduled, the Division of Administrative Law, or its successor, shall notify the direct service worker, his/her representative and the agency representative in writing.

1. - 1.c. ...

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the following procedures.

1. - 8. ...

9. When the allegation(s) supporting placement of a finding is substantiated, the direct service worker may not rest on the mere denial in his/her testimony and/or pleading(s) but must set forth specific facts and produce evidence to disprove or contest the allegation(s).

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9287. Preliminary Conferences

A. - A.6. ...

B. When the Division of Administrative Law, or its successor, schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:99 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9289. Witnesses and Subpoenas

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006), amended LR 33:99 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9291. Continuances or Further Hearings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006), amended LR 33:100 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9293. Failure to Appear at Administrative Hearings

A. If a direct service worker fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Division of Administrative Law, or its successor, dismissing the appeal. A copy of the notice shall be mailed to each party.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006), amended LR

33:100 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972 by increasing the stability of the families who have family members who are elderly or have disabilities and require assistance with daily activities to enhance their well-being.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, January 25, 2012 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Direct Service Worker Registry

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12 since existing staff will be absorbing these reviews into their current workload. It is anticipated that \$3,608 (SGF) will be expended in FY 11-12 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 proposed rule, which continues the provisions of the April 20, 2011 Emergency Rule, proposes to amend the provisions governing the Direct Service Worker (DSW) Registry to create a more manageable and efficient DSW process, and to adopt provisions governing medication administration and the performance of noncomplex nursing tasks by direct service workers (approximately 25,000 statewide). It is anticipated that implementation of this proposed rule will have minimal economic cost for providers who are required to satisfy the additional training requirements if they wish to participate in the medication administration and noncomplex tasks component of the Direct Service Workers Licensing Standards; however, the cost is indeterminable since there is no way to establish how many providers will participate in this component.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1112#082

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Greater New Orleans Community
Health Connection Waiver
(LAC 50:XXII.Chapters 61-69)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXII.Chapters 61-69 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In July 2007, the Department of Health and Hospitals was awarded a \$100 million Primary Care Access Stabilization Grant (PCASG) from the Department of Health and Human Services, Centers for Medicare and Medicaid Services as a result of the disruption of primary health care service delivery in the greater New Orleans area due to Hurricane Katrina. The PCASG was a three-year grant program designed to restore and expand access to primary care services, including behavioral health and dental services, without regard to a patient's ability to pay. The intent of the program was to restore and stabilize the provision of primary health care services in the New Orleans area by providing short-term financial relief to providers and to decrease reliance on costly emergency room services for patients who were uninsured, underinsured, or receiving Medicaid benefits. The PCASG program ended on September 30, 2010.

As a result of the termination of PCASG funds, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which implemented a demonstration program under the authority of a Section 1115 Waiver, called the Greater New Orleans Community Health Connection (GNOCHC) Waiver, to ensure continued access to primary and behavioral health care services that were restored and expanded in the greater New Orleans area (*Louisiana Register*, Volume 36, Number 10). Under this demonstration waiver, the Medicaid Program will provide coverage for primary and behavioral health care services delivered to eligible residents in Jefferson, Orleans, Plaquemines and St. Bernard parishes who have family income up to 200 percent of the federal poverty level.

The department promulgated an Emergency Rule which amended the provisions of the October 1, 2010 Emergency Rule in order to establish provisions that will allow waiver recipients in the Family Planning Waiver and the GNOCHC Waiver to receive health care services through both waiver programs simultaneously (*Louisiana Register*, Volume 37, Number 5). This proposed Rule is being promulgated to

continue the provisions of the May 20, 2011 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 7. Greater New Orleans Community Health Connection Waiver

Chapter 61. General Provisions

§6101. Purpose

A. The Department of Health and Hospitals, Bureau of Health Services Financing hereby implements a Section 1115 demonstration waiver called the Greater New Orleans Community Health Connection (GNOCHC) Waiver to provide primary and behavioral health care services to eligible uninsured residents in the greater New Orleans area.

B. The intent of the GNOCHC Waiver is to preserve primary and behavioral health care access that was restored and expanded in the greater New Orleans area with Primary Care Access and Stabilization Grant (PCASG) funds awarded by CMS after Hurricane Katrina. Implementation of this waiver program is expected to reduce reliance on costlier emergency room services to meet primary care needs.

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 38:

§6103. Program Design

A. The GNOCHC Waiver is designed to transition the PCASG medical home model to a financially sustainable model utilizing other funding resources over the long-term.

B. The waiver is a 39 month demonstration project which shall be implemented in two primary phases which span four fiscal years.

C. Phase one of the GNOCHC Waiver shall focus on preserving access to primary care services and developing a CMS approved plan for transitioning the funding of the demonstration project to long-term revenue sources. Phase two will focus on implementing the transition plan, assessment, and the demonstration project phase-down.

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 38:

Chapter 63. Eligibility

§6301. General Provisions

A. The targeted population for GNOCHC Waiver services shall be uninsured adults who live in the greater New Orleans area. For purposes of these provisions, the greater New Orleans area shall consist of the following parishes:

1. Jefferson;
2. Orleans;
3. Plaquemines; and
4. St. Bernard.

B. All applicants shall be pre-screened to determine possible eligibility for coverage in other Medicaid or Children's Health Insurance Programs (CHIP) prior to determining eligibility for GNOCHC Waiver services.

C. Retroactive coverage is not available in the GNOCHC Waiver program. The effective date of coverage for eligible recipients shall be the first day of the month in which the application for services was received.

D. At the department's discretion, the following measures may be taken to manage eligibility for these services to ensure that waiver expenditures do not exceed funding allocations. The department may:

1. employ a first come, first served reservation list to manage the number of applications received;
2. limit the number of applications provided to potential recipients; or
3. impose enrollment limits.

E. Waiver recipients shall undergo an eligibility redetermination at least once every 12 months. Each redetermination shall include an assessment of the individual's eligibility for coverage in other Medicaid or CHIP programs.

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 38:

§6303. Recipient Qualifications

A. GNOCHC Waiver services shall be provided to individuals who:

1. have been uninsured for at least six months;
2. are not pregnant;
3. are age 19 through 64 years old;
4. are not otherwise eligible for Medicaid, CHIP or Medicare coverage, with the exception of TAKE CHARGE Family Planning Waiver participants and recipients who receive coverage through the Tuberculosis Infected Program;
5. are a resident of any one of the parishes in the greater New Orleans area as defined in §6301.A;
6. have family income up to 200 percent of the federal poverty level; and
7. meet citizenship requirements under the Deficit Reduction Act of 2008 and the Children's Health Insurance Program Reauthorization Act of 2009.

B. A waiver recipient shall be disenrolled from the program if any one of the following occurs. The recipient:

1. has family income that exceeds the income limits for the program at redetermination;
2. voluntarily withdraws from the program;
3. no longer resides in a parish within the greater New Orleans area;
4. becomes incarcerated or becomes an inpatient in an institution for mental disorders;
5. obtains health insurance coverage;
6. turns 65 years old; or
7. dies.

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 38:

Chapter 65. Services

§6501. Covered Services

A. The following services shall be available to GNOCHC Waiver recipients:

1. care coordination;
2. immunizations and influenza vaccines;
3. laboratory and radiology;
4. mental health care;
5. primary health care;
6. preventive health care;
7. substance abuse; and

8. specialty care (covered with a referral from the primary care physician).

B. Cost-sharing may be applicable to the services rendered in this waiver program. All demonstration cost-sharing shall be in compliance with federal statutes, regulations and policies. A waiver recipient's share of the cost shall be restricted to a 5 percent aggregate limit per family.

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 38:

§6503. Service Delivery

A. All of the covered services under this waiver program shall be delivered by an existing PCASG-funded provider.

B. All services shall be delivered on an outpatient basis. Reimbursement shall not be made under this waiver program for services rendered to recipients who meet inpatient status.

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 38:

Chapter 67. Provider Participation

§6701. General Provisions

A. All providers participating in the delivery of services covered under the GNOCHC Waiver shall adhere to all of the applicable federal and state regulations, policy, Rules, manuals and laws.

B. Each participating provider shall meet the following requirements. The provider shall:

1. be an existing PCASG-funded provider;
2. be operational and serving waiver recipients on October 1, 2010;
 - a. if a former PCASG provider wishes to reestablish operations as a GNOCHC participating provider after October 1, 2010, CMS approval shall be required;
3. be a public or private not-for-profit entity that meets the following conditions:
 - a. the entity must not be an individual practitioner in private solo or group practice;
 - b. the provider shall be currently licensed, if applicable;
 - c. either the provider or its licensed practitioners shall be currently enrolled in the Medicaid Program; and
 - d. all health care practitioners affiliated with the provider that provide health care treatment, behavioral health counseling, or any other type of clinical health care services to patients shall hold a current, unrestricted license to practice in the state of Louisiana within the scope of that licensure;
4. provide full disclosure of ownership and control, including but not limited to any relative contractual agreements, partnerships, etc.;
5. have a statutory, regulatory or formally established policy commitment (e.g. through corporate bylaws) to serve all people, including patients without insurance, at every income level regardless of their ability to pay for services, and be willing to accept and serve new publicly insured and uninsured individuals;
6. maintain one or more health care access points or service delivery sites for the provision of health care services which may include medical care, behavioral health care and

substance abuse services, either directly on-site or through established contractual arrangements; and

7. be capable of implementing and evaluating the effectiveness of an organization-specific strategic plan to become a sustainable organizational entity by December 31, 2013 which is capable of permanently providing primary or behavioral health care services to residents in the greater New Orleans area.

a. For purposes of these provisions, a sustainable organizational entity shall be defined as an entity actively developing, implementing and evaluating the effectiveness of its organization to diversify its operating income and funding resources to include non-demonstration funding sources.

C. Participating providers shall be responsible for:

1. collection of all data on the services rendered to demonstration participants through encounter data or other methods so specified by the department; and

2. maintenance of such data at the provider level.

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 38:

§6703. Reporting Requirements

A. GNOCHC participating providers shall be required to provide a sustainability plan to the department by March 1, 2011.

B. Semi-annual progress reports on the sustainability plan shall be submitted during the second and fourth quarter of each demonstration year. The first annual report is due in the fourth quarter of the first demonstration year.

C. Participating providers shall be required to provide encounter data in the format and frequency specified by the department.

D. Participating providers shall be required to report quarterly on infrastructure investment and community care coordination payment expenditures.

E. Providers that do not comply with these reporting requirements shall not be eligible to receive payments from this demonstration program and may receive financial penalties for noncompliance.

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 38:

Chapter 69. Reimbursement

§6901. General Provisions

A. Providers shall ensure that reimbursement for services covered under the GNOCHC Waiver is requested only for those individuals who meet the program criteria.

B. Federal financial participation (FFP) for this waiver program is limited to the federal share of \$30 million annually in demonstration expenditures in each of the first three years of the demonstration. In year four, FFP is limited to the federal share of \$7.5 million. Thus, the total FFP for this demonstration waiver program over all four years is limited to the federal share of \$97.5 million. Federal funding will not be available for expenditures in excess of these annual limits even when the expenditure limit was not reached in prior years.

1. These provisions do not preclude the department from including as allowable expenditures for a particular demonstration year any expenditures incurred after the end

of a demonstration year for items or services furnished during that year.

C. The federal share of expenditures for payments to GNOCHC providers shall be calculated based upon the applicable federal medical assistance percentage rate for the year in which the expenditures were incurred.

D. The department may make an urgent sustainability payment to any eligible GNOCHC provider that meets the criteria of this Chapter 67 and requires financial support to maintain clinical operations while the department seeks CMS approval for the funding and reimbursement protocol for this waiver program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§6903. Reimbursement Methodology

A. Interim Payments

1. Interim payments may be made to eligible providers according to the following criteria.

a. For the period beginning October 1, 2010 through December 31, 2010, an eligible provider's interim payment will be a quarterly urgent sustainability payment equal to 25 percent of the provider's average annual historical grant award received under the PCASG program.

b. For the period beginning January 1, 2011 through September 30, 2011, an eligible provider's interim payment will be monthly up to one third of the quarterly urgent sustainability payment.

2. Interim payments may be reduced by the department at the request of the provider and after consideration of limitations to ensure budget neutrality and promote sustainability.

3. The amount of interim payments, including urgent sustainability payments, made to providers in the period of October 1, 2010 through September 30, 2011 will be reconciled against the actual payments that would have been made to the providers to reimburse waiver-related costs through targeted payments, incentive payments, and encounter rate payments for dates of service during the period.

a. The reconciliation shall occur simultaneously with the demonstration year end adjustments.

b. Any overpayments may be offset against a provider's payment in the quarter following the reconciliation. Any underpayments may be made in the quarter following the reconciliation, subject to any limitations necessary to maintain budget neutrality and promote sustainability.

B. Primary Care Encounter Rates. Encounter rates shall be paid on a per visit basis for primary care services. The primary care encounter rate will be a fixed amount for all providers and will not be provider-specific or vary by patient acuity or service intensity.

1. Primary care encounter rates shall be paid on a per visit basis for the following services covered under the GNOCHC Waiver:

- a. primary health care;
- b. care coordination/case management;
- c. preventive health care;
- d. specialty care;
- e. laboratory services, excluding clinical diagnostic laboratory services;

f. radiology services, including the professional and technical components;

f. immunizations and influenza vaccines not covered by the Vaccines for Children Program; and

g. only the screenings for mental health disorders as a component of the primary care visit, excluding the actual behavioral health services.

NOTE: A separate fee-for-service payment will be made for vaccine administration up to the charge limit specified for the Medicaid Program. Clinical diagnostic laboratory services will be reimbursed separately in an amount equal to the current Medicare rate for each test.

2. For purposes of these provisions, a primary care encounter is defined as a visit to an eligible provider during which the waiver participant receives covered primary care services from a licensed practitioner or a person working under the supervision of a licensed practitioner including, but not limited to a:

- a. physician;
- b. clinical nurse specialists;
- c. nurse practitioner; or
- d. physician assistant.

3. Only one primary care visit may be billed per day.

C. Basic Behavioral Health Care Encounter Rates. Encounter rates shall be paid on a per visit basis for basic behavioral health care services. The basic behavioral health care encounter rate will be a fixed amount for all providers and will not be provider-specific or vary by patient acuity or service intensity.

1. Basic behavioral health care encounter rates shall be paid on a per visit basis for the following services covered under the GNOCHC Waiver:

- a. mental health screening, assessment, and counseling;
- b. substance abuse screening, assessment, and counseling;
- c. medication management;
- d. laboratory services; and
- e. follow-up services for conditions treatable or manageable in primary care settings, excluding actual primary care services.

NOTE: Services in residential, inpatient hospital and outpatient hospital settings are not covered.

2. Behavioral health care encounter rates are designed to cover behavioral health services provided to waiver participants who:

- a. do not meet the federal definition of serious mental illness (SMI), but do meet the American Society of Addictive Medicine (ASAM) criteria; and/or
- b. have a major mental health disorder as defined by the Medicaid Program or previously had a major mental health disorder and are in need of maintenance services.

3. Only one behavioral health care visit may be billed per day. The basic behavioral health care encounter rate and the primary care encounter rate may be billed on the same day if the waiver participant receives both types of services.

D. Serious Mental Illness Behavioral Health Care Encounter Rates. Encounter rates shall be paid on a per visit basis to Jefferson Parish Human Services Authority (JPHSA) and Metropolitan Human Services District (MHSD) for SMI behavioral health care services distinct from the basic behavioral health care encounter rate. The SMI behavioral health care encounter rate will be a fixed amount for JPHSA and MHSD.

1. SMI behavioral health care encounter rates shall be paid to JPHSA and MHSD for the following behavioral health services covered under the GNOCHC Waiver:

- a. mental health screening, assessment, and counseling;
- b. substance abuse screening, assessment, and counseling;
- c. medication management; and
- d. follow-up and community support services.

NOTE: Services in residential, inpatient hospital and outpatient hospital settings are not covered.

2. For purposes of these provisions, an SMI behavioral health care encounter shall be defined as a visit to JPHSA or MHSD during which the waiver participant receives covered mental health and/or substance abuse services from a licensed practitioner or other practitioner authorized by the department to provide services directly or under supervision to the extent permitted by the practitioner's scope of state licensure.

3. SMI behavioral health care encounter rates are designed to cover behavioral health care services provided to waiver participants who meet the federal definition of serious mental illness, including those who also have a co-occurring addictive disorder, and those who were previously identified as SMI and are in need of maintenance services.

4. Only one SMI behavioral health care visit may be billed per day. The SMI behavioral health care encounter rate and the primary care encounter rate may be billed on the same day if the waiver participant receives both types of services.

5. The sum total of payments for behavioral health care services for SMI shall not exceed 10 percent of the total computable expenditures under the demonstration.

E. Targeted Payments

1. Infrastructure Investments

a. Payments shall be made to eligible providers for infrastructure costs related to the provision of health care services. The department shall assess proposals submitted by participating providers to determine if the provider meets the department's designated criteria for the targeted infrastructure investment initiative.

b. Payments for infrastructure investments will cover expenditures to support the provider's delivery of services, billing for services, financial accountability, and encounter/quality reporting. Infrastructure payments will not cover any costs for the acquisition, construction or renovation of bricks and mortar.

c. The sum total of payments for infrastructure investments shall not exceed 10 percent of the total computable expenditures under the demonstration.

2. Community Care Coordination

a. Payments, based on limited allocations, may be made to providers for community care coordination. The department will determine the total amount available for payments for community care coordination.

b. Community care coordination payments shall be calculated using the number of uninsured adult encounters reported for the most recent 12 month period available from all participating providers. The department will allocate and pay the total amount available for payments for community care coordination among providers based on each provider's annual number of uninsured adult encounters as a proportion

of the total number of uninsured adult encounters for all participating providers.

c. Community care coordination payments will be made to eligible providers in demonstration year one only.

d. The sum total of payments for community care coordination shall not exceed 10 percent of the total computable expenditures under the demonstration during demonstration year one.

F. Incentive Payments

1. Quarterly incentive payments shall be made to eligible providers that have National Committee for Quality Assurance (NCQA) Patient Centered Medical Home (PCMH) recognition.

2. For the period beginning October 1, 2010 through June 30, 2011, the amount of a provider's payment will be the product of the fixed rate assigned to the level of NCQA PCMH recognition documented for the provider on the first day of the preceding quarter and the provider's quarterly number of uninsured adult encounters for the preceding quarter.

3. After June 30, 2011, the amount of a provider's payment will be the product of the fixed rate assigned to the level of NCQA PCMH recognition documented for the provider on the first day of the preceding quarter and the provider's quarterly number of enrollee encounters for the preceding quarter.

G. Supplemental Payments. If the sum of all payments made under the demonstration for the year is less than the limit of total computable expenditures allowed under the demonstration for the year, the department will divide the remainder of total computable expenditures allowed under the demonstration for the year by the total number of primary care and behavioral health care (basic and SMI) encounters for waiver participants with dates of service during the year as reported by all eligible providers and the quotient will be considered a supplement to the primary care and behavioral health care encounter rates.

1. A supplemental payment will be made to each eligible provider and the payment amount will be the product of the supplemental rate and the number of primary care and behavioral health care encounters for waiver participants with dates of service during the year as reported by the provider.

2. Supplemental payments, if any, will be made to providers during the quarter following the end of the demonstration year.

H. Adjustments. Rates and payments may be adjusted as necessary to continue providing access to services while maintaining expenditures within budget neutrality limitations, or in conjunction with the various other payment mechanisms within the waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule

on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that uninsured individuals in the greater New Orleans area will continue to have access to primary care and family planning services.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, January 25, 2012 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Greater New Orleans Community Health Connection Waiver**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of \$8,497,813 for FY 11-12, \$8,496,144 for FY 12-13 and \$2,085,000 for FY 13-14. It is anticipated that \$1,968 (\$984 SGF and \$984 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$19,217,230 for FY 11-12, \$19,618,163 for FY 12-13 and \$4,814,405 for FY 13-14. It is anticipated that \$984 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule, which continues the provisions of the October 1, 2010 emergency rule adopts provisions to implement the Greater New Orleans Community Health Connection (GNOCHC) Waiver to ensure continued access to primary and behavioral health care services that were restored and expanded in the greater New Orleans area (approximately 50,000 eligibles). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the

Medicaid Program by approximately \$27,713,075 for FY 11-12, \$28,114,307 for FY 12-13 and \$6,899,405 for FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Don Gregory
Medicaid Director
1112#083

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Pre-Admission Certification
(LAC 50:V.301)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the December 20, 1985 Rule governing the reimbursement methodology and inpatient admission criteria for designated surgical procedures performed in an ambulatory (outpatient) setting, and amended the provisions of the June 20, 1994 Rule governing registration, length of stay assignments and pre-admission certification for inpatient hospital services to require pre-admission certification for all admissions to non-state and state operated acute care general hospitals (*Louisiana Register*, Volume 36, Number 1). The January 20, 2010 Rule also repromulgated the provisions contained in the June 20, 1994 Rule and a June 20, 2001 Rule governing pre-admission certification and length of stay assignments for inpatient psychiatric services for inclusion in the *Louisiana Administrative Code*.

The department promulgated an Emergency Rule to amend the provisions of the January 20, 2010 Rule to revise the provisions governing extensions of the initial length of stay assignment for inpatient hospital admissions (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the January 26, 2010 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Pre-Admission Certification

§301. General Provisions

A. - F.2. ...

a. Subsequent approved extensions may be submitted for consideration referencing customized data, Southern Regional and national length of stay data.

F.3. - J.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:66 (January 2009), amended LR 38:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, January 25, 2012 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Inpatient Hospital Services Pre-Admission Certification

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$123 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the January 26, 2010 emergency rule which amended the provisions governing inpatient hospital services to clarify the provisions governing extensions of the initial length of stay assignment for inpatient hospital admissions. It is anticipated that implementation of this proposed rule will not have economic

cost or benefits to directly affected persons or non-governmental groups for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1112#084

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Minimum Licensing Standards
Civil Monetary Penalty Waivers
(LAC 48:I.9741 and 9743)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.9741 and 9743 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the minimum licensing standards for nursing facilities to revise the provisions governing the approval of facility plans in order to require nursing facilities to comply with the Facility Guidelines Institute's requirements for the design and construction of healthcare facilities, and to allow certain facilities to opt out of compliance under certain conditions (*Louisiana Register*, Volume 37, Number 9).

The department now proposes to amend the provisions governing the minimum licensing standards for nursing facilities to revise the appeals and monetary penalties provisions to allow nursing facilities who have received fines to waive their administrative appeal rights in order to receive a reduction in the amount of the fine.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter A. General Provisions

§9741. Notice and Appeal Procedure

A. Unless otherwise indicated, any sanction may be administratively appealed in the manner described in the nursing home law in section 2009.11.

1. In the case of a civil monetary penalty for Class "C" violations, the facility may waive in writing the right to all administrative reconsideration and appeal rights in this §9741 within 30 days from the date of receipt of the notice imposing the civil monetary penalty. This waiver shall be forwarded to the Health Standards Section of the department on the appropriate form designated by the department.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:53 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9743. Civil Money Penalties (Fines)

A. - C. ...

D. Class "C" violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. A second Class "C" violation occurring within an 18 month period from the first violation shall not exceed \$2,000 per day.

1. If a facility waives its right to all administrative reconsideration and appeal rights pursuant to §9741 and in accordance with the provisions of §9741.A.1, the department shall reduce the civil monetary penalty for Class "C" violations by 50 percent, which shall be paid by the facility within 30 days of receipt of the notice imposing the civil monetary penalty.

2. If the facility does not waive its right to all administrative and appeal rights provided for in §9741, in accordance with the provisions of §9741.A.1, the department shall not reduce the civil monetary penalty for Class "C" violations by 50 percent.

3. The provisions contained in §9743.D.1-3 above shall apply to any civil monetary penalty for Class "C" violations assessed on or after promulgation of the final Rule.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:54 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, January 25, 2011 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facilities—Minimum Licensing Standards—Civil Monetary Penalty Waivers

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$328 (SGF) will be expended in FY 11-12 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 revenue collections to DHH may be reduced by an indeterminable amount. Although many nursing facilities may exercise their right to waive the administrative appeal process in order to get a fine reduction, the department cannot determine how many nursing facilities may exercise this right and there is no way to determine the amount of penalties that may be imposed.

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

This proposed rule amends the provisions governing the minimum licensing standards for nursing facilities to revise the appeals and monetary penalties provisions to allow nursing facilities who have received fines to waive their administrative appeal rights in order to receive a reduction in the amount of the fine. It is anticipated that implementation of this proposed rule will have economic benefits for nursing facilities who opt to waive their administrative appeal rights in order to reduce their fines; however, the benefit is indeterminable since there is no way to determine how many nursing facilities will exercise this right.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1112#085

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Methodology
Minimum Data Set Assessments
(LAC 50:II.20001, 20007, 20013 and 20015)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:II.20001, §20007, §20013 and §20015 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 694 of the 2001 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing the prospective reimbursement methodology for private nursing facilities and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 6). The department amended the June 20, 2002 Rule to incorporate new definitions and revised current definitions governing nursing facility reimbursements (*Louisiana Register*, Volume 28, Number 12). The December 20, 2002 Rule also revised the provisions governing the submission of cost reports and adopted provisions governing verification of minimum data set (MDS) assessments and the appeal process for dispute of MDS review findings.

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing MDS assessments in order to comply with new federal requirements (*Louisiana Register*, Volume 36, Number 10). The October 20, 2010 Emergency Rule also changed the date that MDS assessments are due. This proposed Rule is being promulgated to continue the provisions of the October 20, 2010 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20001. Definitions

[Formerly LAC 50:VII.1301]

Assessment Reference Date—the date on the minimum data set (MDS) used to determine the due date and delinquency of assessments. This date is used in the case-mix reimbursement system to determine the last assessment for each resident present in the facility and is included in the quarterly case-mix report.

Case-Mix Index—a numerical value that describes the resident's relative resource use within the groups under the Resource Utilization Group (RUG-III) classification system, or its successor, prescribed by the department based on the resident's MDS assessments. Two average CMIs will be determined for each facility on a quarterly basis, one using all residents (the facility average CMI) and one using only Medicaid residents (the Medicaid average CMI).

Case-Mix MDS Documentation Review (CMDR)—a review of original legal medical record documentation on a randomly selected MDS assessment sample. The original legal medical record documentation supplied by the nursing facility is to support certain reported values that resulted in a specific RUG classification. The review of the documentation provided by the nursing facility will result in the RUG classification being supported or unsupported.

Delinquent MDS Resident Assessment—an MDS assessment that is more than 121 days old, as measured by the Assessment Reference Date (ARD) field on the MDS.

Facility Cost Report Period Case-Mix Index—the average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the facility's cost reporting period that is used to determine the medians. This average includes any revisions made due to an on-site CMDR.

EXAMPLE: A January 1, 2011-December 31, 2011 cost report period would use the facility-wide average case-mix indices calculated for March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011.

1. Repealed.

Facility-Wide Average Case-Mix Index—the simple average, carried to four decimal places, of all resident case-mix indices based on the last day of each calendar quarter. If a facility does not have any residents as of the last day of a calendar quarter or the average resident case-mix indices appear invalid due to temporary closure or other circumstances, as determined by the department, a statewide average case-mix index using occupied and valid statewide facility case-mix indices may be used.

Final Case-Mix Index Report (FCIR)—the final report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter, referred to as the point-in-time.

Minimum Data Set (MDS)—a core set of screening and assessment data, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long-term care facilities certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within facilities, between facilities, and between facilities and outside agencies. The Louisiana system will employ the current MDS assessment required and approved by the Centers for Medicare and Medicaid Services (CMS).

MDS Supportive Documentation Guidelines—the department's publication of the minimum medical record documentation guidelines for the MDS items associated with the RUG-III or its successor classification system. These guidelines shall be maintained by the department and updated and published as necessary.

On-Site MDS Review—Repealed.

Point-in-Time—Repealed.

Preliminary Case Mix Index Report (PCIR)—the preliminary report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter.

RUG-III Resident Classification System—the resource utilization group used to classify residents. When a resident classifies into more than one RUG-III, or its successor's group, the RUG-III or its successor's group with the greatest CMI will be utilized to calculate the facility average CMI and Medicaid average CMI.

Summary Review Results Letter—a letter sent to the nursing facility that reports the final results of the case-mix MDS documentation review and concludes the review.

1. The *summary review results letter* will be sent to the nursing facility within 10 business days after the final exit conference date.

* * *

Unsupported MDS Resident Assessment—an assessment where one or more data items that are used to classify a resident pursuant to the RUG-III, 34-group, or its successor's resident classification system is not supported according to the MDS supporting documentation guidelines and a different RUG-III, or its successor, classification would result; therefore, the MDS assessment would be considered "unsupported."

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§20007. Case-Mix Index Calculation

[Formerly LAC 50:VII.1307]

A. The Resource Utilization Groups-III (RUG-III) Version 5.20, 34-group, or its successor, index maximizer model shall be used as the resident classification system to determine all case-mix indices, using data from the minimum data set (MDS) submitted by each facility. Standard Version 5.20, or its successor, case-mix indices developed by CMS shall be the basis for calculating average case-mix indices to be used to adjust the direct care cost component. Resident assessments that cannot be classified to a RUG-III group, or its successor, will be excluded from the average case-mix index calculation.

B. Effective with the January 1, 2011 rate setting, each resident in the facility, with a completed and submitted assessment, shall be assigned a RUG-III, 34-group, or its successor, on the last day of each calendar quarter. The RUG-III group, or its successor, is calculated based on the resident's most current assessment, available on the last day of each calendar quarter, and shall be translated to the appropriate case-mix index. From the individual resident case-mix indices, two average case-mix indices for each Medicaid nursing facility shall be determined four times per year based on the last day of each calendar quarter.

C. Effective with the January 1, 2011 rate setting, the facility-wide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid is known to be the per diem payor source on the last day of the calendar quarter.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1792 (August 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§20013. Case-Mix Minimum Data Set Documentation

Reviews and Case-Mix Index Reports

[Formerly LAC 50:VII.1313]

A. The department or its contractor shall provide each nursing facility with the Preliminary Case-Mix Index Report (PCIR) by approximately the fifteenth day of the second month following the beginning of a calendar quarter. The PCIR will serve as notice of the MDS assessments

transmitted and provide an opportunity for the nursing facility to correct and transmit any missing MDS assessments or tracking records or apply the CMS correction policy where applicable. The department or its contractor shall provide each nursing facility with a Final Case-Mix Index Report (FCIR) (point-in-time) utilizing MDS assessments after allowing the facilities a reasonable amount of time to process their corrections (approximately two weeks).

1. If the department or its contractor determines that a nursing facility has delinquent MDS resident assessments, for purposes of determining both average CMIs, such assessments shall be assigned the case-mix index associated with the RUG-III group "BC1-Delinquent" or its successor. A delinquent MDS shall be assigned a CMI value equal to the lowest CMI in the RUG-III, or its successor, classification system.

B. The department or its contractor shall periodically review the MDS supporting documentation maintained by nursing facilities for all residents, regardless of payer type. Such reviews shall be conducted as frequently as deemed necessary by the department. The department shall notify facilities of the Case-Mix MDS Documentation Reviews (CMDR) not less than two business days prior to the start of the review date and a FAX, electronic mail or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying possible documentation that will be required to be available at the start of the on-site CMDR.

1. The department or its contractor shall review a sample of MDS resident assessments equal to the greater of 20 percent of the occupied bed size of the facility or 10 assessments and shall include those transmitted assessments posted on the most current FCIR. The CMDR will determine the percentage of assessments in the sample that are unsupported MDS resident assessments. The department may review additional or alternative MDS assessments, if it is deemed necessary.

2. When conducting the CMDR, the department or its contractor shall consider all MDS supporting documentation that is provided by the nursing facility and is available to the RN reviewers prior to the exit conference. MDS supporting documentation that is provided by the nursing facility after the exit conference shall not be considered for the CMDR.

3. Upon request by the department or its contractor, the nursing facility shall be required to produce a computer-generated copy of the transmitted MDS assessment which shall be the basis for the CMDR.

4. After the close of the CMDR, the department or its contractor will submit its findings in a Summary Review Results (SRR) letter to the facility within 10 business days following the exit conference.

5. The following corrective action will apply to those facilities with unsupported MDS resident assessments identified during an on-site CMDR.

a. If the percentage of unsupported assessments in the initial on-site CMDR sample is greater than 25 percent, the sample shall be expanded, and shall include the greater of 20 percent of the remaining resident assessments or 10 assessments.

b. If the percentage of unsupported MDS assessments in the total sample is equal to or less than the

threshold percentage as shown in column (B) of the table in Subparagraph e below, no corrective action will be applied.

c. If the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the table in Subparagraph e below, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility's CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. A follow-up CMDR process described in Subparagraphs d and e may be utilized at the discretion of the department.

d. Those providers exceeding the thresholds (see column (B) of the table in Subparagraph e during the initial on-site CMDR will be given 90 days to correct their assessing and documentation processes. A follow-up CMDR may be performed at the discretion of the department at least 30 days after the facility's 90-day correction period. The department or its contractor shall notify the facility not less than two business days prior to the start of the CMDR date. A fax, electronic mail, or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying documentation that must be available at the start of the on-site CMDR.

e. After the follow-up CMDR, if the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the following table, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility's CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. In addition, facilities found to have unsupported MDS resident assessments in excess of the threshold in Column (B) of the table below may be required to enter into an MDS Documentation Improvement Plan with the Department of Health and Hospitals. Additional follow-up CMDR may be conducted at the discretion of the department.

Effective Date (A)	Threshold Percent (B)
January 1, 2003	Educational
January 1, 2004	40%
January 1, 2005	35%
January 1, 2006 and beyond	25%

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2537 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§20015. Appeal Process

[Formerly LAC 50:VII.1315]

A. If the facility disagrees with the CMDR findings, a written request for an informal reconsideration must be submitted to the department or its contractor within 15 business days of the facility's receipt of the CMDR findings in the SRR letter. Otherwise, the results of the CMDR findings are considered final and not subject to appeal. The

department or its contractor will review the facility's informal reconsideration request within 10 business days of receipt of the request and will send written notification of the final results of the reconsideration to the facility. No appeal of findings will be accepted until after communication of final results of the informal reconsideration process.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2538 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, January 25, 2012 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facilities—Reimbursement Methodology—Minimum Data Set Assessments

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$1,312 (\$656 SGF and \$656 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$656 will be collected in FY 11-12 for the federal share of

the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the October 20, 2010 emergency rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing minimum data set (MDS) assessments in order to comply with new federal requirements. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or nursing facilities for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1112#086

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

Accreditation of Laboratories Conducting Drinking Water Analyses (LAC 48:V.Chapter 80 and LAC 51:XII.101, 301)

Under the authority of R.S. 36:254(B)(7), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Louisiana Department of Health and Hospitals, Office of Public Health (DHH-OPH) proposes to adopt a set of new regulations governing the accreditation of laboratories performing drinking water analyses for public water systems and for other potable water supplies. Currently, DHH-OPH accredits laboratories performing drinking water analyses pursuant to DHH's "Laboratory Certification Manual" dated September 1989 and adopted effective November 20, 1989 (see LR 15:968). The purpose of the proposed rulemaking is to repeal the September 1989 DHH "Laboratory Certification Manual" in its entirety and replace it with a new, updated document. The need for a new set of regulations is spurred by the institution of new national environmental laboratory certification standards known as the 2009 The NELAC Institute (TNI) Standard (previously referred to as the National Environmental Laboratory Accreditation Conference). Such new standards include the National Environmental Laboratory Accreditation Program (NELAP). The major purpose of this rulemaking is to ensure that water samples collected and analyzed pursuant to the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) meet quality control and quality assurance requirements. Sample results which meet the quality control and quality assurance requirements are used by public water systems and DHH-OPH's Safe Drinking Water Program to ensure that the health of the citizens and visitors to the State of Louisiana are being protected. These regulations will govern the laboratory accreditation and standards of performance for laboratories conducting drinking water analyses for public water systems and for other potable water supplies located in the State of Louisiana.

In addition, the state health officer acting through the DHH, OPH, pursuant to the authority in R.S. 40:4(A)(8) and R.S. 40:5, proposes to amend LAC, Title 51 (Public Health—Sanitary Code), Part XII (Water Supplies). Part XII (Water Supplies) of LAC 51 (the State Sanitary Code) generally is the major Part of the LAC which regulates potable water supply systems from a public health standpoint, including public water systems. Sections 101 and 301 of LAC 51:XII are proposed to be amended to make the current Sanitary Code regulations comport with the laboratory accreditation regulations proposed to now be housed in LAC 48:V.Chapter 80.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 28. Drinking Water Laboratories

Chapter 80. Accreditation of Laboratories Performing Drinking Water Analyses

Subchapter A. General Provisions

§8001. Scope and Authority

A. This Chapter, adopted pursuant to R.S. 36:254(B)(7), the federal Safe Drinking Water Act (42 USC 300f, et seq.) and its implementing regulations (40 CFR Parts 141 and 143), the 2009 The NELAC Institute (TNI) Standard, the National Environmental Laboratory Accreditation Program (NELAP), and the Louisiana State Sanitary Code (LAC 51) constitutes the Department of Health and Hospitals, Office of Public Health (hereinafter referred to as "department") regulations governing the accreditation of laboratories performing drinking water analyses required to be performed by regulations or orders issued pursuant to those acts and regulations. The authority of the department to grant, maintain or revoke a laboratory's TNI NELAP or State Accreditation shall not be delegated to an outside person or body. Portions of the accreditation process may be contracted out by the department but the authority to grant, maintain, suspend or revoke accreditation remains with the department. This Chapter establishes the procedures for obtaining and maintaining accreditation, and the criteria and procedures laboratories shall follow in analyzing drinking water samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8003. Construction

A. These rules shall be liberally construed to permit the department to discharge its statutory functions, and to effectuate the purposes of the laboratory accreditation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8005. Purpose of the Regulations

A. This Chapter is promulgated for the following purposes:

1. to establish an accreditation program for laboratories performing analyses of drinking water samples;
2. to establish the administrative procedures to be followed by laboratories seeking accreditation and by laboratories maintaining accreditation;

3. to establish the categories and parameters for which laboratories may be accredited;

4. to require that the accreditation status of a laboratory be contingent upon that laboratory's continued compliance with the standards set forth herein and with the standards established by The NELAC Institute National Environmental Laboratory Accreditation Program (TNI NELAP); and

5. to establish the enforcement procedures the department shall follow to ensure that all accredited laboratories or laboratories seeking accreditation are in compliance with this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8007. Accreditation Program Requirements

A. The laboratory accreditation program is voluntary and open to any laboratory to apply for accreditation. However any laboratory wishing to analyze drinking water samples for compliance with regulations adopted or orders issued pursuant to the Safe Drinking Water Act, or R.S. 36:254(B)(7), R.S. 36:254(B)(8), R.S.40:4(A)(8), R.S.40:5(6), R.S.40:5.9, or Part XII of the department's Sanitary Code (LAC 51) shall follow the procedures set forth herein in order to obtain and maintain accreditation.

B. Accredited laboratories and laboratories seeking accreditation shall analyze all drinking water samples in accordance with the procedures and methods required by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8009. Incorporation by Reference

A. The department hereby adopts and incorporates into these regulations:

1. the "National Primary Drinking Water Regulations," 40 CFR 141, as amended;
2. the "National Secondary Drinking Water Regulations," 40 CFR 143, as amended;
3. the NELAC Institute 2009 Standard (TNI Standard); and
4. the Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance Fifth Edition (EPA 815-R-05-04) January 2005 including Supplement 1(EPA 815-F-08-006), June 2008, both published by the United States Environmental Protection Agency (USEPA or EPA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8011. Program Information

A. Unless otherwise specified, any questions concerning the requirements of this program as detailed in this Chapter should be directed to:

Laboratory Accreditation Section
Louisiana Department of Health and Hospitals
Office of Public Health
3101 West Napoleon Avenue – Room 201
Metairie, Louisiana 70001
504-219-4662
www.lab.dhh.louisiana.gov

1. All requests for information, applications for laboratory accreditation, and submittals of fees and performance testing data shall be submitted to the address above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8013. Severability

A. If any Section, Subsection, Paragraph, Clause, Subclause, Division, or other portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:

Subchapter B. Program Procedures and Requirements

§8015. Scope

A. This Subchapter establishes the following:

1. requirements of accreditation;
2. categories for which accreditation is available;
3. procedures for becoming an accredited drinking water laboratory;
4. procedures for an accredited drinking water laboratory to renew or modify its accreditation;
5. procedures for cancellation, suspension, and revocation of accreditation; and,
6. fees for accreditation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8017. Requirements of Accreditation

A. All water sample analyses performed for the purpose of determining compliance with the chemical, physical, or radiological requirements of the State's primary and secondary drinking water regulations, or when required by order issued by the department pursuant to the authority of the federal Safe Drinking Water Act, or any other regulations adopted pursuant to those acts, shall be performed in laboratories accredited for this purpose pursuant to this Chapter. Analyses performed in laboratories not so accredited shall not be accepted by the department as being in compliance with the requirements, regulations or orders of the federal Safe Drinking Water Act. Effective July 1, 2011 or the effective date of this rule, whichever occurs later, any laboratory accredited or seeking accreditation in one or more of the categories specified in §8019 of this Chapter shall comply with the following modules (as appropriate for the category or categories which the laboratory is seeking accreditation) which are contained in Volume 1, Management and Technical Requirements for Laboratories Performing Environmental Analysis of the TNI Standard:

1. Module 1–Proficiency Testing [Environmental Laboratory (EL)-Volume (V) 1 Module (M) 1 - 2009];
2. Module 2–Quality Systems General Requirements [EL-VIM2-International Standards Organization (ISO)-2009];
3. Module 3–Asbestos Testing (EL-VIM3-2009);
4. Module 4–Chemical Testing (EL-VIM4-2009); and,

5. Module 6—Radiochemical Testing (EL-VIM6-2009).

B. To be clear, the requirements of §8017 A.1 and §8017 A.2 shall apply to all laboratories regardless of the number of categories specified in §8019 for which the laboratory is seeking accreditation. The requirements of §8017 A.3, §8017.4, and §8017.5 shall apply dependent upon the particular category or categories for which the laboratory is seeking accreditation.

C. The department shall, in accord with the provisions of this Section, grant reciprocity to a laboratory located outside of the State of Louisiana if the laboratory requesting accreditation also meets each of the following requirements:

1. the laboratory is accredited by a TNI NELAP-recognized primary accreditation body;
2. the laboratory submits an acceptable application for accreditation to the State; and
3. the laboratory pays all applicable fees;

D. The department shall consider only the current certification of accreditation issued by the TNI NELAP recognized primary accreditation body and shall grant reciprocal accreditation for the fields of testing, methods and analytes for which the laboratory holds primary TNI NELAP accreditation. The department will issue a Louisiana accreditation certificate within thirty calendar days of receipt of the laboratory's application if all the above reciprocity requirements are met by the laboratory. The department, as a TNI NELAP-recognized secondary accreditation body, does not require any additional proficiency testing, quality assurance, or on-site assessment requirements for fields of testing for which the laboratory holds primary TNI NELAP accreditation.

E. A laboratory that is TNI NELAP-accredited by the department that has lost recognition may seek renewal of TNI NELAP accreditation through any TNI NELAP-recognized federal or state accreditation body. The laboratory's TNI NELAP accreditation from an accreditation body that has lost TNI NELAP recognition shall remain valid throughout its current certificate of accreditation.

F. TNI NELAP accredited laboratories whose home state becomes a recognized TNI NELAP accreditation body may retain their primary accreditation through the state that holds their current accreditation. The laboratory may retain their existing certificate of accreditation through to the date on the certificate, or until such time that they choose to renew. Depending on the regulations of their home state, the laboratory may still be required to apply for secondary accreditation from their home state until time for renewal for their primary accreditation. At the time of renewal, they must apply for their primary accreditation through their home state accreditation body as applicable based on requested fields of accreditation.

G. Only laboratories accredited pursuant to these regulations may be called a TNI NELAP or State Accredited Drinking Water laboratory and no laboratory may adopt any name or make any oral or written statement intended or likely to mislead the public with the respect to its accreditation status.

H. Once a laboratory is accredited, the period of accreditation shall extend to the end of the calendar year in which accreditation is received. For laboratories seeking to renew accreditation, the period of accreditation shall be one

year beginning on January 1 and shall be considered to be ongoing if the appropriate fees are timely received by the department.

I. The TNI Standard is examined periodically and is subject to being amended or changed. If an accredited laboratory seeks to renew its accreditation under TNI NELAP, the laboratory shall be re-evaluated using the current TNI Standard adopted in this Chapter along with any of these TNI-NELAP adopted minor amendments/adjustments to such standard.

J. If there is a difference in the drinking water regulations of the USEPA, the regulations of the department or the requirements of the TNI Standard, a laboratory must follow the more stringent requirement(s).

K. Applications shall be processed in the chronological order in which they have been received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8019. Categories for Accreditation

A. A laboratory may apply for accreditation in any one or more of the following accreditation categories and shall be accredited in those fields of accreditation within the category for which it demonstrates acceptable performance on proficiency samples and meets all other requirements of this Chapter. The laboratory certificate shall specify the categories and the fields of accreditation within each category for which the laboratory is accredited and shall be conspicuously displayed in the laboratory in a location visible to the public. In addition, the current laboratory certificate specifying the accreditation categories, the fields of accreditation, and the expiration date of the certificate shall be posted on its publicly accessible website. The certificate must be removed and returned to the department if the laboratory's accreditation has been revoked. In addition, the laboratory shall post such revocation or suspension of the laboratory's accreditation on its publicly accessible website. The certificate does not have to be returned if it simply expired (reached the expiration date). The following are the accreditation categories available.

1. Inorganic Chemistry. The inorganic chemistry category comprises chemical and/or physical tests or analyses required to determine compliance with the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) and Part XII of the Louisiana Sanitary Code (LAC 51), except those analyses for which gas or liquid chromatography methods are specifically required. Tests or analyses for the inorganic chemistry category shall be conducted in accordance with the methods and procedures specified in 40 CFR 141 and 40 CFR 143 for compliance with the federal Safe Drinking Water Act and Part XII of the Louisiana Sanitary Code (LAC 51).

2. Organic Chemistry. The organic chemistry category comprises chemical tests or analyses required to determine compliance with the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) and Part XII of the Louisiana Sanitary Code (LAC 51) for which the gas or liquid chromatography methods are applicable or required. Tests or analyses for the organic chemistry category shall be conducted in accordance with the methods and procedures specified in 40 CFR 141 and 40 CFR 143 for compliance

with the federal Safe Drinking Water Act and Part XII of the Louisiana Sanitary Code (LAC 51).

3. Radiological Testing. The radiological testing category comprises those tests or analyses for radioactivity required to determine compliance with the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) and Part XII of the Louisiana Sanitary Code (LAC 51). Tests or analyses for the radiological category shall be conducted in accordance with the methods and procedures specified in 40 CFR 141 and 40 CFR 143 for compliance with the federal Safe Drinking Water Act and Part XII of the Louisiana Sanitary Code (LAC 51).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8021. Application Procedures for Laboratories

Located in Louisiana

A. The owner or director of a laboratory who wishes an in-state laboratory to be accredited in any or all of the accreditation categories and fields of accreditation/parameters thereof, described in the federal Safe Drinking Water Act regulations or §8019 of this Chapter, shall apply for accreditation to the department in writing on forms provided by the department. Laboratories applying for accreditation may be fixed-base or mobile. The department shall determine what constitutes an individual fixed-base laboratory when noncontiguous laboratory facilities operate under the same ownership, technical directorship, and quality system as the parent laboratory. A separate accreditation is not required for a mobile laboratory that is owned by an accredited fixed-base laboratory, operates under the same quality system as the fixed-based laboratory, performs a subset of the analyses for which the fixed-base laboratory is accredited, and analyzes samples exclusively from within the state. Separate accreditation is required for a mobile laboratory that is owned by a fixed-base laboratory but operates under a different quality system or performs analyses for which the parent fixed-base laboratory is not accredited.

B. If the applicant fails to submit all the information requested or fails to submit the appropriate fees, the department shall reject the application without prejudice and the applicant notified. The application fee is nonrefundable.

C. If the applicant submits a complete, signed application, the appropriate fee, proficiency data (if required), quality manual (if required), and the information submitted meets the minimum requirements of this Chapter for the category or categories for which accreditation is requested, the application shall be accepted. Acceptance of the application does not authorize the laboratory to perform water analyses regulated by this Chapter. The applicant shall be notified of the acceptance and shall be subject to an evaluation including but not limited to the following:

1. personnel;
2. proficiency testing;
3. on-site assessment; and
4. quality assurance/quality control procedures.

D. Neither accredited nor interim accredited status will be granted to any laboratory which has not met the performance criteria specified in any federal Safe Drinking Water Act regulations or, for those chemicals or other

analyses wherein performance criteria may not be specified under the federal Safe Drinking Water regulations, by the performance criteria specified under a written policy of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8023. Application Procedures for Laboratories Not Located in Louisiana

A. Laboratories located in a state that does not offer TNI NELAP accreditation and have not obtained TNI NELAP accreditation from another source (i.e., a third state or the federal government) and desiring to perform water analyses in any or all of the categories described in §8019 for public water systems (PWSs) and for other potable water supplies located in Louisiana, or as required by the federal Safe Drinking Water Act regulations or Part XII of the Louisiana Sanitary Code (LAC 51), shall apply for accreditation in accordance with the procedures set forth in §8021 and shall submit the standard fee amount(s) specified under §8027 for the category or categories being applied for. In addition, the laboratory shall submit to the department, as an additional fee, the sum the department determines to be sufficient to cover the transportation costs (including airfare, mileage, tolls, car rental, public transportation and parking) and room and board expenses of the department's accreditation assessors.

B. Laboratories possessing TNI NELAP accreditation from an approved NELAP accreditation body and desiring to perform water analyses in any or all of the categories described in §8019 for PWSs and for other potable water supplies located in Louisiana, or as required by the federal Safe Drinking Water Act regulations or Part XII of the Louisiana Sanitary Code (LAC 51), shall apply for accreditation in accordance with the procedures set forth in §8021. Any out of state laboratory located in a state that has a NELAP recognized accreditation body may not apply for accreditation from the department for any field of accreditation that is offered by the home state accreditation body.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8025. Renewal of Accreditation

A. Applications for renewals of accreditation will be accepted by the department during November of each year and shall be submitted at least 30 calendar days prior to the expiration date of the current certificate on forms provided by the department. The appropriate application fee must accompany the application in accordance with §8027.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8027. Fees

A. Owners of laboratories applying for accreditation or renewal of accreditation, for the calendar year commencing January 1, 1990 and for subsequent calendar years shall submit the appropriate fee obtained from the annual fee schedule below along with the required application materials. Fees are nonrefundable.

Annual Laboratory Accreditation Fee Schedule	
Chemistry Category/Categories	Fee
Inorganic	\$750
Organic	\$800
Both Inorganic and Organic	\$1000
Radiological Testing	\$800

B. The annual fees shall not be prorated and shall apply in full to any portion of the calendar year which remains prior to the annual renewal date, November 1.

C. This Section is also applicable to interimly approved laboratories.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7) [the same fee schedule amounts initially adopted in LR 15:968 (November 20, 1989) under this statute's authority].

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8029. Required Laboratory Personnel Policies

A. Every accredited laboratory and laboratories seeking accreditation shall have sufficient properly qualified personnel commensurate with the workload and types of tests or analyses required to be performed for the parameters for which the laboratory is accredited, or is seeking accreditation, pursuant to the requirements of this Chapter; Volume 1, Module 2, Section 5.2 of the TNI Standard; and Chapters IV and VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

1. General requirements for technical staff. The management of an accredited laboratory or laboratory seeking accreditation shall ensure the competency of all technical staff employed by the laboratory.

a. An environmental laboratory accredited under this Chapter or seeking accreditation under this Chapter shall have sufficient personnel with the necessary education, training, technical knowledge, and experience for their assigned functions.

b. Each technical staff member of the environmental laboratory accredited under this Chapter or seeking accreditation under this Chapter shall be responsible for complying with all quality assurance/quality control requirements that pertain to their organization/technical function.

c. Each technical staff member must have a combination of experience and education to adequately demonstrate a specific knowledge of their particular function, and a general knowledge of laboratory operations, analytical procedures, quality assurance/quality control, and records management.

d. The department will consider that the accountability for negligence, the falsification of data, records or instrument parameters will rest upon the analyst, the laboratory management and parent company.

B. Current employee records shall be maintained, which shall include a résumé documenting each employee's training, experience, duties, and date or dates of relevant employment.

1. Evidence must be on file that demonstrates all employees are aware of and are using the latest edition of the laboratory's in-house quality documentation.

2. Training courses or workshops on specific equipment, analytical techniques or laboratory procedures that relate to employee's job responsibilities shall all be documented.

3. Analyst training shall be considered up-to-date when documentation in the files indicate acceptable performance of a blind sample (singly blind to the analyst) at least once per year and a certification that technical personnel have read, understood, and agreed to perform the most recent version of the method, the approved method (if applicable) or standard operating procedure.

C. Data Integrity Training. Data integrity training shall be provided as a formal part of new employee orientation and shall also be provided on an annual basis for all current employees. The laboratory shall implement all of the data integrity training requirements in Section 4.3, Volume 1, Module 2 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8031. Proficiency Testing

A. At the time each laboratory applies for accreditation, it shall notify the department which field(s) of testing it chooses to become accredited for and shall participate in the appropriate proficiency test (PT) studies. Except when determined by the department that an appropriate proficiency test is not readily available, all accredited laboratories or laboratories seeking accreditation shall participate in a TNI Proficiency Testing Provider Accreditor (PTPA) approved proficiency testing program covering all tests, analytes and analytical methods as made available within the category and categories in which the laboratory is accredited or seeks accreditation. The laboratory shall purchase proficiency test studies from any PTPA accredited Proficiency Testing Provider (PTP) for the parameters for which accreditation is requested. For initial and continued accreditation, the laboratory shall meet the proficiency testing requirements pursuant to Volume 1, Module 1, Proficiency Testing of the TNI Standard. A laboratory seeking State of Louisiana drinking water laboratory certification only shall participate in proficiency studies at the frequency that meet the requirements of federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143).

B. The laboratory shall meet all of the requirements for PT record retention as defined in Volume 1, Module 1, Section 5.3 of the TNI Standard. All PT records shall be retained for a minimum of five years and available for assessment by the department pursuant to Volume 2, Module 2, Section 6 of the TNI Standard.

C. To be accredited initially and to maintain accreditation the laboratory shall participate in two PT studies, where available, per year for each PT field of testing for which it seeks or wants to maintain accreditation. For a laboratory seeking to obtain accreditation, the most recent three rounds attempted shall have occurred within 18 months of the laboratory's application date for accreditation with the analysis date of the most recent PT sample having been no more than six months prior to the application date for accreditation. The department will complete the assessment of the final evaluation report for PT studies within 60 days of receipt of each study report pursuant to Volume 2, Module 2, Section 7 of the TNI Standard. The department shall suspend the accreditation of a laboratory for a field of proficiency testing pursuant to the conditions specified in Volume 2, Module 2, Section 10 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8033. On-Site Assessment

A. The department will perform an initial on-site assessment of an environmental laboratory seeking accreditation, except as provided in §8017, prior to granting accreditation, and reassessments at intervals of two years plus or minus six months and at such other times as the department deems necessary to determine continued compliance to this rule. All assessments performed by the department shall be pursuant to Volume 2, Module 3 of the TNI Standard.

B. The department may conduct announced or unannounced on-site assessments of an environmental laboratory to ensure compliance with this Chapter or orders issued by the department at any time.

C. The laboratory shall ensure that records including its quality manual, analytical methods, standard operating procedures, quality assurance/quality control data, proficiency testing data, and all records needed to verify compliance to the TNI Standard, the federal Safe Drinking Water Act (42 USC 300f, et seq.) and its implementing regulations (40 CFR Parts 141 and 143); the Louisiana State Sanitary Code (LAC 51) and this rule are available for review during the on-site assessment. The laboratory shall allow the department's authorized personnel to examine records, observe laboratory procedures, facilities, equipment and to interview staff during the on-site assessment.

D. The department will provide the laboratory with a written assessment report documenting any findings found by the department, observations documenting competence and conformity, within 30 calendar days of the last day of the assessment.

E. The laboratory shall submit a corrective action plan to the department within 30 calendar days from receipt of the on-site assessment report from the department where the department has found deficiencies. The corrective action plan shall document the corrective action taken by the laboratory to correct each deficiency.

F. In addition to on-site assessments, the department shall perform other surveillance activities to monitor accredited laboratories' continued compliance to the provisions of this Chapter throughout the period of accreditation. Annually, the department shall review among other things, proficiency testing, internal audits, corrective action reports and any other accreditation-related laboratory records the department deems appropriate to establish continued compliance to the provisions of this Chapter.

G. Nothing in this Section shall be construed as requiring the department to reassess a laboratory prior to taking a regulatory or administrative action affecting the status of the laboratory's accreditation. Nothing in this Section shall be construed as limiting in anyway the department's ability to revoke or otherwise limit a laboratory's accreditation upon the identification of such deficiencies as to warrant such action.

H. Copies of all assessment reports, checklists, and laboratory responses shall be retained by the department for a period of at least 10 years, or longer if required by specific State or Federal regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8035. Issuance and Display of Certificate and Use of Accreditation

A. The department will issue a certificate to each laboratory meeting the requirements of this Chapter indicating that the laboratory is accredited by the department. The department will issue the certificate of accreditation following the requirements in Volume 2, Module 1, Section 7.5 of the TNI Standard. The numbered certificate will be signed by a laboratory director of the department's Laboratory Services Section and the designated laboratory accreditation staff personnel and will be considered an official document. It will be transmitted as a sealed and dated (effective date and expiration date) document and contain the accreditation logo. Addenda or attachments to the certificate shall be considered official documents. Information on the addenda or attachments shall include the matrix, fields of accreditation, methods, analyte/analyte group and technologies.

1. The accredited laboratory shall display their most recent certificate of accreditation in a prominent place in the laboratory, visible to the public. The certificate shall include the accreditation status of the laboratory and a list all fields of testing for which the laboratory is accredited.

B. An accredited laboratory must not use its certificate, accreditation status and/or accreditation logo to imply, either orally or in any literature, endorsement of the laboratory by the State of Louisiana or the department. An accredited laboratory must not make any inaccurate statements concerning their fields of accreditation and accreditation status.

C. An accredited laboratory's accreditation number or other identifier shall be included when the accreditation body's name is used on general literature such as catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other material.

D. The laboratory must distinguish between proposed testing for which the laboratory is accredited and the proposed testing for which the laboratory is not accredited.

E. The laboratory must return to the department any revoked accreditation certificate(s) and must discontinue use of all catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical results or other materials that contain reference to their past accreditation status and/or display their past accreditation logo.

F. The department shall take suitable actions including, but not limited to, legal action when incorrect references to the accreditation body's accreditation, misleading use of the laboratory's accreditation status and/or unauthorized use of the accreditation logo is found in catalogs, advertisements, business solicitations, proposals, quotations, laboratory analytical reports or other materials. All reports of questionable laboratory practices must be reported to the department's laboratory director and to the department's laboratory certification program manager. The department's laboratory certification program manager shall investigate the merits of the report and forward the findings to the department's laboratory director. If it is determined that a formal investigation is needed, the department's laboratory

director shall contact the Bureau of Legal Services within the Department of Health and Hospitals (DHH) for guidance and assistance in the investigation. If the investigation determines that action is merited, the laboratory shall be issued a revocation order via certified mail revoking the laboratory's accreditation. All legal actions taken by the department shall proceed in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950, et seq.) and under the direction of DHH's Bureau of Legal Services. No laboratory's accreditation shall be revoked without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the revocation order. Said hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950, et seq.) All documents related to the investigation(s), including the final disposition, shall be retained by the department for 10 years from the date of such final disposition.

G. Accreditation may be transferred when the legal status or ownership of an accredited laboratory changes without affecting its staff, equipment, and organization. The department may conduct an on-site assessment to verify the effects, if any, of such changes on laboratory performance.

H. The following conditions apply to the change in ownership and/or the change in location of a laboratory, as well as to a change in top management, key personnel, resources, or premises that is, or previously was, accredited by the department under a previous owner and/or at a previous location.

1. In the event there are any changes in the name, location, ownership, top management, key personnel, main polices, resources or premises of an accredited laboratory to which the provisions of this Chapter apply, written notice thereof shall be made within 30 days to:

Laboratory Certification Program
Laboratory Services
LA Department of Health and Hospitals,
Office of Public Health
3101 West Napoleon Avenue
Metairie, LA 70001

2. The department shall evaluate the significance of any change that might alter or impair the laboratory's capability and quality, and indicate to the affected laboratory the results of the evaluation in writing. The department shall retain records to indicate that such an evaluation was conducted.

3. A change in ownership and/or location will not necessarily require reaccreditation or reapplication in any or all of the categories in which the laboratory is currently accredited.

4. A change in ownership and/or location may require an on-site assessment with the elements of the assessment being determined by the assessor.

5. Any change in ownership shall assure historical traceability of the laboratory accreditation number(s).

6. For a change in ownership, the following additional conditions shall be in effect.

a. The previous owner (transferor) shall agree in writing, before the transfer of ownership takes place, to be accountable and liable for any analyses, data and reports generated up to the time of legal transfer of ownership.

b. The buyer (transferee) must agree in writing to be accountable and liable for any analyses, data and reports generated after the legal transfer of ownership occurs.

c. All records and analyses performed pertaining to accreditation shall be kept for a minimum of 10 years and are subject to review and inspection by the department during this period without prior notification to the laboratory. This stipulation is applicable regardless of change in ownership, accountability or liability.

d. If ownership is transferred, the transferee shall not be responsible for payment of fees to the department during the remainder of the calendar year, provided that the previous owner has fully paid the required fees to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8037. Management System Establishment

A. The laboratory shall establish and maintain a management system pursuant to and meeting the required elements contained in Volume 1 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8039. Denial, Suspension, Revocation and Voluntary Withdrawal of Accreditation

A. Denial of Accreditation. Denial means to refuse to accredit in part or in total a laboratory applying for initial accreditation or resubmission of initial application.

1. Reasons to deny an initial application may include:

a. failure to submit a completed application;
b. failure of laboratory staff to meet the personnel qualifications as required by the TNI Standard. These qualifications include, but are not limited to, education, training and experience requirements;

c. failure to successfully analyze and report proficiency testing samples as required in Volume 1, Module 1; Volume 2, Module 2, and Volume 3 of the TNI Standard;

d. failure to attest that analyses are performed by methodologies as required in Volume 1, Module 2, Section 5.4 of the TNI Standard;

e. failure to implement a quality system as defined in Volume 1, Module 2 of the TNI Standard;

f. failure to respond to a deficiency report from the on-site assessment with a corrective action report within 30 calendar days after receipt of the assessment report;

g. failure to implement the corrective actions detailed in the corrective action report within the specified time frame as required by the department;

h. failure to pay required fees;

i. failure to pass required on-site assessment(s) as specified in §8033 of this Chapter;

j. misrepresentation of any material fact pertinent to receiving or maintaining accreditation; or

k. denial of entry during normal business hours for an on-site assessment as required in Volume 2, Module 1, Section 7.5 of the TNI Standard and as mentioned under §8033.B of this Chapter.

2. A laboratory shall have two opportunities to correct the areas of deficiencies which results in a denial of accreditation.

3. If the laboratory is not successful in correcting the deficiencies as required by §8033 of this Chapter and the TNI Standard, the laboratory must wait six months before again reapplying for accreditation.

4. Upon reapplication, the laboratory shall be responsible for all or part of the fees incurred as part of the initial application for accreditation.

5. No laboratory's accreditation will be denied without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the denial letter. Said administrative hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950, et seq.).

B. Suspension of Accreditation. Suspension means the temporary removal of a laboratory's accreditation for a defined period of time which shall not exceed six months. The purpose of suspension is to allow a laboratory time to correct deficiencies or areas of non-compliance with this Chapter and the TNI Standard.

1. A laboratory's accreditation may be suspended in part or in total. The laboratory shall retain those areas of accreditation where it continues to meet the requirements of this Chapter and the TNI Standard.

2. Reasons for suspension may include:

a. the department finds during the on-site assessment that the public interest, safety or welfare requires emergency action;

b. failure to successfully complete PT studies and maintain a history of at least two successful PT studies for each affected accredited field of testing out of the most recent three PT studies;

c. failure to notify the accreditation body of any changes in key accreditation criteria, as set forth in §8029 of this Chapter;

d. failure to maintain a quality system as defined in §8037 of this Chapter; or

e. failure of the laboratory to employ staff who meet the personnel qualifications including, but not limited to, education, training and experience as required by this Chapter and Volume 1, Module 2, Section 5.2 of the TNI Standard.

3. A laboratory under suspension will not have to reapply for accreditation if the cause/causes for suspension are corrected within six months. The laboratory's suspended accreditation status will change to accredited when the laboratory complies with this Chapter and the TNI standard.

4. A suspended laboratory:

a. cannot continue to analyze samples for the affected fields of testing for which it holds accreditation; and

b. shall remain suspended (without appeal rights) due to unacceptable proficiency testing sample results.

5. If the laboratory is unable to correct the reason for the suspension, the laboratory's accreditation shall be revoked in total or in part within six months after the effective date of the suspension.

6. No laboratory's accreditation will be suspended without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the suspension order. Said

administrative hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S.49:950, et seq.)

C. Revocation of Accreditation. Revocation means partial or total withdrawal of a laboratory's accreditation by the department.

1. The accreditation body shall revoke a laboratory's accreditation, in part or in total, for failure to correct the deficiencies after accreditation had been suspended. The laboratory shall retain those areas of accreditation where it continues to meet the requirements of this Chapter and the TNI Standard.

2. Reasons for revocation, in part or in total, include a laboratory's:

a. failure to submit an acceptable corrective action report in response to a deficiency report and failure to implement corrective action(s) related to any deficiencies found during a laboratory assessment(the laboratory may submit two corrective actions plans within the time limits specified by the department); or

b. failure to correctly analyze a parameter(s) in three consecutive PT studies. Should this occur, the laboratory's accreditation shall be revoked for each affected accredited field of testing(s), method(s) and analyte(s).

3. Reasons for total revocation include a laboratory's:

a. failure to respond with a corrective action report within the required 30 calendar days;

b. failure to participate in the proficiency testing program as required by §8031 of this Chapter and the TNI Standard;

c. submittal of proficiency test sample results generated by another laboratory as its own;

d. misrepresentation of any material fact pertinent to receiving or maintaining accreditation;

e. denial of entry during normal business hours for an on-site assessment as required by §8033 of this Chapter and the TNI Standard;

f. conviction of charges for the falsification of any report of or relating to a laboratory analysis; or

g. failure to remit the accreditation fees within the time limit as established by the department may be grounds for immediate revocation.

4. After correcting the reason/cause for revocation, the laboratory may reapply for accreditation sooner than six months from the official date of revocation.

5. No laboratory's accreditation will be revoked without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the revocation order. Said administrative hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950, et seq.).

D. Voluntary Withdrawal of Accreditation. If an environmental laboratory wishes to withdraw from the laboratory accreditation program, it must submit written notification to the department no later than 30calendar days before the end of the accreditation year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8041. Interim Accreditation

A. If a laboratory completes all of the requirements for accreditation except that of an on-site assessment because the department is unable to schedule the assessment in a timely manner, the department may issue an interim accreditation. Interim accreditation is not available for first time accreditation of a laboratory or after revocation of accreditation. Interim accreditation will allow a laboratory to perform analyses and report results with the same status as a fully accredited laboratory until the on-site assessment requirements have been completed. Interim accreditation status may not exceed 12 months. The interim accreditation status is a matter of public record and will be entered into the national database.

B. Revocation of Interim Accreditation. Revocation of interim accreditation may be initiated for due cause in accord with the requirements of §8039 of this Chapter.

C. The department may approve a laboratory application to add an analyte or method to its scope of accreditation by performing a data review without an on-site assessment. An addition to the scope of accreditation via a data review of PT performance (if available), quality control performance, and written standard operating procedure is at the discretion of the department. An addition of a new technology or test method requiring specific equipment may require an on-site assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8043. Ethics, Standards of Professional Conduct and Conflict of Interest

A. Professional standards apply to every employee of the department including laboratory assessors, whether a government employee or an employee of a third party organization conducting assessments under an agreement with the department or other accreditation body.

1. Department employees, including assessors that knowingly engage in unprofessional activity, may be liable for punitive actions as initiated by the department. Standards for professional conduct outlined herein are based upon 5 CFR 2635 (Standards of Ethical Conduct for Employees of the Executive Branch) and will be followed in all laboratory accreditation related matters. Additionally, conformance with the Louisiana Code of Governmental Ethics, R.S. 42:1101, et seq., is required.

2. All employees including assessors representing the department or other accreditation body shall:

- a. have no interest at play other than that of the department or other accreditation body and NELAP during the entire accreditation process;
- b. act impartially and not give preferential treatment to any organization or individual;
- c. provide equal treatment to all persons and organizations regardless of race, color, religion, sex, national origin, age and/or disability;
- d. not use their position for private gain;
- e. not solicit or accept any gift or other item of monetary value from any laboratory, laboratory representative or any other affected individual or organization doing business with, or affected by, the actions of the assessor's employer or the department;

f. not hold financial interests that conflict with the conscientious performance of their duties;

g. not engage in financial transactions using information gained through their positions as assessors to further any private interest;

h. not engage in employment activities (seeking or negotiating for employment) or attempt to arrange contractual agreements with a laboratory that would conflict with their duties and responsibilities as an assessor;

i. not knowingly make unauthorized commitments or promises of any kind purporting to bind the department or other affected accreditation body; and

j. attempt to avoid any actions that could create even the appearance that they are violating any of the standards of professional conduct outlined in this Section.

3. It is the individual's responsibility to report to the department any personal issues or activities that constitute a conflict of interest before an assessment occurs. It is up to the department to determine if the reported issues and activities regarding a specific assessor constitute, or may be construed as, a conflict of interest. The department's laboratory director shall contact the Bureau of Legal Services within the Department of Health and Hospitals (DHH) for guidance and assistance in deciding a conflict of interest case and the course of action the department should take.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

Subchapter C. Criteria and Procedures for Chemical Testing and Analysis

§8045. Scope

A. This Subchapter establishes the department's requirements which an accredited laboratory or laboratory seeking accreditation shall continually meet and follow when performing chemical analyses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8047. Laboratory Facilities and Safety

A. All accredited laboratories or laboratories seeking accreditation pursuant to this Subchapter shall have laboratory facilities and safety procedures that meet the requirements in Volume 1, Module 2, Section 5.3 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The analysis of compliance samples shall be conducted in a laboratory where the security and integrity of the samples and the data can be maintained.

C. The laboratory facilities must be clean, have adequate temperature and humidity control, have adequate lighting at the bench top and must meet applicable Occupational Safety and Health Administration (OSHA) standards.

D. The laboratory must have provisions for the proper storage and disposal of chemical wastes. The appropriate type of exhaust hood is required, where applicable.

E. There must be sufficient bench space for processing samples. Workbench space should be convenient to sink, water, gas, vacuum and electrical sources free from surges.

F. Instruments must be properly electrically grounded.

G. For safety reasons, facilities for inorganic and organic analyses shall be in separate rooms. Organic analysis and sample extraction should also be separated to prevent cross contamination.

H. The analytical and sample storage areas must be isolated from all potential sources of contamination.

I. There should be sufficient storage space for chemicals, glassware and portable equipment, sufficient floor and bench space for stationary equipment and areas for cleaning materials.

J. Volatile or corrosive chemicals and flammable solvents shall be stored in accordance with the federal Occupational Safety and Health Act and its attendant regulations.

K. Adequate fire precautions shall be taken including, but not limited to, having readily available a fire extinguisher rated for the types of fires that may reasonably be foreseen given the types of testing and analyses performed by and the types of materials handled by the laboratory.

L. Appropriate occupational safety and health laws and regulations shall be posted and observed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8049. Specifications for Laboratory Equipment and Instrumentation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall have on the premises and under the control of the technical manager, all of the equipment and instruments necessary to analyze each parameter in which the laboratory is accredited, or is seeking accreditation. All instruments shall be properly maintained and calibrated and such equipment and instruments including records shall meet the requirements in Volume 1, Module 2, Section 5.5 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8051. Measurement Traceability

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall meet the measurement traceability requirements specified in Volume 1, Module 2, Section 5.6 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8053. Sample Collection, Handling and Preservation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall have procedures for sample collection, handling and preservation techniques that meet the requirements in Volume 1, Module 2, Sections 5.7 and 5.8 and Volume 1, Module 4, Section 1.7.5 of the TNI Standard as well as the requirements in Chapter IV of the

USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Samples requiring preservation shall be preserved at the time of collection. A laboratory that has interim approval or accreditation shall accept only samples which are properly labeled, and for which there is reasonable assurance that they have been collected, preserved, processed, stored and transported in such a manner as to identity and stability of the sample with respect to the requested tests or analyses. If the identity/stability of the sample has not been assured, the laboratory report shall clearly state that the result may be invalid due to an unsatisfactory sample.

C. All samples requiring thermal preservation shall be considered acceptable if the arrival temperature of a representative sample container is either within 2° Celsius (C) of the required temperature or the method's specified range. Additional acceptance criteria are specified in Volume 1, Module 4, Section 1.7.5 of the TNI Standard. The laboratory must measure and record the temperature of the sample when it arrives when temperature preservation is required by the method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8055. Methodology and Method Validation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall use the test procedures specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. Additionally, the laboratories shall comply with the requirements in Volume 1, Module 2, Section 5.4 and Volume 1, Module 4, Section 1.4 of the TNI Standard as well as the requirements in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall list, in its quality manual, and have on-hand the standard operating procedures (SOPs) for each analytical method used. This listing should include the name of the method and a complete reference as to the source.

C. Applicable SOPs shall be available in the laboratory at the analyst's work station. All SOPs shall meet the requirements in Volume 1, Module 2, Section 4.2.8.5 of the TNI Standard.

D. The laboratory shall validate reference methods via the procedures specified in Volume 1, Module 4, Section 1.5 of the TNI Standard and the requirements in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

E. Prior to the acceptance and institution of any method, a satisfactory initial Demonstration of Capability (DOC) shall be performed by the laboratory pursuant to the requirements in Volume 1, Module 4, Section 1.6 of the TNI Standard. Documentation shall be maintained by the laboratory for the initial and any ongoing DOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8057. Quality Assurance for Environmental Testing

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required

chemical analyses, shall have established quality control procedures pursuant to Volume 1, Module 2, Sections 5.9.1 and 5.9.2 of the TNI Standard as well as the quality control procedures in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall implement the essential quality control procedures in Volume 1, Module 2, Section 5.9.3 and in Volume 1, Module 4, Section 1.7 of the TNI Standard, as well as implementing the essential quality control procedures in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

C. The laboratory shall perform all quality control procedures at the frequency required in the approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. In addition, the laboratory shall meet the acceptance criteria specified in the applicable, approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters.

D. Control charts, generated from the laboratory's control sample (however named), shall be maintained by the laboratory. Until sufficient data are available from the laboratory, usually a minimum of 20 to 30 test results on a specific analysis, the laboratory shall use the control limits (if specified) in the method. When sufficient data becomes available, the laboratory shall develop control charts from the mean percent recovery (X) and the standard deviation (S) of the percent recovery for the Quality Control (QC) checks specified in the above Subsections of this Section (also, see Chapter VI of the *Handbook for Analytical QC in Water and Wastewater Laboratories*, EPA-600/4-79-019 or *Standard Methods for the Examination of Water and Wastewater*, 20th edition, Part 1020B, or similar laboratory analytical QC reference texts for further information). These data are used to establish upper and lower control limits as follows:

upper control limit = $X + 3S$ (upper warning limit,
use + 2S instead of + 3S)
lower control limit = $-X - 3S$ (lower warning limit,
use - 2S instead of - 3S)

E. After each five to ten new recovery measurements, new control limits should be calculated using the most recent 20-30 data points. These calculated control limits shall not exceed those established in the method. If any of these calculated control limits are tighter than the control limits specified within the method, the laboratory shall use the tighter criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8059. Records and Data Reporting

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall meet the requirements for reporting results pursuant to Volume 1, Module 2, Section 5.10 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Compliance monitoring data shall be made legally defensible by keeping thorough and accurate records. The quality manual and/or SOPs shall describe the policies and procedures used by the facility for record retention and

storage. If samples are expected to become part of a legal action, chain of custody procedures shall be used.

C. Maintenance of Records. Public water systems are required to maintain records of chemical analyses of compliance samples for 10 years (40 CFR 141.33) and lead and copper for 12 years (40 CFR 141.91). The laboratory should maintain easily accessible records for 10 years. The client water system should be notified before disposing of records so they may request copies if needed. This includes all raw data, calculations, and quality control data. These data files may be either hard copy, microfiche or electronic. Electronic data shall always be backed up by protected tape or disk or hard copy. If the laboratory changes its computer hardware or software, it should make provisions for transferring old data to the new system so that it remains retrievable within the time frames specified above.

D. Sampling Records. Data should be recorded in ink with any changes lined through such that the original entry is visible. Changes shall be initialed and dated. The following information should be readily available in a summary or other record(s):

1. date of sampling, location (including name of utility and PWS ID # if the water system is a PWS), sampling site within the water system, time of sampling, name, organization and phone number of the sampler, and analyses required;
2. identification of the sample as to whether it is a routine distribution system sample, check sample, raw or finished water sample, repeat or confirmation sample or other special purpose sample;
3. date of receipt of the sample by the laboratory;
4. sample volume/weight, container type, preservation and holding time and condition on receipt;
5. pH (from plant records) and disinfectant residual at time of sampling (from on-site analysis by sampler at the time of sampling);
6. disinfectant residual by laboratory immediately prior to analysis; and
7. transportation and delivery of the sample (person/carrier, conditions).

E. Analytical Records. Data shall be recorded in ink with any changes lined through such that original entry is visible. Changes shall be initialed and dated. The following information shall be readily available:

1. laboratory and persons responsible for performing the analysis;
2. analytical techniques/methods used;
3. date and time of analysis;
4. results of sample and quality control analyses; and
5. calibration and standards information.

F. Personnel Records. Résumés and training records shall be maintained for all personnel.

Documentation of the initial demonstration of capability for analysts/technicians shall be kept on file as well as the results of proficiency testing.

G. Reconstruction of Data. Adequate information shall be available to allow the assessor to reconstruct the final results for compliance samples and performance evaluation samples.

H. Computer programs. Computer programs shall be verified initially and periodically by manual calculations and the calculations shall be available for inspection. Access to

computer programs and electronic data shall be limited to appropriate personnel.

I. The original or true duplicate of the results of the test or analysis shall be sent promptly to the person who requested such tests or analysis. In addition, the results of compliance monitoring samples are to be sent to:

Louisiana Department of Health and Hospitals
Office of Public Health
Engineering Services Section - M/S #3
P O Box 4489
Baton Rouge, Louisiana 70821-4489

1. The results data shall be signed by the technical manager or a designee whose designation is in writing and whose name has been submitted to the department. Results submitted to the department shall be submitted electronically and in writing in the format specified by the Engineering Services Section of the department. Any sample result that exceeds the maximum contaminant level (MCL) or may cause a treatment technique requirement violation for any regulated contaminant listed in the federal Safe Drinking Water Act (42 USC 300f, et seq.) and its implementing regulations (40 CFR Parts 141 and 143); an accredited laboratory shall report the result to the supplier of water and the department as soon as possible but no later than the end of the next business day after the result was determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8061. General Laboratory Practices

A. Chemicals/Reagents. Chemicals and reagents used must meet the specifications in the referenced method. If not specified therein, then analytical reagent (AR) grade or American Chemical Society (ACS) grade chemicals or better shall be used for analyses in accredited laboratories.

B. Reagent Water. The laboratory shall have a source of reagent water having a resistance value of at least 0.5 megohms (conductivity less than 2.0 micromhos/cm) at 25°C. High quality water meeting such specifications may be purchased from commercial suppliers. Quality of reagent water is best maintained by sealing it from the atmosphere. Quality checks to meet specifications above shall be made and documented at planned intervals based on use. This planned interval should not exceed daily. Individual analytical methods may specify additional requirements for the reagent water to be used. Reagent water for organic analysis must be free from interferences for the analytes being measured. It may be necessary to treat water with activated carbon to eliminate all interferences. If individual methods specify additional requirements for the reagent water to be used, these must be followed.

C. Glassware Preparation. Specific requirements in the methods for the cleaning of glassware must be followed. If no specifications are listed, then glassware should be washed in a warm detergent solution and thoroughly rinsed first with tap water and then with reagent water. This cleaning procedure is sufficient for general analytical needs. It is advantageous to maintain separate sets of suitably prepared glassware for the nitrate, mercury, and lead analyses due to the potential for contamination from the laboratory environment. For a summary of glassware cleaning procedures, refer to Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

D. Distilled and deionized water shall have at a minimum, resistivity values between 0.5 to 2.0 megohms-cm (2.0 to 0.5 micromhos/cm.) at 25° C. Preferably, distilled and deionized water should have resistivity values greater than 1.0 megohms-cm (less than 1.0 micromhos/cm) at 25°C. When purchasing distilled or deionized water, laboratories should request a list of quality specifications for the water purchased. Containers of distilled or deionized water should be capped when not in use and should be capped immediately after each use.

E. All solutions shall be properly labeled with identification of the compound, concentration, solvent, date, and analyst who prepared the solution.

F. All chemicals, solutions, and standards, shall be dated upon receipt by the laboratory; and the date opened by the laboratory shall also be noted.

G. Compositing of samples for inorganic and organic analyses must be done in the laboratory. Samples shall only be composited if the laboratory detection limit is adequate for the number of samples being composited (up to a maximum of five) and the holding times will not be exceeded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8063. Management Systems General Requirements

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall establish, implement and maintain a management system as outlined in Volume 1, Module 2, Section 4.2 of the TNI Standard. The laboratory's management system policies related to quality, including a quality policy statement, shall be defined in a quality manual (however named). The quality manual shall include all the requirements in Volume 1, Module 2, Section 4.2 of the TNI Standard. The quality manual shall be made available to all laboratory personnel.

B. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall establish and maintain a documented data integrity system. There are four elements within a data integrity system. These are:

1. data integrity training;
2. signed data integrity documentation for all laboratory employees;
3. in-depth, periodic monitoring of data integrity; and
4. data integrity procedure documentation.

C. The procedures of the data integrity system required under Subsection B of this Section shall be signed by top management. The requirements for data integrity investigation are listed in Volume 1, Module 2, Section 4.16 of the TNI Standard. The requirements for data integrity training and documentation are listed in Volume 1, Module 2, Section 5.2.7 of the TNI Standard.

D. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall maintain SOPs that accurately reflect all phases of current laboratory activities, such as assessing data integrity, corrective actions, handling customer complaints and all analytical methods. All of the requirements for the laboratory's SOPs are outlined in Section 4.2.8.5 of Volume 1, Module 2 of the TNI Standard.

All quality control data and records required by this Section shall be retained by the laboratory for a minimum of 10 years and shall be made available for inspection by the department. Such retained data shall include, but shall not be limited to, the results of and raw data generated by proficiency test analyses.

E. Document Control. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall establish and maintain procedures to control all laboratory documents as specified in Volume 1, Module 2, Section 4.3, of the TNI Standard.

F. Review of Requests, Tenders and Contracts. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for review of requests, tenders and contracts pursuant to Volume 1, Module 2, Section 4.4 of the TNI Standard.

G. Subcontracting of Environmental Testing. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for subcontracting environmental testing pursuant to Volume 1, Module 2, Section 4.5 of the TNI Standard.

H. Purchasing Services and Supplies. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for purchasing services and supplies pursuant to Volume 1, Module 2, Section 4.6 of the TNI Standard.

I. Service to the Client and Complaints. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for service to the clients and complaint policy and processes pursuant to Volume 1, Module 2, Sections 4.7 and 4.8 of the TNI Standard.

J. Control of Nonconforming Environmental Testing Work. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for the control of nonconforming environmental testing pursuant to Volume 1, Module 2, Sections 4.9 of the TNI Standard.

K. Laboratory Improvement, Corrective Action and Preventive Action. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for improving the laboratory, corrective and preventive actions pursuant to Volume 1, Module 2, Sections 4.10, 4.11, and 4.12 of the TNI Standard.

L. Internal Audits and Management Reviews. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for establishing and conducting internal audits and management reviews of laboratory activities pursuant to Volume 1, Module 2, Sections 4.14 and 4.15 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

Subchapter D. Criteria and Procedures for Radiological/Radiochemical Testing and Analysis

A. This Subchapter, in conjunction with other requirements contained in other portions of this Chapter,

establishes the department's requirements to which an accredited laboratory or laboratory seeking accreditation shall continually meet and follow when performing radiological/radiochemical analyses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8065. Laboratory Facilities and Safety

A. All accredited laboratories or laboratories seeking accreditation pursuant to this Subchapter shall have laboratory facilities and safety procedures that meet the requirements in Volume 1, Module 2, Section 5.3 of the TNI Standard and Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The analysis of compliance samples shall be conducted in a laboratory where the security and integrity of the samples and the data can be maintained.

C. The laboratory facilities must be clean, have adequate temperature and humidity control, have adequate lighting at the bench top and must meet applicable OSHA standards.

D. The laboratory must have provisions for the proper storage and disposal of chemical and radiological wastes. The appropriate type of exhaust hood is required where applicable.

E. There must be sufficient bench space for processing samples. Workbench space should be convenient to sink, water, gas, vacuum and electrical sources free from surges.

F. Instruments must be properly electrically grounded.

G. Counting instruments must be located in a room other than one in which samples and standards are being prepared or where other types of chemical analyses are performed.

H. The analytical and sample storage areas must be isolated from all potential sources of contamination.

I. There should be sufficient storage space for chemicals, glassware and portable equipment, sufficient floor and bench space for stationary equipment and areas for cleaning materials.

J. Volatile or corrosive chemicals and flammable solvents shall be stored in accordance with the federal Occupational Safety and Health Act and attendant regulations.

K. Adequate fire precautions shall be taken including, but not limited to, having readily available a fire extinguisher rated for the types of fires that may reasonably be foreseen given the types of testing and analyses performed by and the types of materials handled by the laboratory.

L. Appropriate occupational safety and health laws and regulations shall be posted and observed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8067. Specifications for Laboratory Equipment and Instrumentation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall have on the premises and under the control of the technical manager, all of the equipment and instruments necessary to analyze each parameter in which the laboratory is accredited, or is seeking accreditation. All instruments shall be properly maintained

and calibrated and such equipment and instruments including records shall meet the requirements in Volume 1, Module 2, Section 5.5 of the TNI Standard and Volume 1, Module 6, Section 1.7.1 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8069. Measurement Traceability

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the measurement traceability requirements specified in Volume 1, Module 2, Section 5.6 of the TNI Standard and Volume 1, Module 6 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8071. Sample Collection, Handling and Preservation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall have procedures for sample collection, handling and preservation techniques that meet the requirements in Volume 1, Module 2, Sections 5.7 and 5.8 and Volume 1, Module 6, Section 1.7.4 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Samples requiring preservation shall be preserved at the time of collection. A laboratory that has interim approval or accreditation shall accept only samples which are properly labeled, and for which there is reasonable assurance that they have been collected, preserved, processed, stored and transported in such a manner as to identity and stability of the sample with respect to the requested tests or analyses. If the identity/stability of the sample has not been assured, the laboratory report shall clearly state that the result may be invalid due to an unsatisfactory sample.

C. All samples requiring thermal preservation shall be considered acceptable if the arrival temperature of a representative sample container is either within 2°C of the required temperature or the method's specified range. Additional acceptance criteria are specified in Volume 1, Module 6, Section 1.7.4 of the TNI Standard. The laboratory must measure and record the temperature of the sample when it arrives when temperature preservation is required by the method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8073. Methodology and Method Validation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall use the test procedures specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. Additionally, the laboratories shall comply with the requirements in Volume 1,

Module 2, Section 5.4 and Volume 1, Module 6, Section 1.4 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall list, in its quality manual, and have on hand the SOPs for each analytical method used. This listing should include the name of the method and a complete reference as to the source.

C. Applicable SOPs shall be available in the laboratory at the analyst's work station. All SOPs shall meet the requirements in Volume 1, Module 2, Section 4.2.8.5 of the TNI Standard.

D. The laboratory shall validate reference methods via the procedures specified in Volume 1, Module 6, Section 1.5 of the TNI Standard and the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

E. Prior to the acceptance and institution of any method, a satisfactory initial Demonstration of Capability (DOC) shall be performed by the laboratory pursuant to the requirements in Volume 1, Module 6, Section 1.6 of the TNI Standard and Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water. Documentation shall be maintained by the laboratory for the initial and any ongoing DOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8075. Quality Assurance for Radiochemical Testing

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall have established quality control procedures pursuant to Volume 1, Module 2, Sections 5.9.1 and 5.9.2 of the TNI Standard and Volume 1, Module 6 of the TNI Standard as well as the quality control procedures in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall implement the essential quality controls procedures in Volume 1, Module 2, Section 5.9.3 and Volume 1, Module 6, Section 1.7.2 of the TNI Standard as well as implementing the essential quality control procedures in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

C. The laboratory shall perform all quality control procedures at the frequency required in the approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. In addition, the laboratory shall meet the acceptance criteria specified in the applicable, approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters.

D. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall maintain control charts for each instrument and method used by the laboratory for compliance monitoring sample measurements. Instrument initial calibrations and all efficiency and instrument background checks shall be maintained in a permanent record. Control charts shall be maintained as specified in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water. Until sufficient data are available from the laboratory,

usually a minimum of 20 to 30 test results on a specific analysis, the laboratory shall use the control limits (if specified) in the method. When sufficient data becomes available, the laboratory shall develop control charts from the mean percent recovery (X) and the standard deviation (S) of the percent recovery for the Quality Control (QC) checks specified in the above Subsections of this Section (also, see Chapter VI of the *Handbook for Analytical QC in Water and Wastewater Laboratories*, EPA-600/4-79-019 or *Standard Methods for the Examination of Water and Wastewater*, 20th Edition, Part 1020B, or similar laboratory analytical QC reference texts for further information). These data are used to establish upper and lower control limits as follows:

upper control limit = $X + 3S$ (upper warning limit,
use + 2S instead of + 3S)
lower control limit = $X - 3S$ (lower warning limit,
use - 2S instead of - 3S)

E. After every 20 new recovery measurements, new control limits should be calculated using the most recent 20-30 data points. These calculated control limits shall not exceed those established in the method. If any of these calculated control limits are tighter than the control limits specified within the method, the laboratory shall use the tighter criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8077. Records and Data Reporting

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall meet the requirements for reporting results pursuant to Volume 1, Module 2, Section 5.10, of the TNI Standard and Volume 1, Module 6, Section 1.7 of the TNI Standard as well as meeting the requirements for reporting results in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Compliance monitoring data shall be made legally defensible by keeping thorough and accurate records. The quality manual and/or SOPs shall describe the policies and procedures used by the facility for record retention and storage. If samples are expected to become part of a legal action, chain of custody procedures shall be used.

C. Maintenance of Records. Public water systems are required to maintain records of radiological/radiochemical analyses of compliance samples for 10 years (40 CFR 141.33). The laboratory should maintain easily accessible records for 10 years. The client water system should be notified before disposing of records so they may request copies if needed. This includes all raw data, calculations, and quality control data. These data files may be either hard copy, microfiche or electronic. Electronic data shall always be backed up by protected tape or disk or hard copy. If the laboratory changes its computer hardware or software, it should make provisions for transferring old data to the new system so that it remains retrievable within the time frames specified above.

D. Sampling Records. Data should be recorded in ink with any changes lined through such that the original entry is visible. Changes shall be initialed and dated. The following

information should be readily available in a summary or other record(s):

1. date of sampling, location (including name of utility and PWS ID #, if the water system is a PWS), sampling site within the water system, time of sampling, name, organization and phone number of the sampler, and analyses required;
2. identification of the sample as to whether it is a routine distribution system sample, check sample, raw or finished water sample, repeat or confirmation sample or other special purpose sample;
3. date of receipt of the sample by the laboratory;
4. sample volume/weight, container type, preservation and holding time and condition on receipt;
5. pH (from plant records) and disinfectant residual at time of sampling (from on-site analysis by sampler at the time of sampling);
6. disinfectant residual by laboratory immediately prior to analysis; and
7. transportation and delivery of the sample (person/carrier, conditions).

E. Analytical Records. Data shall be recorded in ink with any changes lined through such that the original entry is visible. Changes shall be initialed and dated. The following information shall be readily available:

1. laboratory and persons responsible for performing the analysis;
2. analytical techniques/methods used;
3. date and time of analysis;
4. results of sample and quality control analyses; and
5. calibration and standards information.

F. Personnel Records. Résumés and training records shall be maintained for all personnel.

Documentation of the initial demonstration of capability for analysts/technicians shall be kept on file as well as the results of proficiency testing.

G. Reconstruction of Data. Adequate information shall be available to allow the assessor to reconstruct the final results for compliance samples and performance evaluation samples.

H. Computer programs. Computer programs shall be verified initially and periodically by manual calculations and the calculations shall be available for inspection. Access to computer programs and electronic data shall be limited to appropriate personnel.

I. The original or true duplicate of the results of the test or analysis shall be sent promptly to the person who requested such tests or analysis. In addition the results of compliance monitoring samples are to be sent to:

Louisiana Department of Health and Hospitals
Office of Public Health
Engineering Services Section – M/S #3
P O Box 4489
Baton Rouge, Louisiana 70821-4489

1. The results data shall be signed by the technical manager or a designee whose designation is in writing and whose name has been submitted to the department. Results submitted to the department shall be submitted electronically and in writing in the format specified by the Engineering Services Section of the department. Any sample result that exceeds the maximum contaminant level (MCL) or may cause a treatment technique requirement violation for any regulated contaminant listed in the federal Safe Drinking

Water Act (42 USC 300f, et seq.) and its implementing regulations (40 CFR Parts 141 and 143); an accredited laboratory shall report the result to the supplier of water and the department as soon as possible but no later than the end of the next business day after the result was determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8079. General Laboratory Practices

A. Chemicals/Reagents. Chemicals and reagents used must meet the specifications in the referenced method. If not specified therein, then analytical reagent (AR) grade or American Chemical Society (ACS) grade chemicals or better shall be used for analyses in accredited laboratories.

B. Reagent Water. The laboratory shall have a source of reagent water having a resistance value of at least 0.5 megohms (conductivity less than 2.0 micromhos/cm) at 25°C. High quality water meeting such specifications may be purchased from commercial suppliers. Quality of reagent water is best maintained by sealing it from the atmosphere. Quality checks to meet specifications above shall be made and documented at planned intervals based on use. This planned interval should not exceed daily. Individual analytical methods may specify additional requirements for the reagent water to be used. It may be necessary to treat water with activated carbon to eliminate all interferences. If individual methods specify additional requirements for the reagent water to be used, these must be followed.

C. Glassware Preparation. Specific requirements in the methods for the cleaning of glassware must be followed. If no specifications are listed, then glassware should be washed in a warm detergent solution and thoroughly rinsed first with tap water and then with reagent water. This cleaning procedure is sufficient for general analytical needs. For a summary of glassware cleaning procedures, refer to Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

D. Distilled and deionized water shall have at a minimum, resistivity values between 0.5 to 2.0 megohms-cm (2.0 to 0.5 micromhos/cm.) at 25° C. Preferably, distilled and deionized water should have resistivity values greater than 1.0 megohms-cm (less than 1.0 micromhos/cm) at 25°C. When purchasing distilled or deionized water, laboratories should request a list of quality specifications for the water purchased. Containers of distilled or deionized water should be capped when not in use and should be capped immediately after each use.

E. All solutions shall be properly labeled with identification of the compound, concentration, solvent, date, and analyst who prepared the solution.

F. All chemicals, solutions, and standards, shall be dated upon receipt by the laboratory; and the date opened by the laboratory shall also be noted.

G. Compositing of samples for radiological analyses must be done in the laboratory. Samples shall only be composited if the laboratory detection limit is adequate for the number of samples being composited (up to a maximum of five) and the holding times will not be exceeded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

§8081. Management System General Requirements

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall establish, implement and maintain a management system as outlined in Volume 1, Module 2, Section 4.2 of the TNI Standard. The laboratory's management system policies related to quality, including a quality policy statement, shall be defined in a quality manual (however named). The quality manual shall include all the requirements in Volume 1, Module 2, Section 4.2 of the TNI Standard. The quality manual shall be made available to all laboratory personnel.

B. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall establish and maintain a documented data integrity system. There are four elements within a data integrity system. These are:

1. data integrity training;
2. signed data integrity documentation for all laboratory employees;
3. in-depth, periodic monitoring of data integrity; and,
4. data integrity procedure documentation.

C. The procedures of the data integrity system required under Subsection B of this Section shall be signed by top management. The requirements for data integrity investigation are listed in Volume 1, Module 2, Section 4.16 of the TNI Standard. The requirements for data integrity training and documentation are listed in Volume 1, Module 2, Section 5.2.7 of the TNI Standard.

D. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall maintain SOPs that accurately reflect all phases of current laboratory activities, such as assessing data integrity, corrective actions, handling customer complaints and all analytical methods. All of the requirements for the laboratory's SOPs are outlined in Section 4.2.8.5 of Volume 1, Module 2 of the TNI Standard. All quality control data and records required by this Section shall be retained by the laboratory for a minimum of 10 years and shall be made available for inspection by the department. Such retained data shall include, but shall not be limited to, the results of and raw data generated by proficiency test analyses.

E. Document Control. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall establish and maintain procedures to control all laboratory documents as specified in Volume 1, Module 2, Section 4.3, of the TNI Standard.

F. Review of Requests, Tenders and Contracts. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for review of requests, tenders and contracts pursuant to Volume 1, Module 2, Section 4.4 of the TNI Standard.

G. Subcontracting of Environmental Testing. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for subcontracting environmental testing

pursuant to Volume 1, Module 2, Section 4.5 of the TNI Standard.

H. Purchasing Services and Supplies. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for purchasing services and supplies pursuant to Volume 1, Module 2, Section 4.6 of the TNI Standard.

I. Service to the Client and Complaints. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for service to the clients and complaint policy and processes pursuant to Volume 1, Module 2, Sections 4.7 and 4.8 of the TNI Standard.

J. Control of Nonconforming Environmental Testing Work. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for the control of nonconforming environmental testing pursuant to Volume 1, Module 2, Sections 4.9 of the TNI Standard.

K. Laboratory Improvement, Corrective Action and Preventive Action. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for improving the laboratory, corrective and preventive actions pursuant to Volume 1, Module 2, Sections 4.10, 4.11, and 4.12 of the TNI Standard.

L. Internal Audits and Management Reviews. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for establishing and conducting internal audits and management reviews of laboratory activities pursuant to Volume 1, Module 2, Sections 4.14 and 4.15 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

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:

Category—a group of physical, chemical, or radiological parameters associated with drinking water for which laboratory certification is offered under the *laboratory certification program*.

Certified Chemical Laboratory/Drinking Water—a laboratory meeting the requirements contained within the *laboratory certification regulations* and which has been officially certified by the state health officer to analyze and report compliance monitoring sample results for one or more physical, chemical, or radiological parameters associated with drinking water. Certification may be obtained on a parameter by parameter basis only.

Laboratory Certification Regulations—the regulations which govern laboratory certification and standards of performance for laboratories conducting drinking water analyses for public water systems and other potable water supply systems in the state of Louisiana. Such regulations are housed in LAC 48:V.Chapter 80.

Laboratory Certification Program—a program carried out by the Department of Health and Hospitals, Office of Public Health to certify commercially and publicly owned laboratories to perform compliance monitoring analyses for public water systems and other potable water supply systems in accordance with the National Primary Drinking Water Regulations and this Part. The cost of the program will be recouped from the laboratories requesting certification.

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 35:484 (March 2009), LR 35:2140 (July 2009), LR 38:

Chapter 3. Water Quality Standards

§301. Mandatory Water Quality Standards for Public Water Systems

A. - B. ...

C. A laboratory certification program has been established to certify commercially and publicly owned laboratories to perform chemistry compliance monitoring analyses for public water systems and other potable water supply systems. Laboratories seeking certification in any chemistry category for which certification is offered must adhere to the rules and regulations governing laboratory certifications as contained in the Department of Health and Hospitals, Office of Public Health's *laboratory certification regulations* (see LAC 48:V.Chapter 80). An annual certification fee will be assessed laboratories seeking certification from the Department of Health and Hospitals, Office of Public Health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7), 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 28:1321 (June 2002), amended LR 30:2327 (October 2004), LR 38:

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 to perform the function as contained in the proposed Rule.

Public Comments

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 27, 2011 at COB, 4:30 pm, and should be addressed to Louis P. Wales, Jr., Chemistry Laboratory and Certification Program Manager, Laboratory Services Section, Center for Community Health, Office of Public Health, 3101 West Napoleon Avenue, Room 201, Metairie, LA 70001, or faxed to (504) 219-4661.

Public Hearing

DHH-OPH will conduct a public hearing at 10:00 am on Wednesday, May 25, 2011, in Room 474 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Accreditation of Laboratories Conducting Drinking Water Analyses

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

The proposed rule enacts Chapter 80, Part V, Title 48 and amends Sections 101 and 301, Part XII, Title 51 of the Louisiana Administrative Code. This proposed rule change will amend the September 1989 DHH "Laboratory Certification Manual" which was adopted effective November 20, 1989, in order to align with the standards set by the National Environmental Laboratory Accreditation Program (NELAP). The rule merely seeks to codify the manual with these amendments. The major purpose of this proposed rule change is to ensure that drinking water samples collected and analyzed pursuant to the Federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) meet quality control and quality assurance requirements.

Sample results which meet the quality control and quality assurance requirements are used by public water systems and DHH-OPH's Safe Drinking Water Program to ensure that the health of the citizens and visitors to the State of Louisiana are being protected. These regulations will govern the laboratory accreditation and standards of performance for laboratories conducting drinking water analyses for public water systems and for other potable water supplies located in the State of Louisiana.

This rule change is not anticipated to have any impact on state laboratories since NELAP regulations are already in practice in state operated laboratories. In addition, it is anticipated that the proposed rule will not have any significant impact on local government units. However, local governmental units (e.g., municipal laboratories) which are currently accredited under the existing rule may experience a minimal increase in cost to comply with the proposed regulation relative to the revision of internal documents to meet

the requirements in this new rule. These documents include quality assurance and control documents required under the new rule.

Any municipal laboratory seeking accreditation will have to complete the new application and create the quality assurance and control documents required by this rule and make the changes in their laboratory operations to bring the laboratory into compliance with the requirements outlined in this rule. Costs will depend upon the laboratory's current level of expertise.

The proposed rule changes will result in an estimated cost to DHH-OPH of \$5,418 to publish the notice of intent and the final rule in the *Louisiana Register* (\$2,772 in FY 12 and \$2,646 in FY 13). This is a one-time cost that will be absorbed by the agency's budget.

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)

The non-governmental groups (e.g., owners of private or commercial laboratories) should see an economic benefit from the promulgation of this rule because the laboratories will be able to market their services as meeting widely accepted national and international standards for the operation of environmental laboratories under NELAP.

Owners of private or commercial laboratories which are currently accredited under the existing rule may experience minimal cost to comply with the proposed regulation relative to the revision of internal documents to meet the quality assurance and control requirements in this new rule.

Any non-governmental groups (e.g., owners of private or commercial laboratories) seeking accreditation will have to complete the new application and create the quality assurance and control documents to bring the laboratory into compliance with the requirements outlined in this rule. Costs will depend upon the laboratory's current level of expertise.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition in the public and private sectors should be enhanced by the adoption of this rule. Public and private sector laboratories accredited to NELAP standards will be able to compete on a much broader scale nationally and internationally if they choose to do so. Employment opportunities may increase if the increased competition leads to more business for these laboratories.

J.T. Lane
Assistant Secretary
1112#080

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Sanitary Code—General Provisions and Water Supplies
(LAC 51:I.101, 124 and XII.101, 105, 301, 337,
355, 1101, 1103, 1301, 1701, 1903, and 1911)

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 I (General Provisions) and XII (Water Supplies) of the Louisiana State Sanitary Code (LAC 51). The intent of the amendment to Part I is to clearly state that the state health officer, acting personally, does have the authority to vary the application of any of the provisions contained in the state sanitary code. The intent of the amendments to Part XII 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 portion of the Rule proposed herein relative to Part XII 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 disinfection by-products, lead and copper, and the treatment of surface waters used to produce potable water. Subsequently, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on January 4, 2006 (71 FR 388-493) by promulgating a rule entitled "National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule." The January 4, 2006 federal disinfectants and disinfection byproducts regulations became effective for Louisiana public water systems at the federal level on March 6, 2006. Again, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on January 5, 2006 (71 FR 653-786) by promulgating a rule entitled "National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Final Rule". The January 5, 2006 federal surface water treatment regulation became fully effective for Louisiana public water systems at the federal level on March 6, 2006. Likewise, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on October 10, 2007 (72 FR 57782-57820) by promulgating a rule entitled "National Primary Drinking Water Regulations for Lead and Copper: Short-Term Regulatory Revisions and Clarifications; Final Rule". The October 10, 2007 federal lead and copper regulation became effective for applicable Louisiana public water systems on the federal level on December 10, 2007. It is the intent of this rulemaking to amend the current state regulations by adopting these newly amended federal disinfection by-products, lead and copper, and surface water treatment regulations by reference into Part XII.

For the reasons set forth above, Part I (General Provisions) and 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 I. General Provisions

Chapter 1. General

§101. Definitions

[formerly paragraph 1:001]

A. ...

B. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

State Health Officer—the individual designated as "state health officer" pursuant to R.S. 40:2 and, except for the purpose of issuing variances, those individuals authorized to act on behalf thereof pursuant to R.S. 40:4 and 40:5. For the purpose of issuing variances, the term shall include any individual the state health officer has personally and specifically designated to issue variances on his/her behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and R.S. 40:5(3)(7)(17)(19)(20)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693, (October 2001), repromulgated LR 28:1209 (June 2002), amended LR 28:2528 (December 2002), LR 34:652 (April 2008), LR 38:

§124. Variances from Code

A. The state health officer has the authority and discretion to issue a written variance concerning the application of any provision of the code in any particular case when, in his/her opinion based upon the extenuating circumstances presented, it is determined that the health and safety of the public will not be jeopardized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and R.S. 40:5 (3)(17).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

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.

Louisiana Water Well Rules, Regulations, and Standards—see LAC 56: I.

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, 2008 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);

iii. Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People (40 CFR §§141.500—571);

iv. 40 CFR 141 drinking water regulation amendments promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of the 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 in the *Federal Register* dated November 8, 2006 (Volume 71, Number 216, pages 65651 through 65659); and

v. 40 CFR 141 drinking water regulation amendments promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of the 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 in the *Federal Register* dated January 4, 2007 (Volume 72, Number 2, pages 389 through 398).

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 35:484 (March 2009), LR 35:1240 (July 2009), LR 38:

§105. Permit Requirements for a Potable Water Supply

[formerly paragraph 12:002-2]

A. - C. ...

D. Public water systems shall be designed, installed, and maintained in accordance with the "Ten-State Standards" and the *Louisiana Water Well Rules, Regulations, and Standards*, plus any additional requirements of the state health officer as set forth in this Part. Exception: In regards to the application/enforcement of the "Ten-State Standards", the following Sections thereof shall be applied/enforced as follows:

1. sections 2.6, 3.2.1.2, 3.2.1.3.a, and 6.6.6 shall not be mandatory for non-community water supplies (unless the non-community water supply serves a hospital);

2. the water sight glass required under Section 7.2.4 shall not be mandatory if an automated control to maintain the proper water-to-air ratio in the tank is provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (5)(6)(7)(17)(19).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1320 (June 2002), amended LR 38:

Chapter 3. Water Quality Standards

§301. Mandatory Water Quality Standards for Public Water Systems

A. Each public water supply shall comply with the maximum contaminant levels, maximum residual disinfectant levels, and treatment technique requirements as prescribed and as applicable in the National Primary Drinking Water Regulations, the Louisiana Total Coliform Rule (Chapter 9 of this Part), the Louisiana Surface Water Treatment Rule (Chapter 11 of this Part), the Louisiana Disinfectants and Disinfection Byproducts Rule (Chapter 13 of this Part), and the Louisiana Lead and Copper Rule (Chapter 17 of this Part). The state health officer, upon determining that a risk to human health may exist, reserves

the right to limit exposure to any other contaminant. Further, each public water supply should comply with the National Secondary Drinking Water Regulations. Treatment to remove questionable characteristics shall be approved by the state health officer.

B. Each public water supply shall comply with the monitoring and analytical requirements specified in the National Primary Drinking Water Regulations, the Louisiana Total Coliform Rule (Chapter 9 of this Part), the Louisiana Surface Water Treatment Rule (Chapter 11 of this Part), the Louisiana Disinfectants and Disinfection Byproducts Rule (Chapter 13 of this Part), and the Louisiana Lead and Copper Rule (Chapter 17 of this Part), as applicable.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 (B)(7), 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 28:1321 (June 2002), amended LR 30:2327 (October 2004), LR 38:

§337. Storage

[formerly paragraph 12:013-1]

A. All finished water storage tanks shall be tightly covered and of watertight construction and made of concrete, steel or other materials approved for this purpose by the state health officer. When located wholly or partly below ground, such storage basins shall be of corrosion resistant materials.

B. - C. ...

D. [Formerly paragraph 12:013-4 Coatings] Paints or other materials used in the coating of the interior of cisterns, tanks or other containers in which potable water is processed or stored shall be nontoxic to humans and shall be of such composition that the palatability of the water stored or processed shall not be adversely affected. The "Standard for Coating Steel Water Storage Tanks" (AWWA D102-11) published by the American Water Works Association shall be complied with. Determination of acceptability of coatings for potable water applications by the U.S. Environmental Protection Agency may be considered evidence of compliance with this Subsection. (The AWWA Standard can be obtained from the American Water Works Association, 6666 W. Quincy Ave., Denver, Colo. 80235.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (5)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1325 (June 2002), amended LR 38:

§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 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 (5)(6).

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 35:1240 (July 2009), LR 38:

Chapter 11. Surface Water Treatment Rule
Subchapter A. General Requirements and Definitions

§1101. General Requirements

A. Although this Chapter is titled the "Surface Water Treatment Rule" (SWTR), it is comprised of the adoption of all the following individual rules:

1. the Louisiana Surface Water Treatment Rule (LSWTR) adopted on March 20, 1991 (see LR 17:271);

2. the May 20, 2000 rule (see LR 26:1036) that repealed obsolete turbidity monitoring rules (these obsolete rules pre-dated the newer turbidity monitoring rules contained in the LSWTR);

3. the Louisiana Interim Enhanced Surface Water Treatment Rule (LIESWTR) adopted on December 20, 2002 (LR 28:2513);

4. the Louisiana Long Term 1 Enhanced Surface Water Treatment Rule (LL1ESWTR) adopted on July 20, 2009 (LR 35:1239); and

5. the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) adopted by reference on [insert date of final rule adoption].

a. Pursuant to the definition of National Primary Drinking Water Regulations (as defined in this Part) and the provisions of §377 of this Part, the Department of Health and Hospitals (DHH) Office of Public Health (OPH) adopts by reference the United States Environmental Protection Agency (USEPA) federal Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) as published in the *Federal Register* dated January 5, 2006 (Volume 71, Number 3, pages 653-786). In addition, under §377 of this Part, DHH-OPH also adopted by reference certain USEPA technical corrections to the federal LT2ESWTR. The applicable technical corrections were published in the *Federal Register* dated January 30, 2006 (Volume 71, Number 19, page 4968) and in the *Federal Register* dated February 6, 2006 (Volume 71, Number 24, page 6136).

B. 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.

C. Each supplier using an approved surface water as its source of water supply shall provide multibarrier treatment necessary to reliably protect users from the adverse health effects of microbiological contaminants and to comply with the requirements and performance standards prescribed in this Chapter.

D. Unless the Department of Health and Hospitals, hereinafter referred to as DHH, determines that a shorter time limit is necessary due to an emergency situation or the finding of a significant deficiency, a supplier shall, within 90 days from the date of notification by DHH that a treatment plant using surface water or GWUDISW as its source of water supply does not meet the requirements of this Chapter, submit for DHH approval a plan and schedule to bring its system into compliance.

E. If the supplier disagrees with the DHH's notification issued pursuant to §1101.D of this Part, then the supplier shall submit in writing reasons and evidence for its disagreement as soon as possible but not later than 30 days

from the receipt of the notification unless an extension of time to meet this requirement is requested and granted by the DHH. In cases when DHH's notification involves an emergency situation or the finding of a significant deficiency, the supplier shall submit in writing reasons and evidence for its disagreement as soon as possible but not later than 14 days from the receipt of such notification.

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 35:1241 (July 2009), LR 38:

§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.

LT2ESWTR—Long Term 2 Enhanced Surface Water Treatment Rule.

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 35:1241 (July 2009), LR 38:

Chapter 13. Disinfectants and Disinfection Byproducts Rule

Subchapter A. General

§1301. General

A. Pursuant to the definition of National Primary Drinking Water Regulations and the provisions of §377 of this Part, the Department of Health and Hospitals (DHH) Office of Public Health (OPH) adopts by reference the United States Environmental Protection Agency (USEPA) federal Disinfectants and Disinfection Byproducts Rule (D/DBPR) as published in the *Federal Register* dated December 16, 1998 (Volume 63, Number 241, pages 69389-69476). In addition, under §377 of this Part, DHH-OPH also adopted by reference certain USEPA technical corrections to the federal D/DBPR. The applicable technical corrections were published in the *Federal Register* dated January 16, 2001 (Volume 66, Number 10, pages 3769-3780) and in the *Federal Register* dated February 12, 2001 (Volume 66, Number 29, page 9903). The regulations in this Chapter are promulgated in order to clarify the state's discretionary decisions allowed by the federal requirements.

B. Pursuant to the definition of National Primary Drinking Water Regulations and the provisions of §377 of this Part, the Department of Health and Hospitals (DHH) Office of Public Health (OPH) adopts by reference the United States Environmental Protection Agency (USEPA) federal Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 D/DBPR) as published in the *Federal Register* dated January 4, 2006 (Volume 71, Number 2, pages 388-493). In addition, under §377 of this Part, DHH-OPH also adopted by reference certain USEPA technical corrections to the federal Stage 2 D/DBPR. The applicable technical corrections were published in the *Federal Register* dated January 27, 2006 (Volume 71, Number 18, pages 4644-4645), in the *Federal Register* dated June 29, 2006 (Volume

71, Number 125, page 37168) and in the *Federal Register* dated November 14, 2006 (Volume 73, Number 221, pages 67456-67463).

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 30:1196 (June 2004), amended LR 38:

Chapter 17. Lead and Copper Rule

§1701. General

A. Pursuant to a revision of the definition of *National Primary Drinking Water Regulations* published in the May 20, 1994 *Louisiana Register* (LR 20:545), the Department of Health and Hospitals (DHH) Office of Public Health (OPH) initially adopted by reference the United States Environmental Protection Agency's (USEPA) federal Lead and Copper Rule (LCR) as published in the *Federal Register* dated June 7, 1991 (Volume 56, Number 110, pages 26547 through 26564), including the federal Lead and Copper Rule corrections as published in the *Federal Registers* dated July 15, 1991 (Volume 56, Number 135, page 32113) and June 29, 1992 (Volume 57, Number 125, pages 28788 through 28789). Pursuant to another revision of the definition of *National Primary Drinking Water Regulations* published in the May 20, 2000 *Louisiana Register* (LR 26:1037) and the provisions of paragraph 12:026 (now §377), further technical corrections [as published in the *Federal Register* dated June 30, 1994 (Volume 59, Number 125, page 33862 through 33864)] to the federal Lead and Copper Rule were adopted by DHH-OPH. Pursuant to another DHH-OPH revision of the definition of *National Primary Drinking Water Regulations*, published in the October 20, 2004 *Louisiana Register* (LR 30:2326), and the provisions of §377 of this Part, the DHH-OPH adopted by reference the USEPA federal Lead and Copper Rule Minor Revisions (LCRMRs) as published in the *Federal Register* dated January 12, 2000 (Volume 65, Number 8, pages 2003 through 2014) as well as additional technical corrections to the Lead and Copper Rule as published in the *Federal Register* dated June 29, 2004 (Volume 69, Number 124, pages 38855 through 38857). Pursuant to yet another DHH-OPH revision of the definition of the *National Primary Drinking Water Regulations*, published in the [insert date of published final rule] *Louisiana Register* ([LR 38:*** December 20, 2011]), and the provisions of §377 of this Part, the DHH-OPH adopted by reference the USEPA federal Lead and Copper Rule Short Term Revisions (LCRSTRs) as published in the *Federal Register* dated October 10, 2007 (Volume 72, Number 195, pages 57782 through 57820). The regulations in this Chapter are promulgated in order to clarify the state's discretionary decisions allowed by the federal requirements.

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 30:2327 (October 2004), amended LR 38:

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 Surface Water Treatment Rule (Chapter 11 of this Part), the 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 35:486 (March 2009), amended LR 35:1246 (July 2009), LR 38:

§1911. Public Notice for Certain Violations of Specific Drinking Water Rules

A. ...

B. Surface Water Treatment Rule. Also refer to §1139 of this Part.

C. Disinfectants and Disinfection Byproducts Rule. Also refer to §1317 of this Part.

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 35:487 (March 2009), amended LR 35:1246 (July 2009), LR 38:

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. The functioning of the family is expected to be improved by adoption of this Rule as the intent of the Rule is to lower the occurrence of illness and disease in the population; thus, it is expected that fewer families and family members will become ill or diseased.

4. The Effect on the Family Earnings and Family Budget. A monthly household cost increase for 90 percent of the households connected to a public water system which are affected by this Rule may experience an increase in their water bill ranging from \$0.54 - \$1.37 per month.

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. Only those local governments which own or operate a public water system may be affected by this Rule. If affected, local governments may have to increase the amount charged for water on their customer's

water bill in order to be able to pay for system improvements to comply with this Rule.

Public Comments

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Friday, January 27, 2012 at COB, 4:30 p.m., and should be addressed to Caryn Benjamin, Safe Drinking Water Program Manager, Engineering Services Section, 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 N. Fourth Street - Room 132, Baton Rouge, LA 70802.

Public Hearing

DHH-OPH will conduct a public hearing at 1 pm on Tuesday, January 24, 2012, in Room 118 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the seven-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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sanitary Code General Provisions and Water Supplies

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

The Office of Public Health is proposing to amend two Parts of the Louisiana State Sanitary Code (LAC 51). Part I (General Provisions) proposes to provide clarity regarding the authority of the state health officer by removing and revising verbiage and adds a section that authorizes him to vary the application of any of the provisions of the Louisiana State Sanitary Code. Part XII (Water Supplies) proposes to change four separate rules regarding drinking water. The Stage 2 Disinfectant/Disinfection Byproducts Rule, the Long Term 2 Surface Water Treatment Rule, and the Lead and Copper Rule Short Term Regulatory Revisions and Clarifications Rule are being adopted to comply with certain U.S. Environmental Protection Agency regulations and are detailed below. The last rule change provides clarity on the current requirements of existing water systems. There may be a cost to state or local governmental units as the result of making the clarifications to require existing systems to meet code standards; however this cost is inestimable at this time because the deficiencies will be determined on a case-by-case basis during the routine sanitary survey (inspection) of public water systems. These proposed rule changes ensure primacy authority over public water systems in Louisiana to maintain DHH's primacy delegation from the United States Environmental Protection Agency. DHH-OPH must continue to adopt and/or amend its state regulations such that they continue to be equivalent to the federal regulations.

Stage 2 Disinfectant/Disinfection Byproducts Rule - State governmental units, such as DHH hospitals and other state agencies and facilities, that own or operate 20 public water systems may incur an additional cost of approximately \$16,756

in FY 12, \$17,258 in FY 13 and \$17,776 in FY 14. These costs include increased monitoring, capital improvements for treatment, and operation and maintenance costs. This rule will also impact local governmental units that own or operate 567 public water systems statewide. The approximate cost for all 567 systems is \$472,102 in FY 12, \$486,266 in FY 13, and \$500,854 in FY 14, which includes increased monitoring, capital improvements for treatment, and operation and maintenance costs.

Long Term 2 Surface Water Treatment Rule - This rule will impact local governmental units that own or operate 51 public water systems throughout the state. The approximate costs for these 51 systems is \$13,454,910 in FY 13, which includes one-time capital improvements costs for additional treatment and annualized operation and maintenance costs, and \$343,398 in FY 14 for annualized operation and maintenance costs.

Lead and Copper Rule Short Term Regulatory Revisions and Clarifications Rule - The state's adoption of this federal rule will not result in any additional costs to Louisiana public water systems because the systems have already been required to comply under the federal rule since December 2009.

Also, the proposed rule changes will result in an estimated cost to DHH-OPH of \$1,554 to publish the notice of intent and the final rule in the *Louisiana Register*. This is a one-time cost that will be absorbed by the agency's budget.

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

State or local governmental units which own, manage, and/or operate a public water systems (PWS) may determine a need to increase their revenue collections (i.e., increase water bills) to cover the cost of complying with these federally mandated rules. The actual effect on revenue collections is hard to predict due to variables in the applicable requirements based upon various sized systems.

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

The following rules will impact economic costs to persons or non-governmental groups:

Stage 2 Disinfectant/Disinfection Byproducts Rule - Persons or non-governmental groups that own or operate the 597 privately-owned public water systems affected by this rule change may incur, in total for all 597 systems, additional costs of approximately \$496,742, which includes the increased monitoring, capital improvements for treatment, and operation and maintenance costs. In addition, the Environmental Protection Agency has estimated that 90 percent of the households that are connected to a PWS will incur a monthly cost increase of \$0.84 for the Stage 2 Disinfectants and Disinfection Byproduct Rule.

Long Term 2 Surface Water Treatment Rule - This rule will impact persons or non-governmental groups that own or operate the 12 privately owned public water systems affected by this rule change. The approximate cost for all 12 systems is \$3,216,286, which includes one-time capital improvements costs for additional treatment, annualized operation and maintenance costs, and a one-time monitoring cost. Also, the EPA has estimated that over 90 percent of the households that are connected to a PWS that uses surface water as its supply source will incur a monthly cost increase of \$0.54 for the Long Term 2 Enhanced Surface Water Treatment Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will likely cause an increase in competition to hire and retain qualified and certified water plant operators. The rule will require water plant operators to become more knowledgeable of plant processes and controls. The competition to hire and retain a competent operator will be higher based on his/her qualifications. This will cause an

increase in employment to install and maintain such sophisticated treatment systems.

J.T. Lane
Assistant Secretary
1112#079

Evan Brasseur
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Offender Mail and Publications (LAC 22:I.313)

In accordance with the provisions of the Administrative Procedure 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 Section 313, Offender Mail and Publications.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§313. Offender Mail and Publications

A. Purpose. To state the secretary's policy regarding offender mail privileges, including publications, at all adult institutions.

B. Applicability. Deputy secretary, undersecretary, chief of operations, 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 and affected employees.

C. Notice. Staff at each reception and diagnostic center or unit handling initial reception and diagnostic functions shall inform each offender in writing promptly after arrival of the department's rules for handling of offender mail, utilizing the notification of mail handling (Form C-02-009-A.) This form shall be filed in the offender's master record.

1. The current offender population in DPS&C facilities is required to complete form C-02-009-A upon the issuance of this revision to department regulation No. C-02-009 "Offender Mail and Publications."

D. Policy. It is the secretary's policy that offenders may communicate with persons or organizations subject to the limitations necessary to protect legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), to prevent the commission of a crime, or to protect the interests of crime victims.

E. Definitions

DPS and C Facility—includes, for the purpose of this regulation, state operated prison facilities, and state privately operated prison facilities.

E-mail—a document created or received on an electronic mail system, including any attachments, such as word processing and other electronic documents, which may be transmitted with the message. E-mail is correspondence to or from an offender in an electronic format that is

provided through the department's contractor for offender services.

Farm Mail Correspondence—offender to offender mail when housed at the same institution.

Indigent Offenders—those who do not have sufficient funds in the appropriate account(s) at the time of their request for indigent services and/or supplies to fully cover the cost of the requested services or supplies.

Nudity—pictorial depiction of buttocks, genitalia or female breasts (with the nipple or areola exposed).

Privileged correspondence—(includes mail to or from)

- a. Identifiable courts;
- b. Identifiable prosecuting attorneys;
- c. Identifiable probation and parole officers, parole board and pardon board;
- d. State and local executive officers;
- e. Identifiable attorneys;
- f. Secretary, deputy secretary, undersecretary, assistant secretary, chief of operations and other officials and administrators of grievance systems of the department;
- g. Local, state or federal law enforcement agencies and officials.

Publication—book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, magazine/ newspaper clipping, article printed from the internet, plus other materials addressed to a specific offender such as advertising brochures, flyers and catalogs.

Sexually Explicit Material—any book, pamphlet, magazine, or printed matter however reproduced, which contains any picture, photograph, drawing or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, bestiality and homosexuality. Explicit sexual material also includes that which contains detailed verbal descriptions or narrative accounts of sexually explicit conduct. (A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose.)

F. Offender Correspondence. Offenders may write and receive letters and e-mails subject to the following provisions.

1. Frequency. There shall be no limit placed on the number of letters or e-mails an offender may write or receive at personal expense and no limit placed on the length, language or content except when there is reasonable belief that limitation is necessary to protect public safety or institutional order, including restrictions relative to what may be reasonably stored in space provided and security. Offenders in segregation can write and receive letters on the same basis as offenders in general population.

2. Timely handling. All mail, incoming and outgoing, shall be handled without unjustified delay. Letters should generally not be held more than 48 hours and packages shall not be held more than 72 hours. This does not prohibit the holding of mail for offenders who are temporarily absent from the institution and does not include weekends and holidays or emergency situations. When mail is received for an offender who has been transferred to another institution or released, the institution where the mail is received should attempt to forward the mail to him. The collection and

distribution of mail is never to be delegated to an offender. Mail will be given directly to the receiving offender by an employee.

3. Correspondence. An offender may write to anyone except:

a. a victim of any criminal offense for which the offender has been convicted or for which disposition is pending, or an immediate family member of the victim, except in accordance with specific procedures established by department regulations or as established by the warden in conjunction with the crime victims services bureau;

b. any person under the age of 18 when the person's parent or guardian objects verbally or in writing to such correspondence;

c. any person whom the offender is restrained from writing to by court order;

d. any person who has provided a verbal or written request to not receive correspondence from an offender;

e. any other person, when prohibiting such correspondence is generally necessary to further the substantial interests of security, order or rehabilitation.

4. Costs of Correspondence

a. Each offender shall pay personal mailing expenses, except an indigent offender. An indigent offender shall have access to postage necessary to send two personal letters per week, postage necessary to send out approved legal mail on a reasonable basis and basic supplies necessary to prepare legal documents. A record of such access shall be kept and the indigent offender's account shall reflect the cost of the postage and supplies as a debt owed in accordance with department regulations. Stationery, envelopes and stamps shall be available for purchase in the canteen.

b. E-mail shall only be available to offenders who have electronic postage capabilities through the department's contractor for offender services.

5. Outgoing General Correspondence and Farm Mail

a. Review, Inspection and Rejection. Outgoing general correspondence and farm mail shall not be sealed by the offender and may be read and inspected by staff. Outgoing e-mail may also be read by staff. The objectives to be accomplished in reading outgoing mail differ from the objectives of inspection. In the case of inspection, the objective is primarily to detect contraband. The reading of mail and e-mail is intended to reveal, for example, escape plots, plans to commit illegal acts, or plans to violate institutional rules or other security concerns. Outgoing general correspondence and farm mail may be restricted, confiscated, returned to the offender, retained for further investigation, referred for disciplinary proceeding or forwarded to law enforcement officials, if review discloses correspondence or materials which contain or concern:

i. the transport of contraband in or out of the facility;

ii. plans to escape;

iii. plans for activities in violation of facility or department rules;

iv. information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;

v. letters or materials written in code or a foreign language when the offender understands english (unless the

warden or designee determines that the recipient is not fluent in english);

vi. mail which attempts to forward unauthorized correspondence to a third party;

vii. Threats to the safety and security of staff, other offenders or the public, facility order or discipline or rehabilitation (including racially inflammatory material);

viii. sexually explicit material;

ix. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Notice of Rejection. The offender sender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the incoming/outgoing general correspondence, farm mail and e-mail notice of rejection (Form C-02-009-B.) Any further delay in notification shall be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the administrative remedy procedure.

c. Limitations on Restrictions. Any restrictions imposed on outgoing general correspondence and farm mail shall be unrelated to the suppression of expression and may not be restricted solely based on unwelcome or unflattering opinions. Communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest or offender shall be rejected. This shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.

d. Procedures for Mailing. Outgoing general correspondence and farm mail shall be inserted into the envelope and left unsealed by the offender. All outgoing correspondence shall include:

i. a complete legible name and address of the party the correspondence is being sent to;

ii. the offender's name, DOC number, housing unit, and the name and mailing address of the institution which shall be written or typed on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing general correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution.

iii. outgoing e-mails shall be processed electronically and scanned for contents and phrases.

6. Incoming General Correspondence

a. Review, Inspection, and Rejection. All incoming general correspondence and e-mails must contain the return address of the sender, the name and DOC number of the offender and the name and mailing address of the facility. All incoming general correspondence shall be opened and inspected for contraband, cash, checks, and money orders and is subject to being read. Any stick on label or stamp may be removed if it appears to contain contraband. All incoming general correspondence may be rejected if such review discloses correspondence or material(s) which would reasonably jeopardize legitimate penological interests, including, but not limited to, material(s) which contain or concern:

i. the transport of contraband in or out of the facility;

- ii. plans to escape;
- iii. plans for activities in violation of facility or department rules;
- iv. plans for criminal activity;
- v. violations of this regulation or unit rules;
- vi. letters or materials written in code;
- vii. threats to the safety and security of staff, other offenders, or the public, facility order, or discipline, or rehabilitation, (including racially inflammatory material);
- viii. sexually explicit material;
- ix. greeting cards larger than 8" x 10" and greeting cards containing electronic or other non-paper parts, cards constructed in such a way as to permit concealment of contraband;
- x. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Incoming general correspondence containing any of the foregoing may be restricted, confiscated, returned to the sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

c. Notice of Rejection. The offender shall be notified within three working days, in writing, of the correspondence or e-mail rejection and the reason therefore on the incoming/outgoing general correspondence, farm mail and e-mail notice of rejection (Form C-02-009-B.) Any further delay in notification shall be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the administrative remedy procedure.

7. Monetary Remittances

a. Incoming. Funds may only be sent to the facility and processed for hobbycraft purchases properly supported by a hobbycraft agreement in accordance with established policy and procedures.

b. For hobbycraft purchases, money from permissible sources may be accepted in the following forms:

- i. postal, bank or commercially issued money orders;
- ii. bank cashier checks;
- iii. cash;
- iv. personal checks.

c. All other offender funds shall be processed through the department's contractor for offender services in accordance with established policy and procedures.

d. Upon discovery of cash, multiple party checks, personal checks not for hobbycraft purchases or any other funds received in the mail for an offender, the offender shall be sent a monetary remittances notice of rejection (Form C-09-009-C) within three working days describing the contents of the mail, the date of its receipt and advising that he has seven working days to provide return postage. If return postage is not provided within seven working days, the postage will be provided by the unit. The offender's banking account will be charged if funds are available. If funds are not available, a debt owed will be established pursuant to department regulations.

8. Identification of Privileged Correspondence. It is the responsibility and duty of institutional staff to verify the legitimacy of the official listed on the envelope. For purposes of this regulation, "identifiable" means that the

official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, then the letter is to be treated as general correspondence and an appropriate inquiry made into the offender's intent in addressing the envelope as privileged mail.

9. All outgoing privileged correspondence shall include:

a. a complete legible name and address of the party the correspondence is being sent to;

b. the offender's name, DOC number, housing unit, and the address of the institution on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing privileged correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution.

c. outgoing privileged correspondence may be posted sealed, and will not be opened and inspected without express authorization from the warden or deputy warden as specified in Paragraph F.11 of this Section.

10. Incoming Privileged Correspondence

a. All incoming privileged correspondence must contain the return address of the sender and the name and DOC number of the offender and the name and mailing address of the facility. All incoming privileged correspondence shall be opened in the presence of the offender to whom it is addressed and inspected for the presence of cash, checks, money orders and contraband and to verify as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege. When the material is inspected and it is found to be bound or secured in any manner that would prevent the thorough inspection of the document, the offender shall have the option of allowing staff to take the document apart for adequate inspection or returning the material to the sender to require that the material be returned in a loose manner to allow for proper inspection. Additionally, offenders receiving legal material in the form of a compact disc shall have the option of paying for copies to be made by the facility or returning the disc to the sender in order to require that the material be converted to paper copies. Payment for paper copies of legal material from a compact disc shall be in accordance with established policy and procedures.

b. Incoming privileged mail may be opened and inspected outside the offender's presence in the circumstances outlined in Paragraph F.11 of this Section.

i. Inspection and Rejection. When, in the course of inspection, cash, checks, or money orders are found, they shall be removed and forwarded to the business office who will verify the legitimacy of the transaction in accordance with established policy and procedures.

ii. If material is found that does not appear to be entitled to the privilege or if any of the circumstances outlined in Section F.11. exist, the mail may be restricted, confiscated, returned to sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

iii. Notice of Rejection. The offender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the privileged correspondence notice of rejection (Form C-02-

009-D) describing the reason for the rejection and advising that he has seven working days to determine the disposition of the correspondence. Rejections are appealable through the administrative remedy procedure.

iv. Accidental Opening. If privileged correspondence is opened accidentally, outside the presence of the offender, the envelope shall be immediately stapled or taped closed and the envelope marked "Accidentally Opened" along with the date and employee's initials. An unusual occurrence report shall be completed.

11. Mail Precautions

a. The wardens and deputy wardens are authorized to open and inspect incoming and outgoing privileged mail outside the offender's presence in the following circumstances:

i. letters that are unusual in appearance or appear different from mail normally received or sent by the individual or public entity;

ii. letters that are of a size or shape not customarily received or sent by the individual or public entity;

iii. letters that have a city and/or state postmark that is different from the return address;

iv. letters that are leaking, stained, or emitting a strange or unusual odor or have a powdery residue;

v. when reasonable suspicion of illicit activity has resulted in a formal investigation and such inspection has been authorized by the secretary or designee.

12. Offender Organizations. Offender organizations must pay the postage costs for all of their outgoing mail. All outgoing mail must be approved by the offender organization sponsor.

G. Procedures for Publications

1. Publications (see definition in Subsection E) may be read and inspected to discover contraband and unacceptable depictions and literature. Unless otherwise provided by the rules of the institution, all printed matter must be received directly from the publisher. Multiple copies of publications for any one individual offender are not allowed. Samples inserted in publications will be removed prior to delivery.

2. Newspaper and magazine clippings (xerox copies allowed) as well as articles printed from the internet are considered publications for the purpose of review pursuant to this regulation. However, they are not required to originate from the publisher. A limit of five clippings/articles may be received within a piece of regular correspondence and the quantity received may be further limited by what can be reasonably reviewed for security reasons in a timely manner. Multiple copies of the same clippings/articles for any one individual offender are not allowed. Inclusion of clippings/articles in regular correspondence may delay the delivery.

3. Refusal of Publications. Printed material shall only be refused if it interferes with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), or if the refusal is necessary to prevent the commission of a crime or to protect the interests of crime victims. This would include but not be limited to the following described categories:

a. Security Issues

i. maps, road atlas, etc. that depict a geographic region that could reasonably be construed to be a threat to security;

ii. writings that advocate, assist or are evidence of criminal activity or facility misconduct;

iii. instructions regarding the ingredients or manufacturing of intoxicating beverages or drugs;

iv. information regarding the introduction of, or instructions in the use, manufacture, storage, or replication of weapons, explosives, incendiaries, escape devices or other contraband;

v. instructs in the use of martial arts;

vi. racially inflammatory material or material that could cause a threat to the offender population, staff, and security of the facility;

vii. writings which advocate violence or which create a danger within the context of a correctional facility.

b. Sexually Explicit Material

i. It is well established in corrections that sexually explicit material causes operational concerns. It poses a threat to the security, good order and discipline of the institution and can facilitate criminal activity. Examples of the types of behavior that result from sexually explicit material include non-consensual sex, sexual molestation of other offenders or staff, masturbation or exposing themselves in front of staff and inappropriate touching or writing to staff or other forms of sexual harassment of staff and/or offenders.

ii. Sexually explicit material can portray women (or men) in dehumanizing, demeaning and submissive roles, which, within an institutional setting, can lead to disrespect and the sexual harassment of female (or male) correctional staff. Lack of respect and control in dealing with offenders can endanger the lives and safety of staff and offenders.

iii. The viewing of sexually explicit material undermines the rehabilitation of offenders as it can encourage deviant, criminal sexual behavior. Additionally, once sexually explicit material enters an institution, it is impossible to control who may view it. When viewed by an incarcerated sex offender, it can undermine or interrupt rehabilitation efforts.

iv. Publications that depict nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one time issues will not be allowed.

c. When screening publications for acceptability, the following categories shall be utilized:

i. Category 1—presumption of non-acceptability;

ii. Category 2—those that need to be reviewed on a case-by-case basis prior to allowing them to be delivered to the recipient and subject to review by the regional warden;

iii. Category 3—presumption of acceptability.

d. Publications can be added, deleted or moved from one category to another at the discretion of the secretary at any time.

e. When an institution receives a Category 2 publication which has not already been ruled on by the regional wardens, the mailroom shall send the offender a notice of pending review of publication (Form C-02-009-E) and forward the publication to the regional warden who shall

determine acceptability. When an institution suspends delivery of an issue of a Category 3 publication, the regional warden is notified. The mailroom will send the offender a notice of pending review of publication (Form C-02-009-E.) The regional wardens shall determine if the publication should be moved to Category 2. When magazines are received that are not currently listed, the regional warden shall be notified.

f. Procedures When Publication is Refused. The offender shall be notified within three working days of the refusal and the reason therefore on the publications notice of rejection (Form C-02-009-F) describing the reason for the rejection and advising that he has seven working days to determine the publication's disposition. Rejections are appealable through the administrative remedy procedure. The institution should retain possession of the disputed item(s) until the exhaustion of administrative and judicial review.

H. Procedures for Photographs, Digital or Other Images

1. Offenders shall not be allowed to receive or possess photographs or digital or other images that interfere with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), or to prevent the commission of a crime or to protect the interests of crime victims. This includes photographs, digital or other images which expose the genitals, genital area (including pubic hair), anal area, cheeks of the buttocks or female breasts (or breasts which are designed to imitate female breasts). These areas must be covered with garments which cannot be seen through.

2. Lingerie will not normally be acceptable whether transparent or not. Swimwear will only be acceptable if the overall context of the picture is reasonably related to activities during which swimwear is normally worn. Suggestive poses alone may be sufficient cause of rejection regardless of the type of clothing worn.

3. Each institution shall develop a procedure that serves to reasonably restrict an offender's possession of multiple copies of the same photograph or digital or other image.

4. Hard backed and laminated photographs or digital or other images that are subject to alteration or modification may be rejected.

5. The term "photograph" includes other images such as those created by a digital imaging device or e-mails.

6. The offender shall be notified within three working days, in writing, of the photograph rejection and the reason therefore on the photographs notice of rejection (Form C-02-009-G) describing the reason for the rejection and advising that he has seven working days to determine the photograph's disposition. Rejections are appealable through the administrative remedy procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A), *Guajardo v. Esteile*, 580 F.2d 748 (5th Cir. 1978)

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:4 (January 1979), amended LR 10:803 (October 1984), LR 11:360 (April 14985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 33:851 (May 2007), amended LR 38:

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.

Public Comments

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 January 9, 2012.

James M. Le Blanc
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Offender Mail and Publications

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

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change is a technical adjustment that amends the current regulation to clarify, further define and expand upon the proper procedures and rules governing Offender Mail and Publications. The proposed administrative rule also provides for clarification of payment(s) to offenders for hobby craft purchases and monetary deposits not related to hobby craft purchases.

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

The proposed administrative rule change will result in an increase in revenue collections due to the Department of Corrections receiving a percentage of the fee paid to the contractor by offenders to receive and send electronic mail (e-mail). The amount of revenue collected will depend on the number of e-mails sent and received by offenders. The Department will receive 30% of the \$0.30 fee for both incoming and outgoing offender e-mails.

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

The proposed administrative rule change will result in a cost to offenders that send and receive e-mails and an economic benefit to the contractor. The contractor will charge offenders a fee of \$0.30 for each e-mail both sent and received by the offender.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this rule change.

Thomas C. Bickham, III
Undersecretary
1112#072

Evan Brasseaux
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 Procedure 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 Section 316, Offender Visitation.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§316. Offender Visitation

A - J.6.d. ...

e. Visitors are allowed to bring only enough cash money for vending machines and/or concessions into the visiting area. Financial transactions for offenders shall be in the form of cash and/or credit or debit card payments made at the unit's visitor center kiosk machines provided by the department's contractor for offender services for use by the offender's approved visitors. All other money from permissible sources may be accepted and processed in accordance with established policy and procedures. Note: Contractor fees shall apply to this transaction.

J.6.f. - Q.18. ...

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 35:1248 (July 2009) LR 37:2177 (July 2011), LR 38:

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.

Public Comments

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 January 12, 2012.

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 GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change is a technical adjustment that amends the current regulation to reflect the new kiosk machines for deposits that will be included in the visiting center.

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

The proposed rule change may result in an increase in revenue collections to the Department of Corrections, which receives a percentage of the fee paid to the contractor by persons depositing money in an offender's account. The amount of revenue collected will depend on the number of transactions processed and the amounts deposited in each transaction. The department will receive 15% of the fee charged to persons depositing funds.

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

The proposed rule change may result in a cost to persons depositing funds in an offender's account and an economic benefit to the contractor. The contractor will charge a service fee to persons depositing funds into an offender's account. The fee amount varies depending on the amount of money deposited at the kiosk and whether cash or credit/debit cards are used for the deposit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this rule change.

Thomas C. Bickham, III
Undersecretary
1112#071

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of State Police

Towing, Recovery and Storage (LAC 55:I.Chapter 19)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1711 et seq., gives notice of its intent to promulgate multiple and varied amendments to the regulatory requirements regarding the towing and storage industry. The Sections to be amended are listed above.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 19. Towing, Recovery, and Storage

Subchapter A. Authority, Exemptions, Definitions, Scope §1905. Definitions

A. The definitions found in the Louisiana Highway Regulatory Act, specifically R.S. 32:1 and the Towing and Storage Act, specifically, R.S. 32:1711 et seq., are applicable to these rules and shall have the same meaning indicated unless the context clearly indicates otherwise.

* * *

Nonconsensual Tow—the movement or transportation of a vehicle by a tow truck without the prior consent or authorization of the motor vehicle owner or operator. This includes private property tows and tows made by law enforcement or other public agencies. A tow initiated by a call from a law enforcement or other public agency at the request of the owner or operator shall be considered nonconsensual unless the tow truck operator is able to prove the owner or operator agreed to the tow fee and the destination of the tow prior to the tow.

Owner—the last registered owner of a vehicle as shown on the records of the Office of Motor Vehicles and/or the holder of any lien on a vehicle as shown on the records of the Office of Motor Vehicles and/or any other person who has a documented ownership interest in a vehicle. Documented proof of ownership shall include a title, current registration, or a notarized bill of sale.

Place of Business—a permanent structure located within Louisiana used for business, staffed during regular business hours, equipped with phone and utility services including water, sewer, and electric, and houses records and other appropriate or required documents.

Tow Truck—a motor vehicle equipped with a boom or booms, winches, slings, tilt beds, wheel lifts, under-reach equipment, and/or similar equipment including, but not limited to, trucks attached to trailers, and car carriers designed for the transportation and/or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), LR 38:

§1907. Administrative Penalty Assessment; Arbitration; Recovery of Penalties

A. Administrative Penalty Assessment

- 1. - 3. ...
- 4. Schedule of Fines

Schedule of Fines	
The following range of fines will be set for violations cited under the corresponding sections. When citing specific violations, the department will set the fine within the corresponding range.	
Exemptions and Other Laws (§1903, 1905, and §1909)	\$50-\$500
Code of Conduct (§1911)	\$100-\$500
Tow Truck License Plate (§1913)	\$50-\$500
Insurance Requirements (§1915)	\$50-\$500
Driver's License Required Skills (§1917)	\$50-\$500
Tow Truck Lighting; Equipment (§1919)	\$25-\$100
Required Equipment (§1921)	\$25-\$100
Capacities of Tow Equipment (§1923)	\$100-\$500
Tow Truck Load Limitations (§1925)	\$100-\$500
Inspections by the Department (§1927)	\$100-\$500
Towing Service to Use Due Care (§1929)	\$100-\$500
Vehicles Towed from Private Prop. (§1930)	\$200-\$500
Storage Facility; Licensing Requirements (§1931)	\$100-\$500
Requirements for ORSV (§1933)	\$100-\$500
Schedule of Fines	
The following range of fines will be set for violations cited under the corresponding sections. When citing specific violations, the department will set the fine within the corresponding range.	
Owner Notification of Stored Vehicle (§1935)	\$100-\$500
Administrative Fees (§1937)	\$100-\$500
Permits to Sell and Dismantle (§1939)	\$100-\$500
Towing/Storage Facilities Requirement (§1941)	\$50-\$500
Storage Rates (§1943)	\$100-\$500
Gate Fees (§1945)	\$100-\$500
Law Enforcement Rotation Lists (§1947)	\$50-\$500

5. Effective January 1, 2012 suspensions may be imposed on a third or subsequent violation when a towing or storage facility has been found in violation on at least two prior and separate inspections within a 12 month period. Suspensions shall be a minimum of 30 days. Violations of these rules or the Towing and Storage Act during the suspension or a violation of the terms of the suspension shall result in an automatic revocation of the storage license.

6. Effective January 1, 2012 revocations may be imposed when a storage facility has met the requirements for a second suspension within a 3 year period. The immediate revocation of a storage license may be imposed when a towing or storage facility is determined by the inspecting

officer to not have the proper insurance as required by this Chapter or is in violation of "Dutiful Conduct" as found in §1911.B2e of this Chapter. Revocations for no or improper insurance shall be recalled and the license reinstated once the facility provides proof of required insurance.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 35:2201 (October 2009), LR 36:2576 (November 2010), LR 38:

Subchapter C. Safety

§1917. Driver's License; Required Skills and Knowledge

A. - A.5. ...

6. the operator of a tow truck shall have a safety belt properly fastened about his or her body at all times when the tow truck is in forward motion.

7. the operator of a tow truck shall wear an approved ANSI Class III reflective vest that is in good condition and fits the operator when working on or near the roadway during crash or vehicle recovery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:858 (May 2006), LR 38:

§1921. Required Equipment

A. - A.9. ...

B. Securement and Safety Devices; Detached or Shifting Loads

1. Securement and Safety Devices

a. - b. ...

c. Acceptable securement devices are chains, cables or synthetic webbing with a combined working load limit equal to or greater than one-half the gross weight of the transported vehicle and customarily used for securing a vehicle or load. Acceptable securement devices shall meet all requirements in CFR 49.

2. - 2.c ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:858 (May 2006), LR 38:

§1927. Inspections by the Department

A. - A.3. ...

B. Inspection of Records, Invoices, Documents

1. Place of Business; Tow Trucks; Storage Facilities

a. - c. ...

d. Tow trucks may be stopped and inspected at anytime while being operated on a public roadway to promote compliance with the provisions of this Chapter.

2. - 6.c.ii ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:859 (May 2006), LR 38:

Subchapter D. Vehicle Storage

§1931. Storage Facility; Licensing, Fees, Inspection, Requirements

A. - B.8. ...

9. The place of business shall meet all requirements as defined in §1905 of this Chapter. This provision shall only apply to new storage facility applicants effective January 1, 2012 and will not effect licensed facilities seeking a renewal.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006), amended LR 36:2579 (November 2010), LR 38:

§1939. Permits to Sell and Permits to Dismantle

A. - D. ...

E. Storage facilities shall maintain copies of the permits to sell, permits to dismantle, and bills of sale with buyer's name and address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006).

§1941. Storage and Towing Facilities; General Requirements; Procedures

A. ...

B. Vehicles shall be released immediately to the vehicle owner or lien holder, or authorized agent once payment is made, any applicable lien holder requirements (R.S. 32:1720.1) are met, and any applicable documented law enforcement or department hold orders are released.

1. Authorized agent shall mean anyone who has obtained written authorization from the vehicle owner or lien holder that contains the name of the authorized agent, the name and signature of the vehicle owner or lien holder, a phone number for the vehicle owner or lien holder, and a description of the vehicle including VIN. Written authorization does not need to be notarized if signature is witnessed. Written authorizations shall be maintained with the vehicle file at the towing and/or storage facility's place of business.

2. Payment required for the release of a vehicle shall be specific as to the services required to tow and/or recover and store that vehicle.

a. Towing and recovery fees on a combination vehicle, such as a truck pulling a trailer, shall be charged to the pulling unit when the truck and trailer is towed and/or recovered as a single unit. Only storage and applicable administrative fees shall apply to the trailer in this case.

b. Towing and recovery fees on a combination vehicle that is towed and/or recovered separately, because there was a separation during a crash or it had to be separated to perform the recovery, shall be divided between the truck and trailer according the resources used to recover each vehicle.

C. - D. ...

E. Removable personal items shall not be withheld by the towing or storage facility. Any person, including insurance agents and lien holders, with picture identification, who shows proof of ownership, or written authorization from the stored vehicle's registered or legal owner, may inspect, photograph, view the vehicle and remove non-affixed personal property, including the license plate, without charge during normal business hours. These items will be released to the owner or person authorized by the

vehicle owner upon request if there is no police hold on them.

F. - P.3.d. ...

Q. Storage facilities shall maintain storage records at the individual locations, which shall include at least the following information:

1. - 9. ...

10. records from the sale of a vehicle including the bill of sale with sale price, copies of the permit to sell, name of the buyer.

11. proof of law enforcement notification as required in R.S. 32:1718

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006), LR 38:

§1943. Storage Rates

A. ...

B. Towing and/or storage facilities shall be staffed and open for business Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays. Employees staffing the facility must have access to records to assist in administrative inspections by the department and be able to release vehicles and/or belongings.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:863 (May 2006), LR 38:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This rule should not have any effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule should not have any effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule should not have any effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule should not have any Effect on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule.

Public Comments

Interested persons may submit written comments to Paul Schexnayder, Post Office Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through January 15, 2012.

Jill P. Boudreaux
Undersecretary

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

RULE TITLE: Towing, Recovery and Storage

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

The proposed amendments provide clarity with regard to current enforcement practices of rules affecting the towing and storage industry. The amendments make technical corrections such as grammatical changes, add new language to address non-consensual towing and storage of vehicles from private property, clarify certain definitions, and codify certain requirements to align with current Louisiana State Police enforcement practices and federal requirements. The amendments consolidate the schedule of fines in §1907 into fewer categories to provide a simpler document for reference purposes.

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

There will be no impact on state or local governmental revenues as a result of these proposed rule changes.

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

The proposed amendments to these administrative rules will not create any costs or benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Jill P. Boudreaux
Undersecretary
1112#075

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Transportation Authority**

Toll Appeal Procedure—LA 1
(LAC 70:XI.Chapter 3)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Transportation Authority intends to promulgate a Rule entitled "Toll Appeal Procedure—LA 1," in accordance with R.S. 47:820.5.4 and 47:820.5.5.

Title 70

TRANSPORTATION

Part XI. Louisiana Transportation Authority

Chapter 3. Toll Appeal Procedure—LA 1

§301. Appeal Procedures

A. In addition to the appropriate statutory provisions, the following procedures shall be followed by the applicant for appeal:

1. the request for appeal may be mailed to the department by the toll violator;
2. the request for appeal may also be mailed in electronic format to the department; or
3. the request for appeal may be mailed to the department on a form provided by the department upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:

§303. Appeal Procedures—LA 1

A. In addition to the appropriate statutory provisions, the following procedures shall be applied to the appeal process of toll violations at LA 1.

1. Notice of the date, time and location of the appeal hearing shall be mailed to the toll violator 10 days in advance of the scheduled hearing.
2. Location of the hearing shall alternate between the Customer Service Center in Golden Meadow, 1821 South Alex Plaisance Blvd. (Hwy) 3235) and the offices of the Crescent City Connection, 2001 Mardi Gras Blvd., New Orleans, Louisiana, unless otherwise notified.
3. Hearings shall be conducted quarterly.
4. The hearing agent shall be appointed by Louisiana Transportation Authority.
5. Only the registered owner of the violating vehicle may appear.
6. Rules of evidence or the Administrative Procedure Act are not applicable.
7. The hearing agent has the authority to waive administrative fees, in whole or in part, for good cause shown.
8. Failure to appear shall constitute denial of appeal.
9. Notice of decision shall be made in person or by mail.
10. Decision is final, subject to judicial review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:

§305. Toll Equipment Malfunctions

A. If it has been determined and properly documented by Departmental personnel that the toll system was malfunctioning at a particular time, then tickets issued during that period of time may be segregated and dealt with by the Violation Clerk in accordance with the provisions of R.S. 47:820.5.4(F)(5).

B. Proper documentation must include the date of the malfunction in the system, type of malfunction in the system and reason for invalidation of the ticket.

C. In the case of such malfunction, appeals of tickets issued during that time frame may be received by telephone, fax, or electronic mail and then will be properly documented by the appropriate departmental personnel. In addition, no administrative fees will be assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:

Family Impact Statement

The proposed adoption of this rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.
2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of

parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent to Cheryl Duvieilh, Executive Counsel, P.O. Box 94245, Baton Rouge, LA 70804-9245, phone: (225) 379-1009.

Sherri H. LeBas, P.E.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Toll Appeal Procedure—LA 1

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

There should be no implementation costs or savings to state or local governmental units. The proposed Rule sets forth procedures for appealing toll violations issued by the automated system at the LA 1 Bridge. These procedures are currently in place pursuant to the provisions of R.S. 47:820.5.4 and are implemented with current personnel. Thus, the proposed Rule merely codifies current practice with regard to toll appeal procedures.

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

There should be no effect on revenue collections of state or local governmental units because these procedures have been implemented since the original imposition of tolls on the LA 1 Bridge.

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

There will be no cost or economic benefit to individuals or non-governmental groups. The proposed Rule codifies current practices with regard to toll appeal procedures pursuant to the provisions of R.S. 47:820.5.4.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment as a result of the proposed Rule change.

Eric Kalivoda
Deputy Secretary
1112#107

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development Transportation Authority

Toll Exemptions—LA 1
(LAC 70:XI.101)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Transportation Authority intends to promulgate a Rule entitled "Toll Exemptions—LA 1," in accordance with R.S. 47:820.5.4 and 47:820.5.5.

Title 70

TRANSPORTATION

Part XI. Louisiana Transportation Authority

Chapter 1. Toll Exemptions—LA 1

§101. Exempt Entities

A. The following entities which own vehicles shall have free and unhampered passage on LA 1 when the entity-owned vehicle is being utilized.

1. Law Enforcement

a. Free passage shall be granted to all law enforcement personnel who are employed on a full-time basis and operate law enforcement agency equipment.

b. "Law Enforcement Agency," for purposes of this Rule shall mean any agency of the state or its political subdivisions and the federal government who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic or highway laws of this state or similar federal laws and who are employed in this state. Officers who serve in a voluntary capacity or as honorary officers are not included.

c. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriffs' departments, levee board police departments, port police departments, the United States Secret Service, the United States Marshall Service and the Federal Bureau of Investigation exclusively.

d. The right of free passage for the state police and law enforcement personnel shall be exercised only by means of automatic vehicular identification toll tags.

e. Upon the written request of the superintendent of state police or the head of an eligible law enforcement agency and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

f. A fee of \$12.50 shall be charged for the issuance of each tag.

g. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by state police with state police equipment and by designated law enforcement personnel with law enforcement agency equipment. The appropriate law enforcement agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

2. Emergency Vehicles with Lights Available for Use. All emergency vehicles performing a public service that permits them, under existing laws and regulations, to display emergency vehicle lights in order to carry out police, fire and ambulance functions in accordance with the laws relative thereto, are exempt from payment of tolls. (Reflects Act 30 of 2010, R.S. 47:820.5.6.)

a. Specifically included in this exception are ambulances from Grand Isle Emergency Vehicle Services (Act 826 of 2010, R.S. 47:820.5.6.)

b. Specifically included in this exception is a Grand Isle medical transportation van. (Act 826 of 2010)

c. The right of free passage for these emergency vehicles shall be exercised only by means of automatic vehicular identification toll tags.

d. Upon the written request of Grand Isle Emergency Vehicle Services and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

e. A fee of \$12.50 shall be charged for the issuance of each tag.

f. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by ambulances owned by the Grand Isle Emergency Vehicle Services and their medical transportation van. The Grand Isle Emergency Vehicle Services shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

3. Fire Departments

a. The right of free passage on LA 1 for firemen, whether professional or volunteer, shall be exercised only by means of automatic vehicular toll tags.

b. Upon the written request of the chief of a municipal or parish fire department or of a fire prevention district, or of a volunteer fire organization, and upon payment of the required fee, the department shall issue to such department or district or organization the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

c. A fee of \$12.50 shall be charged for the issuance of each tag.

d. The use of the automatic vehicular identification toll tags provided to a fire department or district shall be limited to travel made by firemen during the performance of fire fighting and related duties. The appropriate fire department or district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

e. Procedure for Volunteer Firemen

i. All volunteer fire organizations shall apply to the department and shall certify the following:

(a) the address of the volunteer fire organization's domicile or headquarters;

(b) the general location served by the volunteer fire organization;

(c) that the members of the volunteer fire organization are required to travel across the highway only in performance of official fire fighting or fire prevention services;

(d) the number of crossings made in one year on the facility by members of the organization.

ii. The application must be signed by the chief executive officer of the volunteer fire organization.

4. Employees of the Governing Authority

a. The free passage shall be granted to those persons operating a vehicle which has been designated as an official Grand Isle Levee vehicle. (Act 826 of 2010.)

i. The right of free passage for the official Grand Isle Levee vehicle shall be exercised only by means of automatic vehicular identification toll tag.

ii. Upon the written request of the Grand Isle Levee District and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

iii. A fee of \$12.50 shall be charged for the issuance of each tag.

iv. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the official vehicle of the Grand Isle Levee vehicle. The Grand Isle Levee District shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

b. The free passage shall be granted to logo bearing vehicles of the Grand Isle Port Commission. (Act 826 of 2010)

i. The right of free passage for logo bearing vehicles of the Grand Isle Port Commission shall be exercised only by means of automatic vehicular identification toll tags.

ii. Upon the written request of the Grand Isle Port Commission and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

iii. A fee of \$12.50 shall be charged for the issuance of each tag.

iv. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by logo bearing vehicles of the Grand Isle Port Commission. That agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

5. Military Personnel

a. Any person belonging to the organized military of the state, who is in uniform or possesses an order for duty, shall be allowed free passage for himself, his vehicle and the military property of the state in his charge while going to, engaged in or returning from any parade, drill or meeting which he or she is required to attend, or upon being called to, engaging in or returning from any active state duty ordered by the governor.

b. The right of free passage for military personnel shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the military personnel and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by military personnel as described in §101.A.5.a. The appropriate military agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

6. Students in School Buses

a. Free passage is offered to students in clearly marked school buses and to the school bus and driver.

b. The right of free passage for students in school buses and the bus and driver shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the appropriate school district and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the students in school buses. The appropriate school district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

7. Mass Transit Vehicles

a. Any publicly owned vehicles and any vehicle used in connection with or in furtherance of the mass transportation of the general public which is owned and operated by any person, firm or corporation engaged in a publicly subsidized transit business or which is owned by a public body shall have free and unhampered passage at all times over the LA 1 facilities.

b. The right of free passage for mass transit vehicles shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the owner of the mass transit vehicle, and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by mass transit vehicles. The appropriate agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

8. Boy Scouts, Girl Scouts and Camp Fire Girls

a. Boy Scouts, Girl Scouts and Camp Fire Girls when assembled in uniform in a parade or group consisting of not less than 15 and under the supervision of a scout master or other responsible person shall have free and unhampered passage at all times over the LA 1 facilities.

b. The right of free passage for Boy Scouts, Girl Scouts and Camp Fire Girls shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the and payment of the required fee, the department shall issue the number of

automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the above described groups. The appropriate supervisors shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

9. Residents of Grand Isle

a. Residents of Grand Isle who purchase toll exemption tags shall have free and unhampered passage at all times of the LA 1 facilities.

b. A fee of \$12.50 shall be charged for the issuance of each tag.

c. In order to procure the tag, the resident must show a motor vehicle registration reflecting registration in the zip code for Grand Isle, and one of the following:

- i. Louisiana driver's license;
- ii. proof of homestead exemption;
- iii. voter registration card. (Act 826 of 2010)

d. The accounts of the residents of Grand Isle may cover free passage for multiple plated vehicles, however the resident owner must have registered all vehicles in the Grand Isle zip code and provide one of the items listed in §101.9.c hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:

Family Impact Statement

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent to Cheryl L. Duvieilh, Executive Counsel, Legal Section, Department of Transportation and Development, P.O. Box

Sherril H. LeBas, P.E.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Toll Exemptions—LA 1**

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

This Rule change reflects current practice for exempting certain vehicles from tolls and incorporates new exemptions as mandated by Act 826 of 2010. Act 826 provides that certain vehicles shall have free and unhampered passage crossing the Tomey J. Doucet Bridge on LA 1 in Leesville, Louisiana. There should be no cost to the state for implementation. The current toll system used at the toll facility on LA 1 is programmed to recognize transponders used by exempted users.

Local governmental units will be required to pay a one-time fee for the issuance of a non-revenue transponder for each vehicle. Each tag will permanently affix to the official vehicle. Replacement of the vehicle will require a replacement tag to be purchased at the user's expense. The acquisition cost for an individual tag is equal to the amount charged in fees to a user, \$12.50, making the fee cost neutral to the agency. The standard toll rate for a two-axle vehicle is \$2.50 per passage (\$0.50 for residents of Grand Isle or Port Fouchon). Thus, the one-time cost of the toll-free device for a two-axle vehicle equates to either 5 or 25 normal trips through the toll meter, depending on residency status.

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

Pursuant to Act 826 of the 2010 Regular Legislative Session, the proposed administrative rules will reduce collection of fees and self-generated revenues from LA 1 tolls in the approximate amount of \$48,463 annually. The agency will continue generating fees equal to \$12.50 multiplied by the number of new non-revenue transponders issued in any given fiscal year. Since implementation of the toll exemption in August of 2010, 1,118 non-revenue transponders have been issued. It is assumed that the majority of users qualifying for toll-free usage of LA 1 have purchased them by this point in time. According to the *Wall Street Journal* in 2006, the average U.S. driver replaces his or her vehicle approximately every 52 months. If this trend holds true today, approximately 258 new tags should be purchased on an annual basis as new vehicles are purchased (1,118 transponders to date divided by 52 months average replacement schedule x 12 months). This replacement of transponders will result in projected annual revenues of \$3,225. The revenue generated by toll tag replacements should not impact or offset the loss of toll revenue, as the number of transponder tags purchased by frequent users should remain relatively stable after implementation of the exempt status. The difference is that before Act 826, these users were required to deposit credit to their individual transponder code as payment for toll fees on a recurring basis.

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

The economic benefit to specific exempted individuals will be an aggregate benefit of \$45,238 annually (\$48,463 projected annual toll payments minus \$3,225 annual purchases of transponders for replacement vehicles). Impacted individuals possessing the tag will not be charged a toll fee for each crossing of the bridge.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment. These exemptions affect residents and public servants.

Eric Kalivoda
Deputy Secretary
1112#081

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Professional Engineering and Land Surveying Board**

Definitions (LAC 46:LXI.105)

Under the authority of the Louisiana Professional Engineering and Land Surveying Licensure Law, La. R.S. 37:681, et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has initiated procedures to amend its rules contained in LAC 46:LXI.Chapters 1 through 33.

This is a technical revision of an existing rule under which LAPELS operates. This change clarifies the requirement that certain types of surveying and mapping functions must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXI. Professional Engineers and Land Surveyors
Chapter 1. General Provisions**

§105. Definitions

A. The words and phrases defined in R.S. 37:682 shall apply to these rules. In addition, the following words and phrases shall have the following meanings, unless the content of the rules clearly states otherwise.

Practice of Land Surveying—defined in R.S. 37:682. The board recognizes that there exists a close relationship between land surveying and some areas of engineering, with some activities common to both professions; however, survey work related to property boundaries must be performed under the responsible charge of a professional land surveyor. Presented below are guidelines which shall be used as an aid in determining the types of surveying services which may be rendered by professional land surveyors or professional engineers.

a. - b.viii. ...

c. Surveying and mapping functions which do not require the establishment of the relationship of property ownership boundaries must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor. Such surveying and mapping functions include:

ci. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Surveyors, LR 4:298 (August 1978),

amended LR 5:110 (May 1979), LR 7:643 (December 1981), LR 14:449 (July 1988), LR 16:772 (September 1990), LR 17:804 (August 1991), LR 20:901 (August 1994), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1020 (July 2001), LR 30:1704 (August 2004), LR 32:1618 (September 2006), LR 35:1908 (September 2009), LR 38:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the Louisiana Register: The proposed Rule has no known impact on family formation, stability or autonomy.

Public Comments

Interested parties are invited to submit written comments on the proposed Rule through January 9, 2012 at 4:30 p.m., to Donna D. Sentell, Executive Director, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433.

Donna D. Sentell
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Definitions

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 resulting from this rule change. The proposed rule makes a technical change necessary to clarify one section. This change clarifies the requirement that certain types of surveying and mapping functions must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor.

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

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

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

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment. The proposed rule change clarifies that certain surveying and mapping functions that do not require the establishment of the relationship of property ownership boundaries must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor. This proposed rule clarifies that a properly licensed individual must perform or be in the responsible charge of these specific surveying and mapping functions and eliminates confusion that other non-licensed individuals may be allowed to perform the functions. This proposed rule codifies the current application of the rule by the Board.

Donna D. Sentell
Executive Director
1112#065

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Treasury Board of Trustees of the Louisiana State Employees' Retirement System

Procedures for Processing Disability Applications
(LAC 58:I.2511-2513, 2521 and 2523)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees Retirement System ("LASERS") proposes to amend LAC 58:I.2511 and 2513 and repeal LAC 58:I.2521 and 2523, regarding procedures for processing disability retirement applications. These changes are proposed in order to aid staff and disability retirees and to make the Rules more consistent with current practice and statutory law. These Rule changes comply with and are enabled by R.S. 11:515.

Title 58

RETIREMENT

Part I. Louisiana State Employees' Retirement System Chapter 25. Procedures for Processing Disability Applications

§2511. Certification of Continuing Eligibility

A. LASERS may require a disability retiree to complete an Annual Attending Physician Statement ("AAPS") once each year during the first five years following the disability retirement and once in every three years thereafter until the retiree has reached the equivalent age of regular retirement unless the medical evidence shows conclusively that the disability retiree cannot recover from the disability. The AAPS must be returned within 30 business days of the anniversary date of the accrual of retirement benefits by the disability retiree. Depending on the results of the AAPS LASERS may require a disability retiree to undergo a medical examination.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:220.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 26:1490 (July 2000), LR 27:1581 (September 2001), LR 32:265 (February 2006), LR 38:

§2513. Limitation on Earnings

A. - B. ...

C. Repealed.

D. Each disability retiree may be required to submit a notarized annual statement of earned income for the previous calendar year. The statement must be submitted no later than May 1, of each calendar year, otherwise the benefit will be discontinued effective June 1 of that calendar year, without retroactive reimbursement, until the statement is filed. If a disability retiree refuses to submit the statement for the remainder of the calendar year, all the retiree's rights in and to the disability retirement may be revoked by the board.

E. If the earnings limit is exceeded, LASERS may take appropriate action, including reducing future benefits to recover the amount of excess earnings. The disability retiree shall be notified in writing of the reduced amount at least 30 days prior to the reduction taking effect.

F. If it is determined that a disability retiree is engaged in gainful occupation which places the retiree over the earnings limit, then the amount of the disability benefit may be reduced to an amount within the retiree's earnings limit. Should the retiree's earning capacity later change, the disability benefit may be further modified in accordance with R.S. 11:221.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1581 (September 2001), LR 38:

§2521. Notices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 38:

§2523. Conversion to Regular Retirement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 38:

Family Impact Statement

These Rule changes should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Public Comments

No preamble for these Rule changes has been prepared. Interested persons may submit written comments on the proposed changes until 4:30 p.m. January 26, 2012, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Procedures for Processing Disability Applications

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

The proposed rule change will have no impact on state or local governmental units. The proposed rule increases the

return date period for the Annual Attending Physician Statement for LASERS disability retirees from 10 days of receipt of the blank form to 30 days from the retiree's retirement anniversary date. Other rule changes include: 1.) Repealing the provision requiring a disability retiree to notify LASERS if the retiree becomes employed and earnings exceed the limitation; 2.) Repealing the mandatory requirement for submission of a notarized annual statement of earned income for the previous calendar year; 3.) Makes permissive the current language mandating LASERS to reduce future benefits if the earnings limit is exceeded; 4.) Removes the mandatory requirement that a disability retiree's benefits be reduced if it is determined that a disability retiree is engaged in gainful occupation that places the retiree over the earning limit.

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

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule adoption.

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

Disability retirees of LASERS would be directly affected by the proposed action; however, none of the rule changes are anticipated to result in associated costs or economic benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule adoption.

Cindy Rougeou
Executive Director
1112#104

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational Offshore Landing Permit
(LAC 76:VII.377)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations governing the issuance of a recreational offshore landing permit.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§377. Recreational Offshore Landing Permit

A. Any person possessing any one of the following fish species or species groups on board a vessel taken from within or without Louisiana territorial waters shall be required to have obtained and have in their immediate possession a Recreational Offshore Landing Permit. The Recreational Offshore Landing Permit shall be available for inspection by a duly authorized agent of the department.

1. Highly Migratory Species:

- a. tunas;
- b. billfish;
- c. swordfish.

B. Permits may be obtained at no cost, from authorized license vendors, by persons who hold any valid license authorizing the taking and possessing of saltwater species of

fish. With the exception of those licenses that do not have to be renewed every year, the permits shall be valid for the same duration as the license authorizing saltwater fishing privileges. For those licenses that do have to be renewed every year, the permit shall be valid for one year from the date it was obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(34).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public Comments

Interested persons may submit written comments relative to the proposed Rule to Mr. Joey Shepard, Office of Fisheries, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, February 2, 2012.

Stephen W. Sagrera
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Recreational Offshore Landing Permit

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

A one time implementation cost of approximately \$30,000 will be incurred by the Louisiana Department of Wildlife and Fisheries in FY 2011-2012. The Louisiana Department of Wildlife and Fisheries has been awarded a grant from the National Fish and Wildlife Foundation that will be used to pay for setting up the ability to issue the Recreational Offshore Landing Permit using the Louisiana Department of Wildlife and Fisheries recreational licensing system.

Additionally, the proposed rule is anticipated to have recurring annual expenditures in the amount of \$16,059 beginning in FY 2012-2013. A grant from the National Fish and Wildlife Foundation will be used for these expenditures and this estimate is based on the assumption that 22,304 Recreational Offshore Landing Permits will be issued annually. The Louisiana Department of Wildlife and Fisheries pays a contactor a transaction fee of \$0.72 per recreational permit issued, leading to an estimated annual recurring cost for issuing the Recreational Offshore Landing Permit of \$16,059.

The proposed rule will have no impact on local governmental unit expenditures.

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

There will be no effect on revenue to state or local governmental units from the proposed rule. There will be no fee for the receipt of a Recreational Offshore Landing Permit.

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

It is estimated that 22,304 Louisiana saltwater recreational anglers will be directly affected by the proposed rule each year because they will be required to obtain a Recreational Offshore Landing Permit before taking and possessing tunas, billfish, or swordfish in Louisiana waters. These anglers will incur no additional costs as a result of the proposed rule because the Recreational Offshore Landing Permit will be made available by the Louisiana Department of Wildlife and Fisheries or its authorized license vendors at no charge.

The Recreational Offshore Landing Permit shall be valid for the same duration as the license authorizing the taking and possessing of saltwater fish species in Louisiana if said license must be renewed annually. If the permit authorizing the taking and possessing of saltwater fish species in Louisiana is valid for more than one year, the associated Recreational Offshore Landing Permit shall be valid for one year from the date of issuance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendments are anticipated to have no effect on competition and employment in the public and private sectors.

Stephen W. Sagrera
Chairman
1112#041

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Tuna Harvest Regulations
(LAC 76:VII.361)

The Wildlife and Fisheries Commission hereby advertises its intent to establish landing restrictions and reporting requirement on recreational possession of yellowfin tuna. Reporting is designed to collect better harvest information on this state and federal cooperatively managed species.

Title 76

WILDLIFE AND FISHERIES

PART VII. FISH AND OTHER AQUATIC LIFE

Chapter 3. Saltwater Sport and Commercial Fishing

§361. Tuna - Harvest Regulations

A. - C. ...

D. Permits

1. Recreational: Persons aboard a vessel whether within or outside Louisiana territorial waters possessing any of the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna and albacore are required to have a valid federal recreational tuna permit and a recreational offshore landing permit in their immediate possession on board the vessel.

D.2. - E. ...

F. Landing Restrictions

1. When possessing recreationally harvested yellowfin tuna on a vessel within Louisiana territorial waters a written harvest report must be maintained on such vessel indicating the date harvested, time put on board, permit number of the person catching the fish, location of catch and length of the fish. It is the responsibility of the person catching the fish or

in the case of a chartered vessel the licensed captain to record and maintain such information on the vessel in order to legally possess the fish. Any person possessing such fish without such documentation shall be considered to be in violation of this Section. Harvest report forms will be made available by the department online to recreational offshore landing permit holders, but do not necessarily have to be used as long as the proper information is recorded and maintained and available for immediate inspection on the fishing vessel.

2. No person shall transfer yellowfin tuna at sea. No person shall offload yellowfin tuna from a fishing vessel which were taken or possessed recreationally, prior to being validated by contacting the toll free number provided or other means approved by the department to validate the yellowfin tuna caught and possessed. When such validation is made, an authorization code will be provided which shall be recorded on the harvest report associated with that fish. The information required on the harvest report must be provided when validating the catch in order to obtain an authorization code. In the case where a minor possesses the yellowfin tuna the guardian of such minor shall be responsible for the documentation and validation.

3. Failure to abide by these rules and regulations shall constitute a violation of this Section and shall be fined in accordance with the provisions of a class one violation pursuant to R.S. 56:31.

AUTHORITY NOTE: Promulgated in accordance with R.S.56:6(25)(a), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C) and R.S. 56:6(34).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2834 (December 2000), amended LR 27:2269 (December 2001), LR .0000 (December 2011), LR 0000 (December 2011).

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public Comments

Interested persons may submit written comments relative to the proposed Rule to Mr. Joey Shepard, Office of Fisheries, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, February 2, 2012.

Stephen W. Sagera
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Tuna Harvest Regulations

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

The proposed rule amendments will have no impact on state or local governmental unit expenditures.

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

There will be no effect on revenue to state or local governmental units as a result of the proposed rule change.

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

The proposed rule shall require that a written harvest report for yellowfin tuna be maintained on vessels within Louisiana territorial waters from which yellowfin tuna are harvested. In the harvest report, data shall be maintained on the date of the harvest, time put on board, permit number of the person making the catch, location of the catch, and length of the yellowfin tuna harvested. The Louisiana Department of Wildlife and Fisheries shall make harvest report forms available to the public. Further, the proposed rule shall require that a person not offload yellowfin tuna from a vessel prior to the harvest being validated by the Louisiana Department of Wildlife and Fisheries.

It is estimated that approximately 1.9 percent of the 494,468, or 9,251, of the Louisiana saltwater recreational anglers shall be directly affected by the proposed rule each year because they will be required to maintain a harvest report when recreationally harvesting yellowfin tuna and have harvests validated by the Louisiana Department of Wildlife and Fisheries. Neither of these requirements will affect the number of yellowfin tuna that these Louisiana saltwater recreational anglers can harvest or the characteristics of the yellowfin tuna that they are allowed to harvest. The proposed rule shall have no financial impact on Louisiana saltwater recreational anglers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendments are anticipated to have no effect on competition and employment in the public and private sectors.

Stephen W. Sagera
Chairman
1112#042

H. Gordon Monk
Legislative Fiscal Officers
Legislative Fiscal Office

NOTICE OF INTENT

Louisiana Workforce Commission Office of Workers' Compensation

Utilization Review Procedures (LAC 40:I.Chapter 27)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative provisions Act, proposes to amend LAC 40:I:Chapter 27.

The proposed amendment will establish the process and procedures by which utilization review is conducted in light of the recently enacted R.S. 23:1203.1, which mandates the use of a medical treatment schedule.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

Chapter 27. Utilization Review Procedures

§2701. Statement of Policy

A. - A.2. ...

B. The law provides that after the promulgation of the medical treatment schedule, medical care, services, and treatment due, pursuant to R.S. 23:1203, et seq., by the employer to the employee incurred in the treatment of work-related injuries or occupational diseases [hereinafter referred to as "illness(es)"] shall mean care, services, and treatment in accordance with the medical treatment schedule.

1. ...

2. It is also deemed to be in the best interest of all of the parties in the system that fees for services reasonably performed and billed in accordance with the reimbursement schedule should be promptly paid. Not paying or formally contesting such bills by filing LWC-WC-1008 (Disputed Claim for Compensation), with the Office of Workers' Compensation within 60 days of the date of receipt of the bill may subject the Carrier/Self-Insured Employer to penalties and attorneys fees. Additionally, frivolous contesting of the bill may subject the Carrier/Self-Insured Employer to penalties and attorneys fees.

3. - 7. ...

8. For purposes of these utilization review rules, persons performing such shall be certified in accordance with the certification provisions as found in R.S. 40:2721, et seq.

AUTHORITY NOTE: Promulgated in accordance with RS 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:263 (March 1991), repromulgated LR 17:653 (July 1991), amended LR 38:

§2715. Medical Treatment Schedule Authorization and Dispute Resolution

A. Purpose. It is the purpose of this section to facilitate the management of medical care delivery, assure an orderly and timely process in the resolution of care-related disputes; identify the required medical documentation to be provided to the Carrier/Self-Insured Employer to initiate a request for authorization as provided in R.S. 23:1203.1(J); and provide for uniform forms, timeframes, and terms for suspension of prior authorization process, withdrawal of request for authorization, authorization, denial, and dispute resolution in accordance with R.S. 23:1203.1.

B. Statutory Provisions

1. Emergency Care.

a. In addition to all other Utilization Review rules and procedures, R.S. 23:1142 provides that no prior consent by the Carrier/Self-Insured Employer is required for any emergency medical procedure or treatment deemed immediately necessary by the treating health care provider. Any health care provider who authorizes or orders diagnostic testing or treatment subsequently held not to have been of an emergency nature shall be responsible for all of

the charges incurred in such testing or treatment. Such health care provider shall bear the burden of proving the emergency nature of the diagnostic testing or treatment.

b. Fees for those services of the health care provider held not to have been of an emergency nature shall not be an enforceable obligation against the employee or the employer or the employer's workers' compensation insurer unless the employee and the payor have agreed upon the treatment or diagnostic testing by the health care provider.

2. Non-Emergency Care. In addition to all other Utilization Review rules and procedures, the law (R.S. 23:1142) establishes a monetary limit for non-emergency medical care. No health care provider shall incur more than a total of \$750 in non-emergency diagnostic testing or treatment without the mutual consent of the Carrier/Self-Insured Employer and the employee. The statute further provides significant penalties for a Carrier's/Self-Insured Employer's arbitrary and capricious refusal to approve necessary care beyond that limit.

3. Medical Treatment Schedule

a. In addition to all other Utilization Review rules and procedures, R.S. 23:1203.1 provides that after the promulgation of the medical treatment schedule, medical care, services, and treatment due, pursuant to R.S. 23:1203 et seq., by the employer to the employee shall mean care, services, and treatment in accordance with the medical treatment schedule.

b. Pursuant to R.S. 23:1203.1(I), medical care, services, and treatment that varies from the promulgated medical treatment schedule shall also be due by the employer when it is demonstrated to the medical director of the office of workers' compensation by a preponderance of the scientific medical evidence, that a variance from the medical treatment schedule is reasonably required to cure or relieve the injured worker from the effects of the injury or occupational disease given the circumstances.

c. Pursuant to R.S. 23:1203.1(M), with regard to all treatment not covered by the medical treatment schedule, all medical care, services, and treatment shall be in accordance with Subsection D of R.S. 23:1203.1.

d. All requests for authorization of care beyond the statutory non-emergency monetary limit of \$750.00 are to be presented to the Carrier/Self-Insured Employer. In accordance with these Utilization Review Rules, the Carrier/Self-Insured Employer or a utilization review company acting on its behalf shall determine if such request is in accordance with the medical treatment schedule. If the request is denied or approved with modification and the health care provider determines to request a variance from the medical director, then a LWC-WC-1009 shall be filed as provided in Subsection G of this Section.

e. Disputes shall be filed by any aggrieved party on a LWC-WC-1009 within 15 calendar days of receipt of the denial or approval with modification of a request for authorization. The medical director shall render a decision as soon as practicable, but in no event later than 30 calendar days from the date of filing. The decision shall determine whether:

i. the recommended care, services, or treatment is in accordance with the medical treatment schedule; or

ii. a variance from the medical treatment schedule is reasonably required; or

iii. the recommended care, services, or treatment that is not covered by the medical treatment schedule is in accordance with another state's adopted guideline pursuant to Subsection D of R.S. 23:1203.1.

f. In accordance with LAC 40:1.5507.C, any party feeling aggrieved by the R.S. 23:1203.1(J) determination of the medical director shall seek a judicial review by filing a Form LWC-WC-1008 in a workers' compensation district office within 15 calendar days of the date said determination is mailed to the parties. A party filing such appeal must simultaneously notify the other party that an appeal of the medical director's decision has been filed. Upon receipt of the appeal, the workers' compensation judge shall immediately set the matter for an expedited hearing to be held not less than 15 days nor more than 30 calendar days after the receipt of the appeal by the office. The workers' compensation judge shall provide notice of the hearing date to the parties at the same time and in the same manner.

g. If the medical director does not render a decision within the specified time frame, the medical director is deemed to have denied the 1009. A health care provider, claimant or claimant's attorney, if represented, who chooses to appeal a denial pursuant to this subparagraph shall file a 1008 in accordance with Subsection K of this Section.

h. R.S. 23:1203.1(J) provides that after a health care provider has submitted to the Carrier/Self-Insured Employer the request for authorization and the information required pursuant to this Section, the Carrier/Self-Insured Employer shall notify the health care provider of their action on the request within 5 business days of receipt of the request.

C. Minimum Information for Request of Authorization

1. Initial Request for Authorization. The following criteria are the minimum submission by a health care provider requesting care beyond the statutory non-emergency medical care monetary limit of \$750.00 and will accompany the LWC Form 1010:

- a. history provided to the level of the condition and as provided in the Medical Treatment Schedule;
- b. physical findings/clinical tests;
- c. documented functional improvements from prior treatment, if applicable;
- d. test/imaging results; and
- e. treatment plan including services being requested along with the frequency and duration.

2. To make certain that the request for authorization meets the requirements of this Subsection, the health care provider should review the medical treatment schedule for each area(s) of the body to obtain specific detailed information related to the specific services or diagnostic testing that is included in the request. Each section of the medical treatment schedule contains specific recommendations for clinical evaluation, treatment and imaging/testing requirements. The medical treatment guidelines can be viewed on Louisiana's Workforce Commission website. The specific URL is http://www.laworks.net/WorkersComp/OWC_MedicalGuidelines.asp.

3. Subsequent Request for Authorizations. After the initial request for authorization, subsequent requests for additional diagnostic testing or treatment does not require that the healthcare provider meet all of the initial minimum requirements listed above. Subsequent requests require only

updates to the information of 1.a-e above. However such updates must demonstrate the patient's current status to document the need for diagnostic testing or additional treatment. A brief history, changes in clinical findings such as orthopedic and neurological tests, and measurements of function with emphasis on the current, specific physical limitations will be important when seeking approval of future care. The general principles of the medical treatment schedule are:

a. the determination of the need to continue treatment is based on functional improvement, and

b. the patient's ability (current capacity) to return to work is needed to assist in disability management.

D. Submission and Process for Request for Authorization

1. To initiate the request for authorization of care beyond the statutory non-emergency medical care monetary limit of \$750.00 per health care provider, the health care provider shall submit LWC Form 1010 along with the required information of this section by fax or email to the Carrier/Self Insured Employer.

2. The Carrier/Self-Insured Employer shall provide to the OWC a fax number and/or email address to be used for purposes of these rules and particularly for LWC-WC-1010 and 1010A. If the fax number and/or email address provided is for a utilization review company contracted with the Carrier/Self-Insured Employer, then the Carrier/Self-Insured Employer shall provide the name of the utilization review company to the OWC. All Carrier/Self-Insured Employer fax numbers and/or email addresses provided to the OWC will be posted on the office's website at www.laworks.net. If the fax number or e-mail address is for a contracted utilization review company, then the OWC will also post on the web the name of the utilization review company. When requesting authorization and sending the LWC-WC-1010 and 1010A, the health care provider shall use the fax number and/or email address found on the OWC website.

3. Pursuant to R.S. 23:1203.1, the 5 business days to act on the request for authorization does not begin for the Carrier/Self-Insured Employer until the information of Subsection C and LWC-WC-1010 is received. In the absence of the submission of such information, any denial of further non-emergency care by the Carrier/Self-Insured Employer is prima facie, not arbitrary and capricious.

E. First Request

1. If a Carrier/Self-Insured Employer determines that the information required in Subsection C of this Section has not been provided, then the Carrier/Self-Insured Employer shall, within 5 business days of receipt of LWC Form 1010, notify the health care provider of its determination. Notice shall be by fax or e-mail and shall include the provider-submitted LWC Form 1010 with the "First Request" section completed to indicate a delay due to lack of information and LWC-WC-1010A identifying the information that was not provided.

a. The health care provider must respond by fax or e-mail to the Carrier/Self-Insured Employer's request for additional information within 10 business days of receipt of the request.

b. If the health care provider agrees that the additional information from the first request is due, then such information shall be provided along with LWC-WC-1010 and 1010A.

c. If the health care provider disagrees that the additional information in the first request is due, then the health care provider shall return the LWC-WC-1010 and 1010A with an explanation describing why the health care provider believes all required information has been previously provided.

d. If the health care provider fails to respond to the first request within 10 business days of receipt, then such failure to respond shall result in a withdrawal of the request for authorization without further action by the OWC or the Carrier/Self-Insured Employer. In order to obtain authorization for care the health care provider will be required to initiate a new request for authorization with a new LWC-WC-1010 pursuant to this Section.

e. The Carrier/Self-Insured Employer must respond by fax or e-mail within 5 business days of receipt of a timely submitted response from the health care provider.

i. If the health care provider responds timely with additional information and the Carrier/Self-Insured Employer determines that the requested information has been provided, then the Carrier/Self-Insured Employer has 5 business days to act on the request for authorization pursuant to R.S. 23:1203.1(J) and these Rules. Subsection G of this Section provides the Rules regarding whether a request for authorization is approved, approved with modification, or denied.

ii. If the health care provider responds timely with additional information but the Carrier/Self-Insured Employer determines that the requested information has again not been provided, then the Carrier/Self-Insured Employer shall return LWC-WC-1010 to the health care provider, and indicate suspension of prior authorization process due to lack of information.

iii. If the health care provider responds timely with the appropriate forms and an explanation as to why no additional information is necessary and

iv. the Carrier/Self-Insured Employer determines that the request for information has been satisfied, then the Carrier/Self-Insured Employer has 5 business days to act on the request for authorization pursuant to R.S. 23:1203.1(J) and these Rules. Subsection G of this Section provides the Rules regarding whether a request for authorization is approved, approved with modification, or denied.

v. the Carrier/Self-Insured Employer determines that the requested information has still not been provided, then the Carrier/Self-Insured Employer shall return to the health care provider the LWC-WC-1010 indicating suspension of prior authorization process due to lack of information.

4. A Carrier/Self-Insured Employer who fails to return LWC-WC-1010 within the 5 business days as provided in this Subsection is deemed to have denied such request for authorization. A health care provider, claimant, or claimant's attorney if represented who chooses to appeal a denial pursuant to this Subsection shall file a LWC-WC-1009 pursuant to Subsection J of this Section.

i. A request for authorization that is deemed denied pursuant to this subparagraph may be approved by the Carrier/Self-Insured Employer within 10 calendar days of being deemed denied. The approval will be indicated in Section 3 of LWC-WC-1010. The medical director shall dismiss any appeal that may have been filed by a LWC-WC-

1009. The Carrier/Self-Insured Employer shall be given a presumption of good faith regarding the decision to change the denial to an approval provided that the LWC-WC-1010 which indicates "approved" in Section 3 is faxed or emailed within the 10 calendar days.

F. Appeal of Suspension of Prior Authorization Process

1. If the health care provider disagrees with the suspension of prior authorization process, the provider, within 5 business days of receipt of the suspension, shall file an appeal with the medical services section of the OWC. The appeal shall include:

a. A copy of the LWC-WC-1010 submitted to the Carrier/Self-Insured Employer. The health care provider should complete the appropriate section of the form indicating that an appeal is being requested; and

b. A copy of LWC-WC-1010A; and

c. A copy of all information previously submitted to the Carrier/Self-Insured Employer.

2. The medical services section shall, within 10 business days of receipt of the filed LWC-WC-1010,

a. determine whether the information provided satisfied the provisions of Subsection C of this Section; and

b. issue a written determination to the health care provider, claimant and Carrier/Self-Insured Employer.

3. If the medical services section determines that the requested information was not provided, then the health care provider will be required to submit the information to the Carrier/Self-Insured Employer within 5 business days of receipt of the decision of the medical services section.

a. If the information is provided as required by decision of the medical services section, the Carrier/Self-Insured Employer shall have 5 business days to act on the request for authorization pursuant to R.S. 23:1203.1(J) and these Rules. Subsection G of this Section provides the rules regarding a request for authorization being approved, approved with modification, or denied.

b. Failure of the health care provider to provide the information within 5 business days of receipt of the decision of the medical services section shall result in a withdrawal of the request for authorization without further action by the OWC or the Carrier/Self-Insured Employer. In order to obtain authorization, the medical provider will be required to initiate a new request for authorization pursuant to this Section.

4. If the medical services section determines that the requested information was provided, then within 5 business days of receipt of the decision of the medical services section decision, the Carrier/Self-Insured Employer shall act on the request for authorization pursuant to R.S. 23:1203.1(J) and these Rules with the information as previously provided. Subsection G of this Section provides the Rules regarding a request for authorization being approved, approved with modification, or denied.

5. Failure of the Carrier/Self-Insured Employer to act on the request within the 5 business days will be deemed a denial of the request for authorization. A health care provider, claimant, or claimant's attorney if represented who chooses to appeal a denial pursuant to this subparagraph shall file a LWC-WC-1009 pursuant to Subsection J of this Section.

6. A request for authorization that is deemed denied pursuant to this subparagraph may be approved by the

Carrier/Self-Insured Employer within 10 calendar days of being deemed denied. The approval will be indicated in Section 3 of LWC-WC-1010. The medical director shall dismiss any appeal that may have been filed by a LWC-WC-1009. The Carrier/Self-Insured Employer shall be given a presumption of good faith regarding the decision to change the denial to an approval provided that the LWC-WC-1010 which indicates "approved in Section 3 is faxed or emailed within the 10 calendar days.

G. Approval or Denial of Authorization for Care

1. Request for Authorization Covered by the medical treatment schedule. Upon receipt of the LWC-WC-1010 and the required medical information in accordance with this Section, the Carrier/Self-Insured Employer shall have 5 business days to notify the health care provider of the Carrier/Self-Insured Employer's action on the request. Based upon the medical information provided pursuant to this Section the Carrier will determine whether the request for authorization is in accordance with the medical treatment schedule.

a. The Carrier/Self-Insured Employer will return to the health care provider Form 1010, and indicate in the appropriate section on the form that "The requested treatment or testing is approved" if the request is in accordance with the medical treatment schedule; or

b. The Carrier/Self-Insured Employer will return to the health care provider, claimant, and the claimant's attorney if one exists, the LWC Form 1010, and indicate in the appropriate section on the form "The requested treatment or testing is approved with modification" if the Carrier/Self-Insured Employer determines that modifications are necessary in order for the request for authorization to be in accordance with the medical treatment schedule, or that a portion of the request for authorization is denied because it is not in accordance with the medical treatment schedule. The Carrier/Self-Insured Employer shall include with the LWC-WC-1010 a summary of reasons why a part of the request for authorization is not in accordance with the medical treatment schedule and explain any modification to the request for authorization; or

c. The Carrier/Self-Insured Employer will return to the health care provider, the claimant, and the claimant's attorney if one exists, the LWC-WC-1010, and indicate in the appropriate section on the form "the requested treatment or testing is denied" if the Carrier/Self-Insured Employer determines that the Request for Authorization is not in accordance with the medical treatment schedule. The Carrier/Self-Insured Employer shall include with the LWC-WC-1010 a summary of reasons why the request for authorization is not in accordance with the medical treatment schedule.

2. Request for Authorization not covered by the medical treatment schedule. Requests for authorization of medical care, services, and treatment that are not covered by the medical treatment schedule in accordance to R.S. 23:1203.1(M), must follow the same prior authorization process established for all other requests for medical care, services, and treatment. A request for authorization that is not covered by the medical treatment schedule exists when the requested care, services, or treatment are for a diagnosis not addressed by the medical treatment schedule. The Health Care Provider requesting care, services, or treatment that is

not covered by the medical treatment schedule may submit documentation sufficient to establish that the request is in accordance with R.S. 23:1203.1(D). After timely receipt of the LWC-WC-1010, the submitted documentation if any, and the required medical information in accordance with this Section, the Carrier/Self-Insured Employer shall determine whether the request for authorization is in accordance with R.S. 23:1203.1(D). In making this determination, the Carrier/Self-Insured Employer shall review the submitted documentation, but may apply another guideline that meets the criteria of R.S. 23:1203.1(D). The Carrier/Self-Insured Employer has 5 business days to notify the health care provider of the Carrier/Self-Insured Employer's action on the request.

a. The Carrier/Self-Insured Employer will return to the health care provider Form 1010, and indicate in the appropriate section on the form that "The requested treatment or testing is approved" if the request is in accordance with R.S. 23:1203.1(D); or

b. the Carrier/Self-Insured Employer will return to the health care provider, claimant, and the claimant's attorney if one exists, the LWC Form 1010, and indicate in the appropriate section on the form "The requested treatment or testing is approved with modification" if the Carrier/Self-Insured Employer determines that modifications are necessary in order for the request for authorization to be in accordance with R.S. 23:1203.1(D), or that a portion of the request for authorization is denied because it is not in accordance with R.S.23:1203.1(D). The Carrier/Self-Insured Employer shall include with the LWC-WC-1010 a summary of reasons why a part of the request for authorization is not in accordance with R.S. 23:1203.1(D); or

c. the Carrier/Self-Insured Employer will return to the health care provider, the claimant, and the claimant's attorney if one exists, the LWC-WC-1010, and indicate in the appropriate section on the form "the requested treatment or testing is denied" if the Carrier/Self-Insured Employer determines that the Request for Authorization is not in accordance with R.S. 23:1203.1(D). The Carrier/Self-Insured Employer shall include with the LWC-WC-1010 a summary of reasons why the request for authorization is not in accordance with R.S. 23:1203.1(D).

3. Summary of Reasons. The summary of reasons provided by the Carrier/Self-Insured Employer with the approval with modification or denial shall include:

i. the name of the employee;
ii. the date of accident;
iii. the name of the health care provider requesting authorization;

vi. the decision (approved with modification, denied);

vii. the clinical rationale to include a brief summary of the medical information reviewed;

viii. the criteria applied to include specific references to the medical treatment schedule, or to the guidelines adopted in another state if the requested care, services or treatment is not covered by the medical treatment schedule; and

ix. a section labeled "Voluntary Reconsideration" pursuant to I.2 of this Section that includes a phone number that will allow the health care provider to speak to a person with the Carrier/Self-Insured Employer or its utilization

review company with authority to reconsider a denial or approval with modification.

4. Upon receipt of the LWC-WC-1010 and the required medical information in accordance with this Section, the Carrier/Self-Insured Employer shall have 5 business days to notify the health care provider of the Carrier/Self-Insured Employer's action on the request. Based upon the medical information provided pursuant to this Section, and other information known to the Carrier/Self-Insured Employer at the time of the request for authorization, the Carrier will return to the health care provider, claimant, and claimant's attorney if one exists, the LWC-WC-1010 and indicate in the appropriate section on the form "the requested Treatment or Testing is denied because:

- a. "the request for authorization or a portion thereof is not related to the on-the-job injury"; or
- b. "the claim is non-compensable"; or
- c. "other" and provide a brief explanation for the basis of denial.

H. Failure to Respond by Carrier/Self-Insured Employer. A Carrier/Self-Insured Employer who fails to return LWC-WC-1010 with Section 3 completed within the 5 business days to act on a request for authorization as provided in this Section is deemed to have denied such request for authorization. A health care provider, claimant, or claimant's attorney if represented who chooses to appeal a denial pursuant to this subparagraph shall file a LWC-WC-1009 pursuant to Subsection J of this Section.

1. Reconsideration Prior to LWC-WC-1009 Decision

1. R.S. 23:1203.1(L) provides that it is the intent of the legislature that, with establishment of the medical treatment schedule, medical and surgical treatment, hospital care, and other health care provider services shall be delivered in an efficient and timely manner to injured employees.

2. In furtherance of that goal, the LWC-WC-1010 and the summary of reasons provided by the Carrier/Self-Insured Employer with the denial or approved with modification will include a statement that the health care provider is encouraged to contact the Carrier/Self Insured Employer to discuss reconsideration of the denial or approval with modification. The Carrier/Self Insured Employer shall include on the summary of reasons a section labeled "Voluntary Reconsideration," and include a phone number that will allow the health care provider to speak to a person with the Carrier/Self-Insured Employer or its utilization review company with authority to reconsider the previous denial or approval with modification.

3 Reconsideration after denied or approved with modification. If the Carrier/Self-Insured Employer determines that the requested care should now be approved, it will return to the health care provider, the claimant, and the claimant's attorney if one exists within 10 calendar days of the denial or approval with modification, the LWC-WC-1010, and in the appropriate section on the form indicate "the prior denied or approved with modification request is now approved." Such approval ends the utilization review process as it relates to the request. A LWC-WC-1009 or 1008 shall not be filed regarding such request. The Carrier/Self-Insured Employer shall be given a presumption of good faith regarding the decision to change its decision of

denied or approved with modification to approved after discussing the request with the health care provider.

4. Reconsideration after deemed denied due to failure to respond. A request for authorization that is deemed denied pursuant to H of this Section may be approved by the Carrier/Self-Insured Employer within 10 calendar days of the request for authorization as indicated on the LWC-WC-1010. The approval will be indicated in Section 3 of LWC-WC-1010. The medical director shall dismiss any appeal that may have been filed by a LWC-WC-1009. The Carrier/Self-Insured Employer shall be given a presumption of good faith regarding the decision to change the denial to an approval provided that the LWC-WC-1010 which indicates "approved" in Section 3 is faxed or emailed within 10 calendar days of the request for authorization.

J. Review of denial, approved with modification, deemed denied, or variance by LWC-WC-1009.

1. Any aggrieved party who disagrees with a request for authorization that is denied, approved with modification, deemed denied pursuant to E.1.e.4, F.4, and H, or who seeks a determination from the medical director with respect to medical care, services, and treatment that varies from the medical treatment schedule shall file a request for review with the OWC. The request for review shall be filed within 15 calendar days of

- a. receipt of the LWC-WC-1010 indicating that care has been denied or approved with modification; or
- b. the expiration of the 5th business day without response by the Carrier/Self-Insured Employer pursuant to paragraphs E.1.e.4, F.4, and H of this Section; or the expiration of the 5th business day without a decision by the Medical Director pursuant to paragraph B.3.g and J.5.e of this Section.

2. The request for review shall include:

- a. LWC-WC-1009 which shall state the reason for review is either:
 - i. a request for authorization that is denied; or
 - ii. a request for authorization that is approved with modification; or
 - iii. a request for authorization that is deemed denied pursuant to paragraphs E.1.e.4, F.4, and H; or
 - iv. a variance from the medical treatment schedule is warranted; and
- b. a copy of LWC-WC-1010 which shows the history of communications between the health care provider and the Carrier/Self-Insured Employer that finally resulted in the request being denied or approved with modification; and
- c. all of the information previously submitted to the Carrier/Self-Insured Employer; and
- d. In cases where a variance has been requested, the health care provider or claimant shall also provide any other evidence supporting the position of the health care provider or the claimant including scientific medical evidence demonstrating that a variance from the medical treatment schedule is reasonably required to cure or relieve the claimant from the effects of the injury or occupational disease given the circumstances.

3. In cases where the requested care, services, or treatment are not covered by the medical treatment schedule pursuant to R.S. 23:1203.1(M);

- i. the health care provider may also submit with the LWC-WC-1009 the documentation provided to the

Carrier/Self-Insured Employer pursuant to G.2 of this Section; and

ii. the Carrier/Self-Insured employer may submit to the medical director within 5 business days of receipt of the LWC-WC-1009 from the health care provider or claimant the documentation used to deny or approve with modification the request for authorization pursuant to R.S. 23:1203.1(D).

4. The health care provider or claimant filing the LWC-WC-1009 shall certify that such form and all supporting documentation has been sent to the Carrier/Self-Insured Employer by email or fax. The OWC shall notify all parties of receipt of a LWC-WC-1009.

5.a. Within 5 business days of receipt of the LWC-WC-1009 from the health care provider or claimant, the Carrier/Self-Insured Employer shall provide to the medical director any evidence it thinks pertinent to the decision regarding the request being denied, approved with modification, deemed denied, or that a variance from the medical treatment schedule is warranted.

b. The medical director shall within 30 calendar days of receipt of the LWC-WC-1009, and consideration of any medical evidence from the Carrier/Self-Insured Employer if provided within such 5 business days, render a decision as to whether the request for authorization is medically necessary and is

i. in accordance with the medical treatment schedule or,

ii. in accordance with R.S. 23:1203.1(D) if such request is not covered by the medical treatment schedule, or

iii. scientific medical evidence that a variance from the medical treatment schedule is reasonably required. The decision of the medical director shall be provided in writing to the health care provider, claimant, claimant's attorney if one exists, and Carrier/ Self-Insured Employer.

d. The decision of the medical director shall include:

i. the date the decision is mailed; and

ii. the name of the employee; and

iii. the date of accident; and

iv. the decision of the medical director

v. the clinical rationale to include a summary of the medical information reviewed; and

vi. the criteria applied to make the LWC-WC-1009 decision.

e. If the medical director does not render a decision within the specified time frame, the medical director is deemed to have denied the 1009. A health care provider claimant or claimant's attorney, if represented, who chooses to appeal a denial pursuant to this subparagraph shall file a 1008 in accordance with Subsection K of this Section.

K. Appeal of 1009 Decision by Filing 1008.

1. In accordance with LAC 40:I.5507.C, any party feeling aggrieved by the R.S. 23:1203.1(J) determination of the medical director shall seek a judicial review by filing a Form LWC-WC-1008 in a workers' compensation district office within 15 calendar days of the date said determination is mailed to the parties. The filed LWC-WC-1008 shall include a copy of the LWC-WC-1009 and the decision of the medical director. A party filing such appeal must simultaneously notify the other party that an appeal of the medical director's decision has been filed. Upon receipt of

the appeal, the workers' compensation judge shall immediately set the matter for an expedited hearing to be held not less than 15 calendar days nor more than 30 calendar days after the receipt of the appeal by the office. The workers' compensation judge shall provide notice of the hearing date to the parties at the same time and in the same manner. The decision of the medical director may only be overturned when it is shown, by clear and convincing evidence that the decision was not in accordance with the provisions of R.S. 23:1203.1.

2. If the Medical Director does not render a decision within the specified time frame, the Medical director is deemed to have denied the LWC-WC-1009. Any party feeling aggrieved by this determination shall seek a judicial review by filing a LWC-WC-1008 in a workers' compensation district court within 15 calendar days of the expiration of the time frame set forth in J.5.b. The filed LWC-WC-1008 shall include a copy of the LWC-WC-1009 and an attached signed statement that the Medical Director failed to render a decision within the specified time frame. A party filing such appeal must simultaneously notify the other party that an appeal of the deemed denial has been filed. Upon receipt of the appeal, the workers' compensation judge shall immediately set the matter for an expedited hearing to be held not less than 15 calendar days nor more than 30 calendar days after the receipt of the appeal by the office. The workers' compensation judge shall provide notice of the hearing date to the parties at the same time and in the same manner. The decision of the medical director may only be overturned when it is shown, by clear and convincing evidence that the deemed denial was not in accordance with the provisions of R.S. 23:1203.1.

L. Variance to Medical Treatment Schedule

1. Requests for authorization of medical care, services, and treatment that may vary from the medical treatment schedule must follow the same prior authorization process established for all other requests for medical care, services, and treatment that require prior authorization. If a request is denied or approved with modification, and the health care provider or claimant determines to seek a variance from the medical director, then a LWC-WC-1009 shall be filed as provided in J of this Section. The health care provider, claimant, or claimant's attorney filing the LWC-WC-1009 shall submit with such form the scientific medical literature that is higher ranking and more current than the scientific medical literature contained in the medical treatment schedule, and which supports approval of the variance.

2. A variance exists in the following situations:

a. the requested care, services, or treatment is not recommended by the medical treatment schedule although the diagnosis is covered by the medical treatment schedule.

b. the requested care, services, or treatment is recommended by the medical treatment schedule, but for a different diagnosis or body part.

c. the requested care, services, or treatment involves a medical condition of the claimant that complicates recovery of the claimant that is not addressed by the medical treatment schedule.

M. Emergency Care. In addition to all other rules and procedures, the health care provider who provides care under

the "medical emergency" exception must demonstrate that it was a "medical emergency" in the following manner:

a. - b. ...

N. Change of Physician

1. Requests for change of treating physician within one field or specialty shall be made in writing to the Carrier/Self-Insured Employer and shall contain a clear statement of the reason for the requested change. Having exhausted the monetary limit for non-emergency treatment is insufficient justification, without other reasons. The Carrier/Self-Insured Employer shall notify all parties of the request, and of their action on the request, within five calendar days of date of receipt of the request. Failure to timely respond may result in assessment of penalties by the hearing officer.

2. Disputes over change of physician will be resolved in accordance with R.S. 23:1142(B).

O. Opposing Medical Opinions. In the event that there are opposing medical opinions regarding claimant's condition or capacity to work, the Office of Workers' Compensation Administration will appoint an independent medical examiner of the appropriate licensure class to examine the claimant, or review the medical records at issue. The expense of this examination will be set by the director and will be borne by the Carrier/Self-Insured Employer.

AUTHORITY NOTE: Promulgated in accordance with RS 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:263 (March 1991), repromulgated LR 17:653 (July 1991), repromulgated LR 18:257 (March 1992), amended LR 38:

§2717. Medical Review Guidelines

A. - C.1.e. ...

2. Quality of Care. Quality care should:

a. be provided in a timely manner, without inappropriate delay, interruption, premature termination or prolongation of treatment, and emphasize an early, safe return to work;

b. seek the patient's cooperation and participation in the decisions and process of his or her treatment;

c. Be based on accepted principles of evidence based practice as established in R.S. 23:1203.1 and the skillful and appropriate use of other health professionals and technology;

d. be provided with sensitivity to the stress and anxiety that illness can cause, and with concern for the patient's and family's overall welfare and should focus on

improvement in function related to the physical demands of the injured workers' job.

e. use technology and other resources efficiently to achieve the treatment goal;

f. be sufficiently documented in the patient's medical record to allow continuity of care and peer evaluation.

3. Medical Necessity

a. The workers' compensation law provides benefits only for services that are medically necessary for the diagnosis or treatment of a claimant's work related illness, injury, symptom or complaint. Medically Necessary or Medical Necessity shall mean health care services that are:

i. clinically appropriate, in terms of type, frequency, extent, site, and duration, and effective for the patient's illness, injury, or disease; and

ii. in accordance with the medical treatment schedule and the provisions of R.S. 23:1203.1.

b. To be medically necessary, a service must be:

i. consistent with the diagnosis and treatment of a condition or complaint; and

ii. in accordance with the Louisiana medical treatment schedule; and

iii. - iv. ...

c. Services not related to the diagnosis or treatment of a work related illness or injury are not payable under the workers' compensation laws and shall be the financial responsibility of the claimant, and in appropriate cases, his health insurance carrier.

4. - 9. ...

D. Professional Justification

1. Medical Necessity. All claims submitted to the Carrier/Self-Insured Employer must be reviewed for medical necessity and for compliance with the medical treatment schedule and the provisions of R.S. 23:1201.1. Medical necessity implies the use of technologies* services, or supplies provided by a hospital, physician, or other provider that is determined to be:

a. - b. ...

c. In accordance with the medical treatment schedule and the provisions of R.S. 23:1203.1; and

1.d. - 2.*...

AUTHORITY NOTE: Promulgated in accordance with RS 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:263 (March 1991), repromulgated LR 17:653 (July 1991), amended LR 38:

§2718. Utilization Review Forms

A. LWC Form 1010—Request of Authorization/
Carrier or Self Insured Employer Response

LWC FORM 1010 - REQUEST OF AUTHORIZATION/CARRIER OR SELF INSURED EMPLOYER RESPONSE

PLEASE PRINT OR TYPE

SECTION 1. IDENTIFYING INFORMATION - To Be Filled Out By Health Care Provider			
P A T I E N T	Last Name: First: Middle:		Street Address, City, State, Zip:
	Social Security Number:	Date of Birth:	Phone Number: Date of Injury:
	Employers Name:		Street Address, City, State, Zip: Phone Number:
C A R R I E R	Name:		Adjuster: Claim Number (if known):
	Street Address, City, State Zip:		Email Address: Phone Number: Fax Number:
SECTION 2. REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider			
P R O V I D E R	Requesting Health Care Provider		Phone Number: Fax Number:
	Street Address, City, State Zip:		Email:
	Diagnosis:	CPT/DRG Code:	ICD-9/DMS-4 Code:
	Requested Treatment or Testing (Attach Supplement if Needed):		
	Reason for Treatment or Testing (Attach Supplement if Needed):		
INFORMATION REQUIRED BY RULE TO BE INCLUDED WITH REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider (Following is the required minimum information for Request of Authorization (LAC 40:2715 (C))			
P R O V I D E R	<input type="checkbox"/> History provided to the level of condition and as provided by Medical Treatment Schedule <input type="checkbox"/> Physical Findings/Clinical Tests <input type="checkbox"/> Documented functional improvements from prior treatment <input type="checkbox"/> Test/imaging results <input type="checkbox"/> Treatment Plan including services being requested along with the frequency and duration		
	I hereby certify that this completed form and above required information was <input type="checkbox"/> Faxed to the Carrier/Self Insured Employer on this the _____ day of _____, _____ <input type="checkbox"/> Emailed (day) (month) (year)		
	Signature of Health Care Provider:		Printed Name:
SECTION 3. RESPONSE OF CARRIER/SELF INSURED EMPLOYER FOR AUTHORIZATION (Check appropriate box below and return to requesting Health Care Provider, Claimant and Claimant Attorney as provided by rule)			
C A R R I E R	<input type="checkbox"/> The requested Treatment or Testing is approved <input type="checkbox"/> The requested Treatment or Testing is approved with modifications (Attach summary of reasons and explanation of any modifications) <input type="checkbox"/> The requested Treatment or Testing is denied because		
	<input type="checkbox"/> Not in accordance with Medical Treatment Schedule or R.S.23:1203.1(D) (Attach summary of reasons)		
	<input type="checkbox"/> The request, or a portion thereof, is not related to the on-the-job injury		
	<input type="checkbox"/> The claim is being denied as non-compensable		
	<input type="checkbox"/> Other (Attach brief explanation)		
	I hereby certify that this response of Carrier/Self Insured Employer for Authorization was <input type="checkbox"/> Faxed to the Health Care Provider (and to the Attorney of Claimant if one exists, if denied or approved with modification) on this the _____ day of _____, _____ <input type="checkbox"/> Emailed (day) (month) (year)		
	Signature of Carrier/Self Insured Employer:		Printed Name:
<input type="checkbox"/> The prior denied or approved with modification request is now approved			
I hereby certify that this response of Carrier/Self Insured Employer for Authorization was <input type="checkbox"/> Faxed to the Health Care Provider and Attorney of Claimant if one exists on this the _____ day of _____, _____ <input type="checkbox"/> Emailed (day) (month) (year)			
Signature of Carrier/Self Insured Employer:		Printed Name:	

Family Impact Statement

1. The effect on the stability of the family.

The proposed UR Rules for the Office of Workers' Compensation Administration will have 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.

The proposed UR Rules for the Office of Workers' Compensation Administration will have 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.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on the functioning of the family.

4. The effect on earnings and family budget.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government able to perform the function as contained in the proposed Rule.

The family or a local government is not able to perform the functions contained in the proposed UR Rules for the Office of Workers' Compensation Administration.

Public Comments

Inquiries concerning the proposed amendment may be directed to: Director, Office of Workers' Compensation Administration, Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040.

Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040., Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Department within 20 days of the publication of this notice.

Curt Eysink
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Utilization Review Procedures

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

The proposed rule addresses Utilization Review (UR), which is the process used by employers or claim administrators to review treatment and determine whether or not to approve the treatment based on medical necessity. These rules are in

conjunction with the Medical Treatment Schedule (MTS) that became effective on July 15, 2011. There are no significant additional administrative costs associated with the amendment of these rules. The Medical Director has been under contract since December 1, 2010, but \$10,000 in additional expenses may be required to contract additional physician(s) to substitute for the Medical Director as needed for timeliness or specialization. All costs that may be necessary for the administration of the proposed rules have been factored into the existing budget.

The amendment of the existing UR rules establishes the process and procedures to be followed by the parties in light of the implementation of the (MTS). The Office of Workers' Compensation (OWC)'s administrative involvement in setting independent medical exams (IME) and second medical opinions (SMO) should decline in light of the new procedures set by MTS and new UR rules. However, these administrative tasks will be replaced by other administrative tasks established by the MTS and new UR rules. As such, the promulgation of these rules is not expected to provide any additional costs or savings for the OWC. The proposed rules do contain additional forms but the forms will be made available online. Thus, OWC will not experience any additional expense with regards to the forms.

The Division of Administration indicates that the proposed rule will have no fiscal impact on the Office of Risk Management.

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

The implementation of the UR rule change will have no anticipated effect on revenue collections of state or local governmental units.

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

The proposed rules impose rigid deadlines and reporting requirements for certain components of care. According to LWC, all parties affected by the new UR rules could receive a net economic benefit. For injured workers, the new UR process will help streamline the delivery of medical services. For medical providers, the rules will remove unreasonable delays in providing treatment. For employers/insurance carriers, the rules will ensure recognized, evidence based treatment for injured workers that is medically necessary which could enable a faster return to work. For all affected parties, the rules will establish a process whereby medical disputes are resolved by a streamlined administrative process rather than the prior legal process. In accordance with the rules, most medical disputes will be resolved in less than 60 days. By contrast, before implementation of the MTS, medical disputes had taken an average of 15 months to resolve in court. The reduction in time for resolving medical disputes should result in savings in litigation and indemnity expenses. However, the anticipated savings cannot be quantified with any degree of certainty at this time. The proposed rules do contain new forms to be made available online. The reporting burden is not anticipated to be significantly different than that currently imposed.

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

There is no anticipated direct effect on competition and employment.

Wes Hataway
Director
1112#078

Greg V. Albrecht
Chief Economist
Legislative Fiscal Office

Committee Reports

COMMITTEE REPORT

Committee on House and Governmental Affairs and Committee on Senate and Governmental Affairs

Third Party Ethics Training (LAC 52:I.Chapter 24)

Editor's Note: This Notice of Intent was published in the August 20, 2011 *Louisiana Register* on pages 2442-2445.

On December 7, 2011, the Committee on House and Governmental Affairs and the Committee on Senate and Governmental Affairs held a joint meeting to consider rule changes proposed by the Board of Ethics. The proposed rule changes concerned third party ethics training. Each committee determined the rule changes proposed by the Board of Ethics to be unacceptable.

Members of the committees expressed concern that the proposed Rule, particularly those concerning the

certification of trainers, was not in conformity with legislative intent and was not advisable. Particular concern was expressed over the minimum training requirement for certified training applicants and the requirement that certified trainer applicants be licensed to practice law in the state and not ever found to have been violation of any law under the jurisdiction of the Board of Ethics or the Ethics Adjudicatory Board.

Robert W. "Bob" Kostelka
Chairman
Senate and Governmental Affairs
and
Richard "Rick" Gallor, Jr.
Chairman
House and Governmental Affairs

1112#074

Potpourri

POTPOURRI

Office of the Governor Coastal Protection and Restoration Authority

Public Hearing—State Fiscal Year 2013 Draft
Annual Plan and 2012 Draft Coastal Master Plan

Pursuant to R.S. 49:213.6, the Coastal Protection and Restoration Authority of Louisiana (CPRA) will hold the following public hearings to receive comments and recommendations from the public and from elected officials on Louisiana's draft "Fiscal Year 2013 Annual Plan: Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana" and "Louisiana's 2012 Coastal Master Plan: Integrated Ecosystem Restoration and Hurricane Protection:"

Monday, January 23, 2012 from 1p.m.-8 p.m.
University of New Orleans
Lindy Boggs Conference Center Auditorium
2045 Lakeshore Drive, New Orleans, LA 70122

Tuesday, January 24, 2012 from 1 p.m.-8 p.m.
346 Civic Center Boulevard
Room 3
Houma, LA 70360

Wednesday, January 25, 2012 from 1 p.m.-8 p.m.
Lake Charles Civic Center
Contraband Room
900 Lakeshore Drive
Lake Charles, LA 70601

Public comments will be taken and recorded throughout the scheduled meeting time; however, court reporters will be available for documenting additional public comments on both the Annual Plan and the Master Plan from 5:30 pm-7:30 pm.

If, because of a disability, you require special assistance to participate, please contact the CPRA Administrative Assistant, at P.O. Box 44027, Baton Rouge, LA 70804-4027 or by telephone at (225) 342-5160, at least five working days prior to the hearing.

Please visit <http://coastal.louisiana.gov/> or <http://www.coastalmasterplan.la.gov/> for more detailed information and copies of the draft Annual Plan and Master Plan which will be posted prior to the public meetings.

For questions regarding the meetings, please contact Chuck Perrodin at (225) 342-7615.

Garret Graves
Chairman

1112#114

POTPOURRI

Office of the Governor Office of Financial Institutions

Judicial Interest Rate Determination For 2012

R.S. 13:4202(B), as amended by Acts 2001, No. 841, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2012 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on October 3, 2011, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three-quarters .75 percent.

R.S. 13:4202(B)(1) mandates that on and after January 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors approved discount rate on October 3, 2011. Thus, the effective judicial interest rate for the calendar year 2012 shall be four percent per annum.

R.S. 13:4202(B)(2) provides that the publication of the Commissioner's determination in the *Louisiana Register* "shall not be considered rulemaking within the intentment of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953." Therefore, (1) a Fiscal Impact Statement, (2) a Family Impact Statement, and (3) a Notice of Intent are not required to be filed with the *Louisiana Register*.

John P. Ducrest, C.P.A.
Commissioner

1112#013

POTPOURRI

Department of Health and Hospitals Board of Medical Examiners

Public Hearing—Substantive Changes to Proposed
Rule Amendments—Physician Assistants; Authority and
Limitations of Supervising Physician (LAC 46:XLV.4507)

The board published a Notice of Intent to amend its rules in the July 20, 2010, edition of the *Louisiana Register* (LR 37:2285-2286). The notice solicited views, arguments, information, written comments and testimony. As a result of its consideration of the written comments and testimony received, the board proposes to amend §4507.C.1, §4507.C.3 and §4507.D of the proposed Rule amendments so that, as amended, these provisions will read as set forth below.

In accordance with R.S. 49:968(H)(2), a public hearing on proposed substantive changes will be held by the board on

January 24, 2012, at 8:45 a.m. at the offices of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana 70130.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 45. Physician Assistants

§4507. Authority and Limitations of Supervising

Physician

A. - B. ...

C. An SP may delegate certain medical services beyond core competencies to a PA provided:

1. the SP is trained and qualified in and performs the service in the course and scope of his or her practice. If the service is provided in a hospital the SP and the PA shall be credentialed to provide the service. PA credentialing shall be in the manner specified in C.5.a of this Section;

2. ...

3. the SP provides a level of supervision appropriate to the risk to the patient and the potential for complications requiring the physician's personal attention;

4. - 5.b. ...

D. An SP:

1. may not serve as a PSP for more than two PAs;

2. shall not act as a SP for more than four PAs simultaneously at the same time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F), R.S. 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:112 (April 1978), amended LR 17:1106 (November 1991), LR 22:205 (March 1996), LR 25:32 (January 1999), LR 34:246 (February 2008), LR 38:

Robert L. Marier, M.D.
Executive Director

1112#064

POTPOURRI

**Department of Health and Hospitals
Board of Veterinary Medicine**

Spring/Summer Examination Dates

The Louisiana Board of Veterinary Medicine will administer the State Board Examination (SBE) for licensure to practice veterinary medicine on the first Tuesday of every month. Deadline to apply for the SBE is the third Friday prior to the examination date desired. SBE dates are subject to change due to office closure (i.e. holiday, weather).

The board will accept applications to take the North American Veterinary Licensing Examination (NAVLE) which will be administered through the National Board of Veterinary Medical Examiners (NBVME), formerly the National Board Examination Committee (NBEC), as follows.

Test Window Date	Deadline To Apply
April 9 through April 21, 2012	Monday, January 3, 2012

The board will also accept applications for the Veterinary Technician National Examination (VTNE) for state registration of veterinary technicians which will be administered through the American Association of Veterinary State Boards (AAVSB), as follows.

Test Date	Deadline To Apply
March 15-April 15, 2012	February 1, 2012
July 15 through August 15, 2011	June 15, 2012
November 15 through December 15, 2011	October 15, 2012

Applications for all examinations must be received on or before the deadline. No late application will be accepted. Requests for special accommodations must be made as early as possible for review and acceptance. Applications and information may be obtained from the board office at 263 Third Street, Suite 104, Baton Rouge, LA 70801 and by request via telephone at (225) 342-2176 or by e-mail at admin@lsbvm.org; application forms and information are also available on the website at www.lsbvm.org.

Wendy D. Parrish
Executive Director

1112#015

POTPOURRI

**Department of Health and Hospitals
Board of Veterinary Medicine**

Board Meeting Dates

The members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2012:

- Thursday, February 2, 2012
- Thursday, April 5, 2012
- Thursday, June 7, 2012 (Annual Meeting)
- Thursday, August 2, 2012
- Thursday, October 4, 2012
- Thursday, December 6, 2012

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at admin@lsbvm.org to verify actual meeting dates.

Wendy Parrish
Executive Director

1112#009

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
R. K. Freeman	Converse	S	Sam Bison	001	94110
Vern Wilson Energy Inc.	Greenwood-Waskom	S	D Simpson	001	164949
Vern Wilson Energy Inc.	Greenwood-Waskom	S	D Simpson	002	165359
Vern Wilson Energy Inc.	Greenwood-Waskom	S	D Simpson	003	165360
Vern Wilson Energy Inc.	Greenwood-Waskom	S	D Simpson	004	165361
Vern Wilson Energy Inc.	Greenwood-Waskom	S	D Simpson	005	165362
Vern Wilson Energy Inc.	Greenwood-Waskom	S	D Simpson	006	166152
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Nettie Soniat	015	166630
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Nettie Soniat	016	166631
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Nettie Soniat	017	166632
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Nettie Soniat	019	166634
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Nettie Soniat	020	166635
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Nettie Soniat	021	166636
Vern Wilson Energy Inc.	Greenwood-Waskom	S	Agurs Swd	001	184872

James H. Welsh
Commissioner

1112#109

POTPOURRI

**Department of Natural Resources
Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 6 claims in the amount of \$25,688.66 were received for payment during the period November 1, 2011 - November 30, 2011.

There were 4 paid and 2 denied.

Latitude/longitude coordinates of reported underwater obstructions are:

2906.251	9039.498	Terrebonne
2909.606	9025.016	Terrebonne
2910.450	9037.857	Terrebonne
2926.784	9137.415	St. Mary
2938.091	8947.321	Plaquemines
2945.297	9321.086	Cameron

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-9388.

Scott A. Angelle
Secretary

1112#032

POTPOURRI

**Department of Public Safety and Corrections
Oil Spill Coordinator's Office**

Request for Comments: Deepwater Horizon Oil Spill; Draft Phase I Early Restoration Plan and Environmental Assessment

Action: Notice of availability; request for comments.

Summary: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill, the Federal and State natural resource trustee agencies (Trustees) have prepared a Draft Early Restoration Plan and Environmental Assessment (DERP/EA) describing and proposing a suite of early restoration projects intended to commence the process of restoring natural resources and services injured or lost as a result of the *Deepwater Horizon* oil spill, which occurred on or about April 20, 2010, in the Gulf of Mexico. The purpose of this notice is to inform the public of the availability of the DERP/EA and to seek written comments on the proposed restoration alternative presented in the DERP/EA.

Dates:

Comments Due Date: We will consider public comments received on or before February 14, 2012.

Public Meetings: A series of public meetings are scheduled to facilitate public review and comment on the DERP/EA. Both written and verbal public comments will be taken at the meetings. The meeting dates, times, and locations are listed below. Meeting facilities and their addresses will be published in local newspapers and will be posted on the web at <http://losco-dwh.com/>.

Date and Time	Location
Jan 11, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Florida
Jan 12, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Florida
Jan 17, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Mississippi
Jan 18, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Mississippi
Jan 19, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Mississippi
Jan 23, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Alabama
Jan 24, 2012 6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Alabama

Date and Time		Location
Jan 26, 2012	6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Texas
Jan 31, 2012	5:30 p.m. Open House 6:30 p.m. Meeting/presentation/comment	Louisiana
Feb 1, 2012	5:30 p.m. Open House 6:30 p.m. Meeting/presentation/comment	Louisiana
Feb 2, 2012	5:30 p.m. Open House 6:30 p.m. Meeting/presentation/comment	Louisiana
Feb 7, 2012	6:00 p.m. Open House 7:00 p.m. Meeting/presentation/comment	Washington, D.C.

Addresses: Obtaining Documents: You may download the DERP/EA and the framework agreement at <http://losco-dwh.com/>. Alternatively, you may request a CD of the DERP/EA (see FOR FURTHER INFORMATION CONTACT). You may also review hard copies of the DERP/EA at any of the public repositories listed at <http://losco-dwh.com/>.

Submitting Comments: You may submit comments on the DERP/EA by one of following methods:

via the Web: <http://losco-dwh.com/>;

for electronic submission of comments containing attachments, email: Karolien.Debuschere@la.gov;

U.S. Mail: Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70806.

For Further Information Contact: Karolien Debuschere at Karolien.Debuschere@la.gov

Supplementary Information:

Introduction

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seabed. An estimated 4.9 million barrels (210 million gallons) of oil were released from the well into the Gulf of Mexico over a period of approximately three months. In addition, approximately 771,000 gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

Federal and State trustees (listed below) are conducting the natural resource damage assessment for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. § 2701 *et seq.*). Pursuant to OPA, federal and state agencies and Indian tribes may act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the damages required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship. The trustees have developed this DERP/EA under the Framework Agreement.

The trustees are:

U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S Fish and Wildlife Service, and Bureau of Land Management;

National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S Department of Commerce;

State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries and Department of Natural Resources;

State of Mississippi Department of Environmental Quality;

State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;

State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and

Texas Parks and Wildlife Department, Texas General Land Office and Texas Commission on Environmental Quality.

The U.S. Department of Defense (DOD) is a Trustee, but does not have affected lands in this Draft Phase I Early Restoration Project.

Background

On April 20, 2011, BP agreed to provide up to \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the *Deepwater Horizon* oil spill. This early restoration agreement, entitled "Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill" (Framework Agreement), represents a preliminary step toward the restoration of injured natural resources. The Framework Agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together "to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable" prior to the completion of the natural resource damage assessment process or full resolution of the Trustees' natural resource damages claim.

The Trustees have actively solicited public input on restoration project ideas through a variety of mechanisms, including public meetings, electronic communication, and creation of a Trustee-wide public website and database to share information and receive public project submissions. The Trustees are considering a broad array of potential early restoration projects. Their key objective in pursuing early restoration is to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is still underway. As the first step in this accelerated process, the Trustees are first proposing eight projects as set forth in this Phase I Draft Early Restoration Plan/Environmental Assessment (DERP/EA) in accordance with OPA and NEPA. The projects proposed in this plan are not intended to, and do not fully, address all injuries caused by the spill or provide the extent of restoration needed to satisfy claims against BP.

In keeping with the Framework Agreement, the DERP/EA includes an estimate of the gains anticipated to result from

each project, referred to as “Natural Resource Damage Offsets” (NRD Offsets). These NRD Offsets were identified consistent with the terms of the Framework Agreement. If these projects are approved, at the end of the NRDA process, the Trustees would credit these NRD Offsets generated by these early restoration projects towards the total restoration credits required based on the completed injury assessment. Further comprehensive restoration will still be required to fully compensate the public for natural resource losses from the oil spill.

Overview of the Phase 1 DERP/EA

Draft Early Restoration Plan Alternatives, Including Proposed Alternative

The DERP/EA describes two early restoration alternatives: No Action – Natural Recovery (required for consideration by OPA) and Proposed Action – Proposed Early Restoration Projects. Under the No Action alternative, the trustees would not implement early restoration projects as described in this DERP/EA. Rather, the trustees would rely, for the time being, solely on natural recovery processes to restore natural resources to their pre-spill conditions and would undertake no early actions to accelerate recovery or to help address interim resource losses.

Under the Proposed Action, the Trustees are considering eight projects that meet the selection criteria as described in the DERP/EA.

Proposed Action–Proposed Early Restoration Projects

The proposed projects are intended to provide services that will benefit injured marshes, coastal dune habitats, nearshore sediments, oysters, and human uses (on water recreation). Each of these projects provides benefits to natural resources and their services injured by the *Deepwater Horizon* oil spill. The proposed projects are: (1) Lake Hermitage Marsh Creation, Louisiana; (2) Louisiana Oyster Cultch Project; (3) Mississippi Oyster Cultch Restoration; (4) Mississippi Artificial Reef Habitat; (5) Marsh Island (Portersville Bay, Alabama) Marsh Creation; (6) Alabama Dune Restoration Cooperative Project; (7) Florida Boat Ramp Enhancement Cooperative Project; (8) Florida Dune Restoration.

Next Step

After the public comment period ends, we will analyze and address the comments. After close of the public comment period, the Trustees will consider all input received before a Phase I Early Restoration Plan is finalized. As described above, a series of public meetings are scheduled to facilitate the public review and comment process. Upon completion of the Phase I Early Restoration Plan, negotiations with BP will be completed and approved projects will proceed to implementation, pending compliance with all applicable state and federal laws.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Administrative Record

The documents comprising the Administrative Record can be viewed electronically at the following location: <http://losco-dwh.com/AdminRecord.aspx>.

Author

The primary author of this notice is Nanciann Regalado.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. § 2701 *et seq.*), the implementing Natural Resource Damage Assessment regulations found at 15 CFR Part 990, and the Framework Agreement for Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill.

Roland Guidry
Coordinator

1112#076

POTPOURRI

Department of Revenue Policy Services Division

Advance Notice of Proposed Rulemaking and Solicitation of Comments Concerning Electronic Funds Transfer (LAC 61:1.4910)

As part of its ongoing effort to provide guidance to taxpayers concerning the proper interpretation of the law and to prevent the loss of tax revenue to which the state is entitled under the law, the Department of Revenue is hereby providing notice of its intention to proceed with rulemaking to more accurately account for payments remitted by electronic funds transfer. The department proposes to delete language within the current rule that provides a special exception from withholding tax return filing for employers who remit their withholding taxes to the department by electronic funds transfer. Beginning with taxable periods on or after January 1, 2012 all employers, including those who have remitted withholding taxes by electronic funds transfer, will be required to submit quarterly withholding tax returns reconciling the amounts of taxes payable to the department to their actual remittances during each calendar quarter.

Additionally, the department proposes to require tax payments be remitted by electronic funds transfer when the amount withheld from the combined wages of all employees is five hundred dollars or more for taxable periods beginning on or after January 1, 2013.

The Department of Revenue, Office of Legal Affairs, Policy Services Division is requesting comments from industry, tax preparers, and the public on the proposed rule, which is posted on the department’s website at <http://revenue.louisiana.gov>.

Written comments addressing this matter are due no later than 4:30 p.m., January 15, 2011, and should be submitted to Nina S. Hunter, Policy Services Division, Office of Legal Affairs, Louisiana Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. Persons commenting should reference this matter as “Withholding Tax re: Electronic Funds Transfer.”

Cynthia Bridges
Secretary

1112#110

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