

I. EXECUTIVE ORDER

BJ 09-15 Bond Allocation—Louisiana Public Facilities Authority Crescent Gardens Homes Project..... 2123
 BJ 09-16 Halting State Funding to Acorn..... 2123

II. EMERGENCY RULES

Economic Development

Office of the Secretary—Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned
 Small Entrepreneurships Certification Program (The Veteran Initiative) (LAC 19:IX.Chapters 1 and 3).... 2125
 Office of the Secretary, Office of Business Development—Retention and Modernization Act
 (LAC 13:I.Chapter 35) 2128
 Louisiana Economic Development Corporation—Retention and Modernization Act (LAC 13:I.Chapter 35)..... 2131

Education

Student Financial Assistance Commission, Office of Student Financial Assistance—Scholarship/Grant
 Programs (LAC 28:IV.301, 703, 705 and 803)..... 2131
 Tuition Trust Authority, Office of Student Financial Assistance—START Savings Program (LAC 28:VI.305,
 311 and 315) 2133

Governor

Division of Administration, Office of Contractual Review—Small Entrepreneurship
 (The Veteran Initiative)—Procurement (LAC 19:VII.Chapters 11 and 15) 2135
 Office of Group Benefits—PPO and EPO Plans of Benefits—Influenza Vaccinations
 (LAC 32:III.301 and V.301) 2139

Health and Hospitals

Bureau of Health Services Financing—Direct Service Worker Registry—Training Curriculum
 (LAC 48:I.9215) 2140
 Disproportionate Share Hospital Payments—Non-Rural Community Hospitals (LAC 50.V.2701) 2141
 Facility Need Review—Home and Community-Based Service Providers
 (LAC 48:I.12501-12505 and 12523) 2142
 Facility Need Review—Exception Criteria for Bed Approval (LAC 48:I.12513, 12527, 12533,
 12541, and 12543-12553) 2145
 Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Major Teaching Hospitals
 (LAC 50:V.1333) 2148
 Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Supplemental Payments
 (LAC 50:V.Chapter 9) 2149
 Medicaid Eligibility—Express Lane Eligibility (LAC 50:I.Chapter 11) 2152
 Medicaid Eligibility—Youth Aging Out of Foster Care (LAC 50:III.2307) 2154
 Nursing Facilities—Reimbursement Methodology—Rate Determination (LAC 50:VII.1305) 2155
 Nursing Facilities—Reimbursement Rate Reduction (LAC 50:VII.1305 and 1309)..... 2156
 Outpatient Hospital Services—Non-Rural, Non-State Hospitals—Major Teaching Hospitals
 (LAC 50:V.6533) 2157
 Outpatient Hospital Services—Non-Rural, Non-State Hospitals—Supplemental Payments
 (LAC 50:V.5315, 5515, 5717, 5915 and 6117) 2157
 Pharmacy Program—Medication Administration—H1N1 Immunizations (LAC 50:XXIX.123 and 991)..... 2159
 Targeted Case Management—Nurse Family Partnership Program—Reimbursement Rate Reduction
 (LAC 50:XV.10701, 11101 and 11103)..... 2160

Public Safety and Corrections

Board of Private Security Examiners—Security Officers—Documentation and Fees
 (LAC 46:LIX.201, 301, and 903) 2161
 Correction Services—Restoration of Good Time (LAC 22:I.319)..... 2162

Revenue

Policy Services Division—Prepaid Wireless 911 Service Charge (LAC 61:I.5401)..... 2164

This public document was published at a total cost of \$2,625. Five hundred copies of this public document were published in this monthly printing at a cost of \$2,625. The total cost of all printings of this document including reprints is \$2,625. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Social Services

Office of Community Services—Residential Licensing (LAC 67:V.6115, 6709, 2903, 6905, 6909, 6953, 6955, and 6959) 2165
Office of Family Support—Daycare Services and Child Care Quality Rating System (LAC 67:III.7302, 7303, 7305, 7355, 7357, 7359, 7361, and 5121) 2168
TANF—LA 4 Public Pre-Kindergarten (LAC 67:III.5585)..... 2171

Wildlife

Wildlife and Fisheries Commission—Elmer’s Island Wildlife Refuge..... 2172

III. RULES

Economic Development

Office of Business Development, Office of Entertainment Industry Development— Musical and Theatrical Income Tax Credit Program (LAC 61:I.1615-1627) 2173

Environmental Quality

Office of the Secretary, Legal Affairs Division—Methods of Payment (LAC 33:I.1203, 1411, 1911, 2305, 2307; III.215; V.5111, 5119, 5127; VI.709, 917; VII.1505; IX.1309, 1507; XI.307; XV.2509)(MM009) 2178

Health and Hospitals

Board of Medical Examiners—Clinical Laboratory Personnel, Licensure and Certification; Fees (LAC 46:XLV.3529)..... 2182
Bureau of Health Services Financing—Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Reimbursement Rate Adjustment (LAC 50:V.953, 955, and 959) 2182

Natural Resources

Office of the Secretary—Beneficial Use of Dredged Material (LAC 43:I.700 and 723) 2183
Coastal Use Permit Extensions (LAC 43:I.723) 2187

Public Safety and Corrections

Corrections Services—Americans with Disabilities Act (LAC 22:I.308) 2188
Effective Communication with the Hearing Impaired (LAC 22:I.312) 2190
Equal Employment Opportunity (Includes Americans with Disabilities Act) (LAC 22:I.201) 2194
Gaming Control Board—Accounting Regulations (LAC 42:VII.2723, IX.2723, and XIII.2723)..... 2198
Advertising—Compulsive and Problem Gaming (LAC 42:VII.2927; IX.2919; and XIII.2927)..... 2199
Compulsive and Problem Gaming (LAC 42:III.304) 2199
Operation of Video Draw Poker Devices (LAC 42:VII.2729; IX.2729; and XIII.2729) 2200
Liquefied Petroleum Gas Commission—Permit Fee (LAC 55:IX:107)..... 2201
Office of State Police—Towing Recovery and Storage (LAC 55:I.1907)..... 2201

Revenue

Policy Services Division—Income: Withholding Tax (LAC 61:I.1515) 2204

Social Services

Office of Community Services—Chafee Foster Care Independence Program and Young Adult Programs (LAC 67:V.Chapter 39) 2205

IV. NOTICES OF INTENT

Civil Service

Civil Service Commission—Civil Service Rules..... 2207

Culture, Recreation and Tourism

Office of Tourism—Welcome Centers (LAC 25:V:501, 503, 505 and 507)..... 2220

Governor

State Military Department—National Guard Death and Disability Benefits (LAC 41:III.101) 2222

Health and Hospitals

Board of Dentistry—General Provisions (LAC 46:XXXIII.116, 312, 313, 314, 701, and 1713) 2226
Board of Wholesale Drug Distributors—Enforcement Action (LAC 46:XCI.901)..... 2231
General Provisions (LAC 46:XCI.105) 2232
Wholesale Drug or Device Distributors (LAC 46:XCI.301 and 311) 2232
Bureau of Health Services Financing—Direct Service Worker Registry—Medication Administration and Noncomplex Tasks (LAC 48:I.9201, and 9241-9269)..... 2234
Home and Community Based Services Waivers—New Opportunities Waiver Resource Allocation Model (LAC 50:XXI.13704) 2240
Nursing Facility Minimum Licensing Standards—Emergency Preparedness—Electronic Reporting Requirements (LAC 48:I.9729)..... 2241
Office for Citizens with Developmental Disabilities—Direct Service Worker Registry—Medication Administration and Noncomplex Tasks (LAC 48:I.9201, and 9241-9269) 2234
Home and Community Based Services Waivers—New Opportunities Waiver Resource Allocation Model (LAC 50:XXI.13704) 2240
Office of Aging and Adult Services—Direct Service Worker Registry—Medication Administration and Noncomplex Tasks (LAC 48:I.9201, and 9241-9269)..... 2234
Office of Public Health—Water Supplies—Fluoridation (LAC 48:V.1101, 1303-1315 and LAC 51:XII.317) 2243

Insurance	
Office of the Commissioner—Regulation 28—Variable Contract Regulation (LAC 37:XIII.Chapter 77)	2248
Regulation 82—Insure Louisiana Incentive Program (LAC 37:XIII.Chapter 123)	2250
Public Safety and Corrections	
Board of Private Security Examiners—Training (LAC 46:LIX.409)	2253
Revenue	
Policy Services Division—Individual Income Tax Filing Extensions (LAC 61:III.2501).....	2254
Social Services	
Office of Community Services—Foster Care (LAC 67:V.3501).....	2254
Office of Family Support—Support Enforcement (LAC 67:III.2301, 2509, and 2801).....	2256
V. ADMINISTRATIVE CODE UPDATE	
Cumulative—January 2008 through September 2008.....	2258
VI. POTPOURRI	
Environmental Quality	
Office of the Secretary—Declaratory Ruling—No. DR-09-004	2261
Office of the Secretary, Legal Affairs Division—2008 State Implementation Plan (SIP) General Revisions.....	2262
Health and Hospitals	
Board of Nursing—Public Hearing—Substantive Changes to Proposed Rule: Registered Nurses	
Peripherally Inserted Central Catheter (PICC) Insertion (LAC 46:XLVII.3707).....	2264
Natural Resources	
Office of Conservation—Hearing Notice—Rayne SWD, LLC—Docket No. ENV 2009-03	2265
Orphaned Oilfield Sites.....	2265
Revenue	
Office of the Secretary—Meeting of Act 442 Collaborative Working Group.....	2268
VII. INDEX	2269

Executive Orders

EXECUTIVE ORDER BJ 09-15

Bond Allocation—Louisiana Public Facilities
Authority Crescent Gardens Homes Project

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 Public Facilities Authority has requested an allocation from the 2009 Ceiling to finance the acquisition, construction and equipping of a multi-family project consisting of thirtyfive (35) units, and all equipment, furnishings, fixtures, and facilities incidental or necessary in connection therewith, located in the City of New Orleans, State of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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 2009 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$4,000,000	Louisiana Public Facilities Authority	Gardens Home Project

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, 2009, provided that such bonds are delivered to the initial purchasers thereof on or before December 15, 2009.

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 16th day of September, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0910#065

EXECUTIVE ORDER BJ 09-16

Halting State Funding to Acorn

WHEREAS, it is the responsibility of public officials in the State of Louisiana to protect the public and ensure that taxpayer funds are being responsibly, ethically, and properly spent;

WHEREAS, ACORN maintains a national headquarters office in New Orleans and has conducted financial activities in the state;

WHEREAS, upon my request for an investigation into the organization’s activities in the State, the Louisiana Attorney General’s Office subpoenaed documents of ACORN’s national headquarters in New Orleans;

WHEREAS, seventy (70) employees of the Association of Community Organizations for Reform Now (“ACORN”) have been convicted of crimes committed in the course of their work for the organization, to date;

WHEREAS, on September 11, 2009, the U.S. Census Bureau ended its relationship with ACORN;

WHEREAS, up to twenty (20) states are investigating charges related to voting regularities and fraud into the current and past operations of ACORN;

WHEREAS, the United States Senate and House of Representatives recently voted in a bipartisan manner to cut off federal funds to ACORN;

WHEREAS, FBI Director Robert Mueller has stated his department will look into allegations of misconduct relating to ACORN;

WHEREAS, the Internal Revenue Service is aware of the current allegations facing ACORN and is conducting a “thorough review” of their relationship with the organization; and

WHEREAS, ACORN’s actions make clear that financial involvement with ACORN is contrary to the public policy of the State of Louisiana and the best interests of its citizens, and therefore should be quickly terminated if it is found to exist;

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 departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are hereby prohibited from entering into any future contracts with ACORN or its subsidiaries or affiliates.

SECTION 2: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are directed to cease all existing funding for ACORN or its subsidiaries or affiliates unless such funding is legally obligated. If a department, commission, board, office, entity, agency, or officer of the State of Louisiana, or any political subdivision thereof, determines that such funding is legally obligated, it is directed to inform the Executive Counsel to the Governor of its determination.

SECTION 3: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are hereby directed to provide to the Executive Counsel to the Governor no later than October 2, 2009, a copy of any existing contracts or other agreements between the agency and ACORN or its subsidiaries for an immediate review.

SECTION 4: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to assist and cooperate in implementing the provisions of this Order.

SECTION 5: 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 17th day of September, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0910#066

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Louisiana Initiative for Veteran and Service-Connected
Disabled Veteran-Owned Small Entrepreneurships
Certification Program (The Veteran Initiative)
(LAC 19:IX.Chapters 1 and 3)

The Department of Economic Development, Office of the Secretary, 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. 39:2006, R.S. 39:2171 et. seq. and R.S. 51:931, hereby gives notice of its intent to adopt the following Rules for the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative).

The Department of Economic Development, Office of the Secretary, has found an imminent need to provide rules with regard to the certification of businesses as a “Veteran-owned small entrepreneurship” or “Service-connected disabled veteran-owned small entrepreneurship” pursuant to the mandate of R.S. 39:2006 and R.S. 39:2176, since no such rules exist at this time, and the State needs to provide for the facilitation of the growth and stability of Louisiana’s economy by fostering utilization by state interests of the business offerings available for state procurement and public contracts from Louisiana’s “Veteran-owned small entrepreneurships” and “Service-connected disabled veteran-owned small entrepreneurships”.

This program is intended to encourage business opportunities for veteran-owned small entrepreneurships which may not be benefiting from the business offerings available from State procurement and public contracts; and these Rules prescribe procedures for qualifying and certifying a business as a “Veteran-owned small entrepreneurships” and “Service-connected disabled veteran-owned small entrepreneurships” in order to facilitate their access to State procurement and public contracts, which will expand small business economic development throughout Louisiana. Without these Rules, the State of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

This Rule, adopted in accordance with the Administrative procedure Act, R.S. 49:950 et seq., shall become effective October 20, 2009 and shall remain in effect for the maximum period allowed under the Act.

Title 19

CORPORATIONS AND BUSINESS

Part IX. Subpart 1. Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative).

Chapter 1. General Provisions

§101. Statement of Policy

A. The Department of Economic Development, through its designee or its staff, shall administer these regulations for the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program, which are intended to prescribe the procedures for qualifying and certifying a business as a “veteran-owned small entrepreneurship” or “Service-connected disabled veteran-owned small entrepreneurship” to facilitate access to state procurement and public contracts and encourage business opportunities for small entrepreneurships.

B. Certifications that a business is a “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship” are not to be construed as an entitlement for any business locating or located in Louisiana either to such a certification, to any public contract, or to any proceeds from any state contract; and the Secretary of the Department of Economic Development, the Director, or his or their designee, the SE(VI) Certification Program, or its designee or staff, shall have the discretion to determine whether or not each particular applicant or application meets the criteria for the certification as provided herein; and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of such certification status.

C. In no way whatsoever shall the sex, race, birth, age, religious beliefs, political ideas, or affiliations of a business’ owners or officers be considered as a factor in determining whether a business receives certified status.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

§103. Purpose

A. The purposes and intent of this program are to provide the maximum opportunity for Small Entrepreneurships to become so certified as “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship” and thereby become eligible to participate in a competitive modern business economy, to facilitate their access to state procurement and public contracts, and encourage business opportunities for such small entrepreneurships. These purposes shall be

accomplished by providing a program for the certification of a business as “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship”.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

§105. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 39:2171 et. seq., unless the context clearly requires otherwise.

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

Applicant—an individual, firm or business that seeks to be certified as a “Veteran-owned small entrepreneurship” or “Service-connected disabled veteran-owned small entrepreneurship”.

Certification—the determination and acknowledgement that a business qualifies for designation as a “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship”.

Designee—the person designated by the Secretary or by the Director to act in his absence.

Director—the Director of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative) designated by the Secretary of the Department of Economic Development.

Firm—a business that seeks to be or that has been certified as a “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship”.

Full Time—employed and working in the firm at least 35 hours per week on a regular basis.

Program—the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative) in the Department of Economic Development.

Secretary—the Secretary of the Department of Economic Development.

Service-Connected Disabled Veteran-Owned Small Entrepreneurship (SDVSE)—any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which has not less than fifty-one percent ownership by a veteran of the United States Armed Forces with a state-connected disability, and meets the criteria for certification by the secretary of the department of Economic Development, pursuant to R.S. 39:2176. Service-connected disability will be ascertained with appropriate documents from the United States Department of Veterans Affairs or the Louisiana Department of Veterans Affairs.

Small Entrepreneurship(SE)—any business or firm organized for profit, including any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which meets all of the requirements for certification by the Secretary of the Department of Economic Development as specified in R.S. 39:2006 (A).

Veteran-Owned Small Entrepreneurship (VSE)—any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which has not less than 51 percent ownership by a veteran of the United States Armed Forces, and meets the criteria for certification by the secretary of the Department of Economic Development, pursuant to R.S. 39:2176.

AUTHORITY NOTE: Promulgated in accordance with R.S.

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

Chapter 3. Certification

§301. Eligibility Requirements for Certification

A. Eligibility. An applicant for certification must meet two sets of requirements:

1. An applicant must establish that it is a “service-connected veteran-owned small entrepreneurship” (SDVSE) or a “veteran-owned small entrepreneurship” (VSE), by providing appropriate documentation from the united states department of veterans affairs or the Louisiana Department of Veterans Affairs; and

2. Shall meet all the requirements for a Small Entrepreneurship (SE):

a. independently owned and operated;

b. not dominant in its field of operation, which shall be determined by consideration of the business’s number of employees, volume of business, financial resources, competitive status, and ownership or control of materials, processes, patents, license agreements, facilities, and sales territory; and

c. together with any of its affiliates, has fewer than 50 full-time employees with average annual gross receipts not exceeding \$5,000,000 per year for construction operations and \$3,000,000 per year for non-construction operations, for each of the previous three tax years.

B. Any records, writings, accounts, reports, documents, financial information, tax information, proprietary business information and other materials that are in their nature considered to be confidential and are designated as confidential or proprietary by those firms, businesses or individuals submitting, delivering or transmitting the same, pursuant to request, for the purposes of allowing the SE(VI) Certification Program, or its designee or staff, to investigate and/or examine these firms, businesses or individuals pertaining to its statutory duties, may be considered and maintained as confidential and proprietary information, to the extent permitted under Louisiana Public Records.

AUTHORITY NOTE: Promulgated in accordance with R.S.

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

§303. Responsibility for Applying

A. It is the responsibility of any individual or business wishing to participate in the program to complete the appropriate written application and required certification process. Failure to provide complete, true, accurate or timely any requested additional supporting information may result in the rejection of the application.

B. Application and certification materials will be distributed by the SE(VI) Certification Program, or its designee or staff, upon written or verbal request. Written or verbal requests for application and certification materials

should be directed to the SE(VI) Certification Program office in the Department of Economic Development in Baton Rouge.

C. Certification as a (SDVSE) or (VSE) also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification also does not constitute any determination by the SE(VI) Certification Program, its designee or staff, that the firm is a responsible one according to R.S. 39:1505 or R.S. 39:1601, or that the firm is capable of performing any work of any kind.

AUTHORITY NOTE: Promulgated in accordance with R.S.

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

§305. Certification Application Procedure

A. Applicants for certification must submit to the SE(VI) Certification Program office:

1. a written application;
2. supporting financial and other background information;
3. a statement certifying that the applicant meets the eligibility requirements or criteria as specified in R.S. 39:2176(A);
4. an affidavit signed, dated, and notarized attesting to the correctness of the information provided and to the authenticity of all supporting documentation or information provided; and
5. if requested, the applicant must also furnish, within a reasonable time, applicant's most recent financial statements, Federal and State tax returns, a copy of its most recently filed Louisiana Dept. of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE(VI) Certification Program, or its designee or staff.

B. The SE(VI) Certification Program, through its designee or staff, shall review the application, and if it is found to be incomplete or if further information is needed (such as, for example, applicant's most recent financial statements, Federal and State tax returns, a copy of its most recently filed Louisiana Dept. of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE(VI) Certification Program, or its designee or staff), the SE(VI) Certification Program designee or staff will contact the applicant business and request such additional information. If the applicant does not respond with the further requested information within 15 days, the application will be denied. If the application is found to be sufficient, or if the application along with the additional information provided is found to be sufficient, a determination shall be made by the SE(VI) Certification Program, or its designee or staff, as to whether or not the applicant business will be certified.

C. The director, or his designee, shall notify the applicant in writing of the decision whether or not to grant such certification; and if certification is to be granted, a written certification as to such status in appropriate form, as determined by the director or his designee, shall be provided to the applicant business.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

§307. Duration of Certification; Graduation Through Growth

A. The amount of time that a firm may be granted certification by the SE(VI) Certification Program is unlimited until the firm graduates by growing to exceed the eligibility requirements for certification.

B. Retention of the firm in the program depends upon the passing of time, the firm's growth and progress toward successfulness and the attainment of its business goals, its willingness and ability to cooperate with and follow through on recommendations of the SE(VI) Certification Program designee or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

§309. Verification of Eligibility; Reports by Certified Small Businesses; Evaluation

A. Verification of Eligibility. The SE(VI) Certification Program, or its designee or staff, may take any reasonable means at any time to confirm an applicant's eligibility or a certified firm's continued eligibility, such as by investigation, letter, telephone, contact with other governmental and/or state agencies, including but not limited to the Department of Labor, and any other persons, companies, suppliers, or by either announced or unannounced site inspections.

B. Report Form. By letter, or on forms which may be identified or prescribed by the SE(VI) Certification Program, or its designee or staff, certified businesses shall continue to report periodically and at times specified by the SE(VI) Certification Program, or its designee or staff, their financial position and attainment of the business' performance goals. Failure to report or failure to report on a timely basis, as required or requested by the SE(HV) Certification Program, or its designee or staff, may result in the business' termination of its SE certification and from the program.

C. Notification of Changes. To continue participation, a certified firm shall provide the SE(VI) Certification Program, or its designee or staff, with a written statement of any changes in its address, telephone number, ownership, control, financial status, major changes in the nature of the operation, or any other appropriate supporting documentation or information as may be requested or required by the SE(VI) Certification Program, or its designee or staff, including, if requested by the SE(VI) Certification Program, or its designee or staff, updated financial information, Federal and State tax returns, copies of DOL ES-4 Forms, and including an affidavit (signed, dated, and notarized) attesting to the authenticity of all of the aforesaid supporting documentation and attesting to the applicant's eligibility or the certified business' continued eligibility requirements or criteria as specified in R.S. 39:2006A, as it may be amended from time to time. Failure to do so may be grounds for the firm's termination of eligibility and certification, and termination from the program.

D. Evaluation. The SE(VI) Certification Program, or its designee or staff, as necessary, shall evaluate and continue to evaluate the information provided and/or otherwise obtained to determine a business' progress, growth and dominance in its field of operations, number of employees, volume of business, areas of improvement, the firm's financial resources, competitive status, ownerships, status of owners

and officers, and generally the firm's continued eligibility for its continued certification and continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S.

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

§311. Deception Relating to Certification

A. Any individual or business found guilty of deception relating to certification will be denied its certification, or have its already approved certification revoked and shall be discharged from the program, and will not be eligible to reapply under the business name involved in the deception or under any business with which such individual(s) or business may be associated or affiliated.

B. In the event an applicant or certified business knowingly files a false statement in its application or in any other filing, the applicant or the certified business and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant or a certified business and/or its representative is reasonably believed to have filed a false statement in its application or any other filing, the SE(VI) Certification Program, or its designee or staff, is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of any state funds to the application for other filing.

C. The SE(VI) Certification Program or its designee or staff shall have and retain the right, and shall have the authority, but not the obligation, to require and/or conduct full investigations, at any time and from time to time, including but not limited to full financial and performance audits of any applicant, certified business or firm, including all relevant accounts, records and documents of the individual or business.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

§313. Departmental Listing; Availability

A. The department shall maintain a listing of all certified "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship" which shall be updated monthly. The listing shall be available on the Internet and shall also be available in written form upon written request.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

§315. Departmental Reporting

A. The department shall report annually to the Commissioner of Administration with respect to the graduation rates for businesses which grew to exceed the eligibility requirements for certification in the most recently concluded fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

Kristy Mc Kearn
Undersecretary

0910#030

DECLARATION OF EMERGENCY

Department of Economic Development

Office of the Secretary

Office of Business Development

and

Louisiana Economic Development Corporation

Retention and Modernization Act

(LAC 13:I.Chapter 35)

The Department of Economic Development, the Office of the Secretary, and the Office of Business Development, pursuant to the authority R.S. 36:104, 36:108, and 51:2382 and in accordance with the Administrative Procedure Act R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Emergency Rules of the Retention and Modernization Program.

Act 447 of the 2009 Regular Session provides for a modernization tax credit for projects placed in service after July 1, 2011, with a program cap of ten million dollars per year. The Department of Economic Development has found an imminent need to address the process for approval of such projects and the proposed allocation method of tax credits. This is necessary to provide certainty and assurance to investors. Without this Rule, the State of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective October 20, 2009, and shall remain in effect for the maximum period allowed under the Act.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 35. Retention and Modernization Program

§3501. Purpose and Application

A. The purpose of this Chapter is to implement the Retention and Modernization Act as established by R.S. 51:2399.1 et seq.

B. The Chapter shall be administered to achieve the following purposes:

1. to induce businesses to remain in the state and not relocate outside the state; and
2. to modernize existing business operations in Louisiana.

C. This Chapter shall apply to any employer:

1. seeking to become qualified to claim a credit; or
2. claiming a credit under this program.

D. An employer may earn a refundable tax credit on any income or franchise tax liability at the rate of 5 percent for qualified expenditures incurred for modernization.

E. Nothing herein shall be construed to constitute a guarantee or assumption by the state of any debt of any individual company, corporation, or association or to authorize the credit of the state to be given, pledged, or loaned to any individual, company, corporation, or association.

F. No agency shall incur monetary or personnel costs paid with federal funds for compliance with the provisions of this Chapter, when such use of the funds is prohibited by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3503. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2399.1 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Department—Department of Economic Development.

Employer—a legal person who is engaged in a lawful enterprise not excluded by this Chapter that executes a contract with the Department pursuant to the provisions of this Chapter.

a. **Eligible Employers.** To qualify for a contract pursuant to this Chapter, employers must be a manufacturer, as defined by North American Industry Classification System (NAICS) codes: 113310, 211, 213111, 541360, 311-339, 511-512 and 54171 as the employer's primary function.

b. **Ineligible Employers.** Employers engaged in the following professions or services, and identified by the following NAICS codes, shall not be eligible for any credits under this Chapter: retail employers (44 and 45); business associations and professional organizations (8139); state and local governmental enterprises; real estate agents, operators and lessors; automotive rental and leasing; local solid waste disposal, local sewer systems, and local water systems business; non-profit organizations; gaming industry (713219 and 721120); attorneys.

Facility—employer's manufacturing site that is the subject of the project.

LEDC—Louisiana Economic Development Corporation

LDR—Louisiana Department of Revenue

LWC—Louisiana Workforce Commission

Modernization—capitalized investment by an employer in technology, machinery, building and/or equipment that meets one of the following provisions:

a. an investment from a company with multi-state operations with an established competitive capital project program, which is approved by the department; or

b. an increase in the maximum capacity or "efficiency" of the facility of greater than 10 percent. The modernization must result in the facility adopting "best practices" technology for its industry and the company shall establish that without the investment that the facility would be high risk for closure in the foreseeable future. Modernization does not include the replacing of existing technology with the same or similar technology.

i. Increased "efficiency" claims must be supported by an independent third party analysis, such as an engineer's report, or by any other reasonable means.

ii. Best practices may be verified by objective data provided by independent third parties knowledgeable in the industry, or by any other reasonable means.

Project—the design, development, installation and construction of a technology, machinery, building and equipment that results in a modernization of an employer's product line, unit or entire operations that require at least \$5,000,000 of investment.

Qualified Expenditures—amounts classified as capital expenditures for federal income tax purposes plus exclusions from capitalization provided for in Internal Revenue Code Section 263(a)(1)(A) through (L), minus the capitalized cost of land, capitalized leases of land, capitalized interest, and the capitalized cost for the purchase of an existing building. When an employer purchases an existing building and capital expenditures are used to rehabilitate the building, only the costs of the rehabilitation shall be considered qualified expenditures. Additionally, an employer shall be allowed to increase his qualified expenditures to the extent an employer's capitalized basis is properly reduced by claiming a federal credit.

Secretary—Secretary of the Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3505. Eligibility Requirements

A. An employer must meet two sets of requirements.

1. Qualifying Manufacturer

a. **Eligible Employers.** To qualify for a contract pursuant to this Chapter, employers must be a manufacturer, as defined by North American Industry Classification System (NAICS) codes: 113310, 211, 213111, 541360, 311-339, 511-512 and 54171 as the employer's primary function.

b. **Ineligible Employers.** Employers engaged in the following professions or services, and identified by the following NAICS codes, shall not be eligible for any credits under this Chapter: retail employers (44 and 45); business associations and professional organizations (8139); state and local governmental enterprises; real estate agents, operators and lessors; automotive rental and leasing; local solid waste disposal, local sewer systems, and local water systems business; non-profit organizations; gaming industry (713219 and 721120); attorneys.

c. The department may promulgate rules annually listing other employers, professions or service industries which are eligible and not eligible for any credit pursuant to this Chapter, and such rules shall not take effect unless presented to LEDC and approved by both the House Ways and Means Committee and the Senate Committee on Revenue and Fiscal Affairs in a public meeting held for such purpose.

2. Qualifying Event

a. **Efficiency.** The employer must establish an increase of greater than ten percent in the maximum capacity or efficiency of the facility; or

b. **Investment.** An employer with multi-state operations and an established competitive capital project must make an approved investment of at least five million dollars in the facility.

B. No contract or certification shall be executed with an employer who:

1. has defaulted on or otherwise not repaid any loan or other obligation involving public funds, nor with any employer who has ever declared bankruptcy under which an obligation of the employer to pay or repay public funds or monies was discharged as part of such bankruptcy; or

2. is in default on any filing or payment with or to the state or any of its agencies or political subdivisions and in which an assessment or judgment that is final and non-appealable has been rendered, and remains outstanding, in favor of the state, or any of its agencies, or political subdivisions.

C. No project placed in service before July 1, 2011 shall be eligible for the tax credits authorized pursuant to this program.

D. If approved and subsequently issued a tax credit allocation letter, an applicant shall commit to continue business operations in the state for at least the five year period of the tax credit allocation.

1. If an applicant fails to continue business operations in the state, it may retain credits already granted, but the department reserves the right to withhold previously reserved, but not yet granted tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3507. Amount, Allocation and Limitations upon Tax Credits

A. An employer earns tax credits in the calendar year in which the project is placed in service.

B. Certified tax credits shall be granted by the department at a rate of 1 percent of the amount of certified expenditures annually over a five year period, for a total of 5 percent of the amount of certified expenditures, subject to the limitations outlined in this section.

C. The Retention and Modernization Tax Credit Program has a program cap of ten million dollars, in tax credits granted per calendar year.

1. The department shall allocate tax credits in accordance with the terms of the tax credit allocation letter.

2. The department shall certify and grant tax credits based upon verification of actual expenditures and in accordance with terms of the tax credit allocation letter.

a. In the event that the total amount of credits granted in any calendar year is less than ten million dollars, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the ten million dollar limit for each year.

b. In the event that the total amount of credits granted in any calendar year meets the ten million dollar cap, any excess credits applied for will be treated as having been applied for on the first day of the subsequent calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3509. Application Procedures

A. Beginning January 1, 2010, an applicant may apply for this program by submitting the following information to the department:

1. a written application;

2. supporting data as requested by the Department, including but not limited to: independent third party reports verifying efficiency improvements or investments made;

3. a statement verifying that the applicant meets the eligibility requirements or criteria as specified in R.S. 51:2399.1 et seq.; and

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

B. The department shall review the application and supporting information, and if it is found to be incomplete or if further information is needed shall contact the applicant business and request such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3511. Tax Credit Allocation Letter

A. The department shall review the application and supporting information and determine whether to allocate tax credits.

1. Evaluation. When determining allocation of available tax credits the department shall take the following factors into consideration:

a. The impact of the project on the objectives of the Retention and Modernization Program;

b. The impact of the project on the employment of Louisiana residents;

c. The impact of the project on the overall economy of the state;

d. The availability of tax credits relative to the annual program cap and tax credits being requested by the applicant; and

e. The total financial impact from an applicant's involvement with any program administered by the Department.

B. Beginning March 31, 2010, tax credit allocation letters may be issued quarterly: by March 31, June 30, September 30 and December 31 of each calendar year.

1. All complete applications received in the same quarter shall be treated and evaluated as if received on the same day, according to the following schedule:

a. applications received by February 28 shall be considered for allocation on March 31;

b. applications received by May 31 shall be considered for allocation on June 30;

c. applications received by August 31 shall be considered for allocation on September 30;

d. applications received by November 30 shall be considered for allocation on December 31;

C. The tax credit allocation letter shall:

1. contain the employer's name, address and tax identification number;

2. identify the proposed efficiency improvements or investments;
3. identify a timeline for completion;
4. provide for possible extensions for good cause;
5. provide for possible revocation in case of bad faith or unreasonable delays; and
6. provide for a reservation of tax credits, to be allocated in equal portions for five years;

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3513. Certification of Tax Credits

A. Beginning July 31, 2011, employers seeking final certification of tax credits must submit to the department:

1. evidence of qualified expenditures incurred by the employer for modernization;

a. qualified expenditures that could improve efficiency may include but not be limited to: new automation equipment, computer-driven instrumentation upgrades, air emission and water affluent reduction equipment;

b. investment in new equipment for a new production unit making a new or similar product may be a qualified expenditure, if an employer is competing for a new production line as part of a consolidation through competitive capital budget within family of plants either domestically or internationally;

2. evidence of continued business operation; and

3. any other information as reasonably requested by the department.

B. The department shall review requests for certification of tax credits, and upon verification of expenditures, and consultation with the Executive Director of LWC and the Secretary of LDR, shall issue a tax credit certification letter granting tax credits to an employer.

C. The final certification letter shall contain the employer's name, address and tax identification number and be accepted by LDR as proof of the credit.

D. The department shall maintain a list of the tax credit certificates issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3515. Claiming of Tax Credits

A. After receiving a final certification letter from the department, an employer may claim his refundable tax credit from LDR as follows:

1. All entities taxed as corporations for Louisiana income or corporation franchise tax purpose shall claim any credit on their corporation income or corporation franchise tax return.

2. Individuals shall claim any credit on their individual income tax return.

3. Estates or trust shall claim any credit on their fiduciary income tax return.

4. Entities not taxed as corporation shall claim any credit on the returns of the partners or members as follows:

a. Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.

b. Individual partners or members shall claim their share of any credit on their fiduciary income tax returns.

B. A Retention and Modernization tax credit shall expire and have no value or effect on tax liability beginning with the eleventh year after the tax year in which it was originally granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

§3517. False or Fraudulent Claims

A. Any person making an application, claim for a tax credit, or any report, return statement, invoice or other instrument or providing any other information pursuant to this program who willfully makes or who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than \$1,000 and not more than \$50,000, or imprisoned for not less than two years and not more than five years, or both.

B. Any person convicted of a violation shall be liable for the repayment of all credits which were granted to the employer. Interest shall be due on such credits at the rate of 15 percent per annum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation LR 35:

Kristy Mc Kearn
Undersecretary

0910#029

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 703, 705 and 803)

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

This rulemaking adjusts the requirements to maintain a Taylor Opportunity Program for Students (TOPS) award by allowing hours earned by a student during an intersession immediately following the spring term to be counted toward the minimum of 24 hours required each year to maintain eligibility for a TOPS award.

This rulemaking extends the TOPS deadline for enrolling as first-time, full-time student in an eligible postsecondary institution for certain students separated from active duty in the United States Armed Forces to the semester, excluding summer semesters or sessions, immediately following one year from the date of separation from active duty.

This Declaration of Emergency is effective September 22, 2009, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG10111E)

**Title 28
EDUCATION**

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

Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

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

Academic Year (College)—Through the 2007-2008 academic year, the two- and four-year college and university academic year begins with the fall term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring term of the award year. Intersessions ending during the academic year are included in the academic year. The two- and four-year college and university academic year does not include summer sessions or intersessions that do not end during the academic year.

a. Beginning with the 2008-2009 academic year and thereafter, the academic year begins with the fall term of the award year, includes the winter term, if applicable, and concludes with the completion of the intersession immediately following the spring term of the award year. Intersessions ending during the academic year, including the intersession immediately following the spring term, are included in the academic year. The two- and four-year college and university academic year does not include summer sessions or other intersessions.

* * *

Intersession—an academic term between regular semesters/terms that provides credit courses to students in an intensive, condensed format.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April

2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:

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

§703. Establishing Eligibility

A.1.a. - A.4.a. ...

b. if the student joins the United States Armed Forces within one year after graduating from an eligible Louisiana or an eligible non-Louisiana high school or from an eligible out of country high school, enroll not later than the semester, excluding summer semesters or sessions, immediately following the 5th anniversary of the date that the student graduated from high school or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; or

c. if the student is eligible under the provisions of §703.A.5.d or e, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completes the home study program, which is deemed to be May 31; or

d. if the student is eligible under the provisions of §703.A.5.d or e, and has joined and is on active duty with the United States Armed Forces within one year of completion of the 12th grade of an approved home study program, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the 5th anniversary of the completion of the approved home study program or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; or

A.4.e. - J.4.b.ii. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612

(December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 35:

§705. Maintaining Eligibility

A. - A.5. ...

6. minimum academic progress:

a. in an academic undergraduate program at an eligible college or university, by the end of each academic year (college), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the academic year (college), including any hours earned during an intersession ending during the academic year. These hours shall include remedial course work required by the institution, but shall not include hours earned during qualified summer sessions, summer sessions or intersessions that do not end during the academic year or by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

ii. beginning in the 2008-2009 academic year, in an academic undergraduate program at an eligible college or university, by the end of each academic year (college), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the academic year (college), including any hours earned during an intersession ending during the academic year or immediately following the spring term. These hours shall include remedial course work required by the institution, but shall not include hours earned during qualified summer sessions, summer sessions or intersessions that do not end during the academic year or intersessions that do not immediately follow the spring term or by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

A.1.b. - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:437 (March 2007), LR 34:1390 (July 2008), LR 35:

Chapter 8. TOPS-Tech Award

§803. Establishing Eligibility

A.1.a. - A.4.a. ...

b. if the student joins the United States Armed Forces within one year after graduating from an eligible Louisiana or an eligible non-Louisiana high school or from an eligible out of country high school, enroll not later than

the semester, excluding summer semesters or sessions, immediately following the 5th anniversary of the date that the student graduated from high school or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; or

c. if the student is eligible under the provisions of §803.A.5.d, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completed the home study program, which is deemed to be May 31; or

d. if the student is eligible under the provisions of §803.A.5.d and has joined and is on active duty with the United States Armed Forces within one year of the date the student completed the home study program, which is deemed to be May 31, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the 5th anniversary of the date the student completed the home study program, or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; and

A.5. - B.4.b.ii. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 35:

George Badge Eldredge
General Counsel

0910#008

DECLARATION OF EMERGENCY

**Tuition Trust Authority
Office of Student Financial Assistance**

START Savings Program
(LAC 28:VI.305, 311 and 315)

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

These rule changes will authorize account owners to select an investment option for each new deposit and provide guidelines and restrictions for changing investment options when an education savings account has two or more investment options. This rule change also authorizes account owners with multiple accounts to roll over part of the value of a START account to another START account that has a beneficiary who is a member of the family of the original account's beneficiary.

This declaration of emergency is effective on September 22, 2009, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST10112E)

Title 28
EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A. - D.2. ...

3. The account owner:

a. shall select one investment option in completing the owner's agreement, and

b. beginning December 1, 2009, may select the same or a different investment option at the time of each deposit.

4. Changing the Investment Option

a. Through 2008, the investment option can be changed only once in any 12-month period.

b. For the 2009 calendar year, the investment option may be changed at any time, but no more than two times.

c. Beginning December 1, 2009, if an education savings account has funds in two or more investment options:

i. each option in the account may be changed to one different option or allowed to remain the same.

ii. all funds in each option changed must be transferred.

iii. funds in one option may not be moved to more than one option.

iv. all changes in investment options must take place in one transaction.

v. whether the funds are moved from one option or all options, the change is considered the one per calendar year investment option change.

d. Beginning the 2010 calendar year and thereafter, the investment option may be changed one time each calendar year.

5. Once a selection is made, all deposits shall be directed to the last investment option selected.

D.6. - E.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 35:

§311. Termination, Refund, and Rollovers of an Education Savings Account

A. - H. ...

I. Rollovers

1. Rollovers Among Education Savings Accounts of the Same Account Owner

a. Beginning October 1, 2009, an account owner may rollover any part or all of the value of an education savings account to another education savings account if the beneficiary of the account receiving the funds is a member of the family of the beneficiary of the original account.

b. If the current value of an education savings account is transferred, all earnings enhancements and earnings thereon shall be included in the transfer.

2. Rollover to Another Qualified Tuition Program

a. An account owner may request a rollover of the current value of the account less earnings enhancements and earnings thereon to another qualified tuition program.

b. Earnings enhancements and the earnings thereon allocated to an education savings account that is rolled over to another qualified tuition program are forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:444 (March 2007), LR 35:236 (February 2009), LR 35:

§315. Miscellaneous Provisions

A. - M.3. ...

N. Effect of a Change in Residency. On the date an account is opened, either the account owner or beneficiary must be a resident of the state of Louisiana (see §301.G); however, if the account owner or beneficiary, or both, temporarily or permanently move to another state after the account is opened, they may continue participation in the program in accordance with the terms of the owner's agreement.

O. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:

George Badge Eldredge
General Counsel

0910#009

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Office of Contractual Review
and
Office of State Purchasing**

Small Entrepreneurship
(The Veteran Initiative)—Procurement
(LAC 19:VII.Chapters 11 and 15)

The Division of Administration, Office the Commissioner of Administration, has exercised the emergency provisions of R.S. 49:953(B), the Administrative Procedure act, to adopt LAC 19:VIII, Subpart B, under the authority of R.S. 39:2117(F). This action is taken to ensure the welfare of the state by establishing rules governing procurements made as part of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), R.S. 39:2171 through 2179. This Emergency Rule will allow for coordination of state procurement with the October 20, 2009, implementation of veteran and service-connected disabled veteran-owned small entrepreneurship certification procedures by the Department of Economic Development pursuant to LAC 19:VIII, Subpart A. This Emergency Rule shall be effective as of October 20, 2009, pursuant to the provision of the Administrative Procedure Act (R.S. 49:950 et seq.) and shall remain in effect for the maximum period allowed by said act (120 days).

Title 19

ECONOMIC DEVELOPMENT

Part VII. Small Entrepreneurship

(The Veteran Initiative)

Subpart B. Procurement

Chapter 11. General Provisions

§1101. Purpose

A. The Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), hereinafter called LAVET, was created to provide additional opportunities for Louisiana-based veteran and service-connected disabled veteran-owned small entrepreneurship, hereinafter called VSE's and DVSE's, respectively, to participate in contracting and procurement with the State of Louisiana. By formalizing existing practices and implementing new procedures, the LAVET will allow the State of Louisiana to target more effectively certified VSE and DVSE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the LAVET.

B.1. The LAVET is a goal-oriented program, encouraging state agencies to contract with certified VSE's and DVSE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified VSE's. The LAVET is a race and gender-neutral program. LAVET participation is restricted to Louisiana-based VSE's and DVSE's certified in accordance with rules promulgated by the Louisiana Department of Economic Development.

a. The state will establish annual goals for both certified VSE and DVSE participation in state procurement and public contracts. Contract goals will vary based on

contracting and subcontracting opportunities, availability of certified VSE's and DVSE's, and price competitiveness.

b. To participate, VSE's and DVSE's must be certified by the Louisiana Department of Economic Development. Certification is based on a firm's gross revenues, number of employees, and other criteria as specified by Act 167 of the 2009 regular legislative session.

c. The LAVET has guidelines for counting certified VSE and DVSE participation.

d. The LAVET incorporates several procedures to help implement the Initiative.

2. These procedures are designed to maximize the initiative's success, including:

a. assisting certified VSE's and DVSE's and contractors by providing information, practical advice, and support;

b. strongly encouraging joint ventures and/or alliances among certified VSE's and DVSE's and larger firms;

c. assisting in developing a mentoring program for certified VSE's and DVSE's with appropriate private sector businesses and individuals;

d. requiring bidders and proposers to provide written assurance of certified VSE and/or DVSE participation in their bids and proposals;

e. providing workshops and training sessions to acquaint certified VSE's and DVSE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified VSE's and DVSE's during the proposal/bid process and generally while doing work for the state;

f. maintaining an updated certified VSE and DVSE directory and source list(s) on the Internet to help identify qualified and available certified VSE's and DVSE's; and

g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for VSE and/or DVSE participation.

3. For designated contracts, the LAVET requires good-faith efforts by contractors to use certified VSE's and/or DVSE's in contract performance. The LAVET has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are required to document their efforts to obtain certified VSE and/or DVSE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified VSE's and/or DVSE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on a VSE or DVSE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to 3 years. Procedures are in place to provide an opportunity for due process for any contractor, VSE, or DVSE prior to the suspension.

5. The LAVET is race and gender neutral. The LAVET shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy

of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors, certified VSE's, and/or certified DVSE's that violate the state's non-discrimination mandate in the operations of the LAVET will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the LAVET, reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified VSE's and DVSE's, the number of contracts that included a good faith VSE and/or DVSE subcontracting plan, and the dollar value of VSE and DVSE contracts.

2. Nothing in the LAVET should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1103. Mission and Policy Statement

A. Act 167 of the 2009 regular legislative session enacted R.S. 39:2171, et seq., creating the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative) for the State of Louisiana. As enacted, the LAVET is a goal-oriented program, encouraging the state to contract with certified VSE's and DVSE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified VSE's and DVSE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified VSE's and DVSE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the LAVET to ensure opportunities for certified VSE's and DVSE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The LAVET is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified VSE and DVSE participation in the state's contracting and procurement activities. In its operations, the LAVET will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, certified VSE's and certified DVSE's involved with LAVET contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the LAVET including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified VSE and DVSE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the LAVET to promote economic development and business opportunities for all sectors throughout the state;

2. to ensure opportunities for certified VSE's and DVSE's to participate in all phases of the state's contracting activities;

3. to stimulate participation of Louisiana-based certified VSE's and DVSE's with the state and create opportunities through the state's contracting and procurement;

4. to encourage certified VSE's and DVSE's to seek work from prime contractors when qualified and work is available;

5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified VSE and DVSE participation;

6. to carry out the mandate of the state as enacted by Act 167 of the 2009 Regular Legislative Session;

7. to ensure nondiscriminatory practices in the use of certified VSE's and DVSE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1307. Reserved.

§1309. Overall Annual LAVET Goals and Agency Participation Levels

A. Overall Annual Goals. Overall annual goals for LAVET participation for the state will be set each year by the Commissioner of Administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The Commissioner of Administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified VSE and DVSE capacities, certified VSE and DVSE availability, nature of the contract, past experiences with LAVET participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the LAVET.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the LAVET should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified VSE or DVSE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services.

2. issuing an order to a certified VSE or DVSE (prime contractor or distributor) on statewide contract.

3. using an ITB process to award a contract either to a certified VSE or DVSE or to a bidder who can demonstrate a good faith plan to use certified VSE's and/or DVSE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified VSE or DVSE or be able to demonstrate its good faith subcontracting plan.

a. Good Faith Subcontracting Plans in an Invitation to Bid

i. The ITB will require the bidder to certify that the bidder is either a certified VSE or DVSE or that the bidder has a good faith subcontracting plan.

ii. The following describes the process a non-certified VSE or DVSE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan.

(a). The bidder has or will use the LAVET certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified VSE's and/or DVSE's capable of performing the subcontract. Notification must be provided to the certified VSEs and/or

DVSE's no less than five working days prior to the date of bid opening.

(b). Written notification is the preferred method to inform certified VSE's and/or DVSE's. This written notification may be transmitted via fax and/or e-mail.

(c). Written notification must include:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

(d). The successful bidder must be able to provide written justification of the selection process if a certified VSE was not selected.

b. Post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated.

4. using a request for proposals (RFP) process to award a contract to a certified VSE or DVSE or to a proposer demonstrating a good faith effort to use certified VSE's and/or DVSE's as subcontractors;

a. If an agency decides to issue an RFP to satisfy its LAVET goal, the procurement process will include either of the following:

i. require that each Proposer either be a certified VSE or DVSE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve ten percent of the total RFP evaluation points for otherwise responsive Proposers who are themselves a certified as either a VSE or DVSE or who have made a good faith effort to use one or more VSEs and/or DVSE's in subcontracting.

b. In evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for VSE or DVSE participation beyond the designated amount set forth in the RFP.

c. Good Faith Subcontracting in a Request for Proposal

i. Proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below.

(a). The proposer divided the contract work into reasonable lots or portions.

(b). The proposer used the LAVET certification list maintained by the Department of Economic Development to provide notice to three or more certified VSE's and/or DVSE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified VSE's and/or DVSE's no less than five working days prior to the submission of the proposal.

(c). The notification from the proposer was in writing. This written notification may have been transmitted via fax and/or e-mail.

(d). The written notification gave the VSEs and/or DVSE's complete information regarding the potential subcontract including such things as:

- (i). the scope of work;
- (ii). information regarding the location to review plans and specifications (if applicable);
- (iii). information about required qualifications and specifications;
- (iv). bonding and insurance information and/or requirements (if applicable);
- (v). contact person.

ii. An RFP under Clause 4.a.i shall require all proposers who are not certified VSE's or DVSE's to certify they made a good faith subcontracting effort in their proposals.

iii. An RFP under Clause 4.a.ii may require that proposals include a proposed schedule of certified VSE and/or DVSE participation that lists the names of potential certified VSE and/or DVSE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified VSE and/or DVSE subcontract.

iv. An RFP under Clause 4.a.ii may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e.: phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points.

v. Proposers responding to RFP's under either Clauses 4.a.i or 4.a.ii may be asked to provide written justification of the subcontractor selection process if a certified VSE or DVSE is not used as a subcontractor.

d. If at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its LAVET goals the total dollar value of the contract awarded to the certified VSE or DVSE, if the certified VSE or DVSE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified VSE or a DVSE.

C. The state may count towards its LAVET goals the total dollar value of a contract awarded to a joint venture, of which a certified VSE or DVSE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified VSE or DVSE.

D. The state may count toward its LAVET goals the total dollar value of the contract if the RFP contemplated awarding ten percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified VSE's and/or DVSE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its LAVET goals the total dollar value of those contracts in which the contractor has

provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Louisiana Department of Economic Development (LAC 19:VII.Subpart A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1317. Implementation Procedures

A. In an effort to maximize the LAVET's success, the following procedures will be implemented to maximize opportunities for certified VSE and DVSE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the LAVET.

2. Each department/agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly with certified VSE's and DVSE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified VSE's and DVSE's on the state's organization and contractual needs and offer instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified VSE's and DVSE's on challenges frequently encountered by certified VSE's and DVSE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified VSE's and DVSE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for procurement and public contracts with the goals and objective of the state's LAVET initiative and to sensitize them to the problems of VSE's and DVSE's;

g. inform certified VSE's and DVSE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified VSE's and DVSE's and larger firms to provide opportunities for certified VSE's and DVSE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified VSE's and DVSE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified VSE and/or DVSE subcontractors at the time of proposal review. Agreements between a proposer and a certified VSE or DVSE subcontractor in which the certified VSE or DVSE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

§1321. Reporting Procedures

A. The Commissioner of Administration is charged with the preparation of an annual report on the progress of the LAVET in the most recently ended fiscal year. The commissioner must present the report to the House Committee on Appropriations and the Senate Committee on Finance by the fifteenth day of January each year. Therefore, information for the commissioner's report regarding an agency's achievement of LAVET goals must be submitted to the commissioner no later than the first day of October each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified VSE's and DVSE's

2. number of contracts and the value of the contracts that included a good faith certified VSE and/or DVSE subcontracting plan

3. number of actual agency staff that attended Division of Administration training for LAVET and the number of certified VSE's and DVSE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 35:

Angele Davis
Commissioner

0910#048

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Office of Group Benefits

PPO and EPO Plans of Benefits
Influenza Vaccinations
(LAC 32:III.301 and V.301)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of La R. S. 49:953(B).

OGB finds that imminent peril to the public health, safety, or welfare requires it to revise and amend provisions of the PPO and EPO Plan Document relative to influenza vaccinations to provide for payment of such vaccinations and their administration when obtained in treatment settings other than a physician-patient encounter, such as in a pharmacy. Failure to adopt this rule on an emergency basis may result in unreasonable delays and/or denial of services for covered employees, retirees, and their dependents seeking vaccinations from seasonal influenza and the H1NI (swine flu) virus, adversely affecting their own health and welfare as well as the delivery of vital services to the citizens of the state by the public workforce. Accordingly, the following Emergency Rule, revising and amending the PPO and Plans of Benefits, is effective September 30, 2009, and shall remain in effect for a maximum of 120 days, or until a final rule is promulgated, whichever occurs first.

Title 32

EMPLOYEE BENEFITS

Part III. Preferred Provider (PPO) Plan of Benefits

Chapter 3. Medical Benefits

§301. Eligible Expenses

A. - A.35.c. ...

36. Special provisions related to expenses incurred for influenza vaccinations. In addition to all other provisions related to the payment of eligible expenses for vaccinations and the administration of such vaccinations, the following special provisions are applicable to influenza vaccinations:

a. Expenses incurred on and after September 30, 2009, for an influenza vaccination and the administration of such vaccination in a treatment setting other than a physician-patient encounter, including, but not limited to, a pharmacy, will be considered an eligible expense, subject to the terms, conditions, and limitations that follow.

b. The plan member (or covered dependent) must pay the entire cost of the vaccination and its administration at the point of service and submit a claim, along with proof of payment, to the plan.

c. Reimbursement will be paid to the plan member at the participating provider (in network) rate, subject to the deductible, co-payment, and/or co-insurance applicable to a participating (in network) primary care physician. No assignment of benefits and/or other authorization for direct payment to the provider will be recognized.

d. In the event that the influenza vaccine is made available without cost to the administering health care provider, only the administration of the vaccine will be considered as an eligible expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:480 (March 2002), LR 29:339, 343 (March 2003), LR 30:1192 (June 2004), LR 31:441 (February 2005), LR 32:1888 (October 2006), LR 32:1898 (October 2006), LR 34:646 (April 2008), LR 34:646 (April 2008), effective May 1, 2008, LR 34:649 (April 2008), effective May 1, 2008, LR 34:2562 (December 2008), effective January 1, 2009, LR 35:

Part V. Exclusive Provider Organization (EPO) Plan of Benefits

Chapter 3. Medical Benefits

§301. Eligible Expenses

A. - A.35.c. ...

36. Special provisions related to expenses incurred for influenza vaccinations. In addition to all other provisions related to the payment of eligible expenses for vaccinations and the administration of such vaccinations, the following special provisions are applicable to influenza vaccinations:

a. Expenses incurred on and after September 30, 2009, for an influenza vaccination and the administration of such vaccination in a treatment setting other than a physician-patient encounter, including, but not limited to, a pharmacy, will be considered an eligible expense, subject to the terms, conditions, and limitations that follow.

b. The plan member (or covered dependent) must pay the entire cost of the vaccination and its administration at the point of service and submit a claim, along with proof of payment, to the plan.

c. Reimbursement will be paid to the plan member at the participating provider (in network) rate, subject to the deductible, co-payment, and/or co-insurance applicable to a participating (in network) primary care physician. No assignment of benefits and/or other authorization for direct payment to the provider will be recognized.

d. In the event that the influenza vaccine is made available without cost to the administering health care provider, only the administration of the vaccine will be considered as an eligible expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees, State Employees Group Benefits Program, LR 25:1810 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:478 (March 2002), LR 29:334, 338 (March 2003), LR 30:1190 (June 2004), LR 31:440 (February 2005), LR 32:1860 (October 2006), LR 32:1898 (October 2006), LR 34:646 (April

2008), LR 34:647 (April 2008), effective May 1, 2008, LR 34:2563 (December 2008), effective January 1, 2009, LR 35:

Tommy D. Teague
Chief Executive Officer

0910#026

DECLARATION OF EMERGENCY

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

Direct Service Worker Registry
Training Curriculum
(LAC 48:I.9215)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.9215 as authorized by R.S. 40:2179-2179.1. 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 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 promulgated an Emergency Rule to amend the provisions of the January 20, 2007 Rule 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, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 1, 2009 Emergency Rule.

This action is being taken to promote the health and well-being of Louisiana citizens by assuring that direct service workers receive standardized training.

Effective November 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the training curriculum for direct service workers.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Health Standards

Chapter 92. Direct Service Worker Registry

Subchapter B. Training and Competency Requirements

§9215. Training Curriculum

A. - B.3. ...

C. Curriculum Approval. Effective March 1, 2009, licensed providers and other state-approved training entities that wish to offer training for direct service workers, and do not have a training curriculum approved by the department, must use the training curriculum developed by Health Standards. Training curriculums approved by Health Standards prior to March 1, 2009 may continue to be used.

1. To obtain approval to use the Health Standards training curriculum, an entity (provider or school) must submit the following documentation to the Health Standards Section:

- a. the name of the training coordinator and his/her qualifications; and
- b. a list of any other instructors.
- c. Repealed.

2. If a school is applying for approval, it must identify the place(s) used for classroom instruction and clinical experience.

3. If a provider or school that has an approved curriculum ceases to provide training and/or competency evaluations, it must notify the department within 10 days. Prior to resuming the training program and/or competency evaluations, the provider or school must reapply to the Department for approval to resume the program.

4. 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

Alan Levine
Secretary

0910#055

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments Non-Rural Community Hospitals (LAC 50.V.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50.V.2701 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 April 20, 2008 Rule governing DSH payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category and to revise the definition of a non-rural community hospital (*Louisiana Register*, Volume 34, Number 11).

Act 228 of the 2009 Regular Session of the Louisiana Legislature directed the department to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs. In compliance with Act 228, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing disproportionate share hospital payments to provide for a supplemental payment to non-rural community hospitals (*Louisiana Register*, Volume 35, Number 7). This Emergency Rule is being promulgated to continue the provisions of the June 26, 2009 Emergency Rule.

This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective October 25, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to non-rural community hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2701. Non-Rural Community Hospitals

A. ...

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 19 and Act 228 of the 2009 Regular Session of the Louisiana Legislature, and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications.

C. - C.4. ...

D. Private, non-rural community hospitals located in all other parts of the state shall be reimbursed as follows.

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, the payment shall be 30 percent of qualifying uninsured cost.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of total hospital cost, but less than 6.5 percent, the payment shall be 50 percent of qualifying uninsured cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost, but less than or equal to 8 percent, the payment shall be 80 percent of qualifying uninsured cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of qualifying uninsured cost for the portion equal to 8 percent of total hospital cost.

D.5. – F. ...

G. In the event that the total payments calculated for recipient hospitals qualifying under §2701.D. are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. The \$104,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2009 and distributions from the pool shall be considered nonrecurring.

H. – J. ...

AUTHORITY NOTE: Promulgated in 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 LR 34:2402 (November 2008), LR 36:

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

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

Alan Levine
Secretary

0910#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.12501-12505 and adopts §12523 in the Medical Assistance Program as

authorized by R.S. 36:254 and 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the inclusion of adult residential care providers in the Facility Need Review Program and reorganized Chapter 125 of Title 48 of the *Louisiana Administrative Code (Louisiana Register, Volume 34, Number 12)*. The department promulgated an Emergency Rule to amend the December 20, 2008 Rule to adopt provisions governing the inclusion of licensed home and community-based service (HCBS) providers in the Facility Need Review Program (*Louisiana Register, Volume 35, Numbers 4 and 5*). The department amended the April 13, 2009 Emergency Rule to clarify the provisions governing changes in the location of facilities and changes in ownership (*Louisiana Register, Volume 35, Number 7*). The department now proposes to amend the July 20, 2009 Emergency Rule to further clarify the provisions governing changes in the location of facilities.

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

Effective October 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the July 20, 2009 Emergency Rule governing the facility need review process.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

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

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

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

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

§12503. General Information

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

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

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

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

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

D. The department shall be responsible for reviewing proposals for facilities, beds, units, and agencies submitted by health care providers seeking to be licensed or to participate in the Medicaid Program. The secretary or his designee shall issue a decision of approval or disapproval.

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

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

b. – d. ...

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

1. – 4. Repealed.

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

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

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers and ICFs-DD that meet one of the following conditions:

1. HCBS providers which were licensed by January 31, 2009 or had a completed initial licensing application submitted to the department by June 30, 2008; or

2. existing licensed ICFs-DD that are converting to the proposed Residential Options Waiver.

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

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or

2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

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

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

§12505. Application and Review Process

A. FNR applications shall be submitted to the Bureau of Health Services Financing, Health Standards Section, Facility Need Review Program. Application shall be submitted on the forms (on 8.5 inch by 11 inch paper) provided for that purpose, contain such information as the department may require, and be accompanied by a nonrefundable fee of \$10 per bed or unit. The nonrefundable application fee for an HCBS provider shall be a flat fee of \$150. An original and three copies of the application are required for submission.

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

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

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

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

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

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

§12523. Home and Community-Based Service Providers

A. No HCBS provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of an HCBS provider license. Once the FNR Program approval is granted, an HCBS provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

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

C. Determination of Need/Approval

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

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of

serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

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

a. the number of other HCBS providers in the same geographic location and region servicing the same population; and

b. allegations involving issues of access to health care and services.

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

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

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

1. An HCBS provider undergoing a change of location in the same licensed region shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. An HCBS provider undergoing a change of location outside of the licensed region shall submit a new FNR application and fee and undergo the FNR approval process.

2. An HCBS provider undergoing a change of ownership shall submit a new application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR Approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

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

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

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

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

Alan Levine
Secretary

0910#051

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Facility Need Review

Exception Criteria for Bed Approval

(LAC 48:I.12513, 12527, 12533, 12541, and 12543-12553)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.12513, 12527, 12533, 12541 and adopts §12543-12553 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt provisions governing the facility need review (FNR) process (*Louisiana Register*, Volume 21, Number 8). The department amended the August 20, 1995 Rule to establish provisions governing the exemption from the facility need review process for emergency replacement of facilities destroyed by fire, a natural disaster, or potential health hazard (*Louisiana Register*, Volume 32, Number 5). The department promulgated an Emergency Rule to amend the May 20, 2006 Rule to establish provisions allowing a Medicaid certified nursing facility to protect its facility need review bed approvals for a period of time due to a declared disaster or other emergency situation (*Louisiana Register*, Volume 34, Number 10). The department subsequently promulgated an Emergency Rule to amend the October 11, 2008 Emergency Rule to further clarify these provisions (*Louisiana Register*, Volume 35, Number 1). The department promulgated an Emergency Rule to amend the January 20, 2009 Emergency Rule to repromulgate these provisions in the appropriate place in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 35, Number 3).

The department amended the March 20, 2009 Emergency Rule governing the facility need review process to incorporate provisions that will allow nursing facilities 120 days to re-license and re-enroll Medicaid beds after placing the beds in alternate use status (*Louisiana Register*, Volume 35, Number 6). A Notice of Intent was promulgated in the August 20, 2009 edition of the *Louisiana Register* to continue the provisions of the June 20, 2009 and the July 20, 2009 Emergency Rules governing the facility need review process. This Notice of Intent also revised the provisions governing the administrative appeal of FNR decisions. The June 20, 2009 Emergency Rule was subsequently amended to incorporate all of the provisions addressed in the Notice of Intent (*Louisiana Register*, Volume 35, Number 9). This Emergency Rule is being promulgated to amend the provisions of the September 20, 2009 Emergency Rule by incorporating additional provisions governing the administrative appeal process that had been included in the August 20th Notice of Intent, but were inadvertently omitted from the September 20, 2009 Emergency Rule.

This action is being taken to promote the health and well-being of Louisiana citizens and to assure the availability of nursing facility or ICF/DD services by clarifying the provisions of the Facility Need Review Program.

Effective October 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the September 20, 2009 Emergency Rule governing administrative appeals for the facility need review process.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter B. Determination of Bed or Unit Need

§12513. Alternate Use of Licensed Approved Title XIX

Beds

A. – D. ...

E. A nursing facility that has converted beds to alternate use may elect to remove the beds from alternate use and re-license and re-enroll the beds as nursing facility beds. The facility has 120 days from removal from alternate use to re-license and re-enroll the beds. Failure to re-license and re-enroll the beds within 120 days will result in the automatic expiration of FNR approval.

F. The nursing facility beds converted to alternate use shall be used solely for the purpose of providing health care services at a licensed and/or certified facility.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2617 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter C. Revocation of Facility Need Review

Approvals

§12527. General Provisions

A. – C. ...

D. Except as provided in Subchapter E and Subchapter F of this Chapter, approval shall be revoked under the following circumstances:

1. a facility's license is revoked, not renewed, or denied, unless the facility obtains a license within 120 days from the date of such revocation, nonrenewal or denial.

2. a facility's provider agreement is terminated unless, within 120 days thereof, the facility enters into a new provider agreement.

E. Except as provided in Subchapter E and Subchapter F of this Chapter, beds may not be disenrolled except as provided under the alternate use policy and during the 120-day period to have beds relicensed or recertified. The approval for beds disenrolled will automatically expire except as otherwise indicated.

F. The facility need review approval for licensed nursing facilities or ICF/DDs located in an area(s) which have been affected by an executive order or proclamation of emergency or disaster due to Hurricanes Katrina and/or Rita, and which were operating at the time the executive order or proclamation was issued under R.S. 29:794, shall be revoked or terminated unless the nursing facility or ICF/DD re-

licenses and re-enrolls its beds in the Medicaid Program within 120 days from January 1, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2619 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter F. Exception Criteria for Bed Approvals

§12533. General Provisions

A. The facility need review bed approvals for a licensed and Medicaid certified nursing facility located in an area or areas which have been affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 shall remain in effect and shall not be terminated, revoked or considered to have expired for a period not to exceed two years following the date of such executive order or proclamation, provided that the following conditions are met:

1. the nursing facility or ICF/DD shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the nursing facility or ICF/DD has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the nursing facility or ICF/DD intends to resume operation as a nursing home or ICF/DD in the same service area; and

c. includes an attestation that the emergency or disaster is the sole causal factor in the interruption of the provision of services;

NOTE: Pursuant to these provisions, an extension of the 60 day deadline may be granted at the discretion of the department.

2. the nursing facility or ICF/DD resumes operating as a nursing facility or ICF/DD in the same service area within two years for a nursing facility and within one year for an ICF/DD, of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766; and

3. the nursing facility or ICF/DD continues to submit required documentation and information to the department.

B. The provisions of this Section shall not apply to:

1. a nursing facility or ICF/DD which has voluntarily surrendered its facility need review bed approval; or

2. a nursing facility or ICF/DD which fails to resume operations as a nursing facility or ICF/DD in the same service area within two years for a nursing facility and within one year for an ICF/DD, of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766.

C. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the facility need review bed approvals.

C.1. - M. Repealed.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended LR 34:2621 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter G. Administrative Appeals

§12541. General Provisions

A. Administrative appeal hearings shall be conducted pursuant to the Administrative Procedures Act.

1. - 2. Repealed.

B. An applicant may request an administrative hearing within 30 calendar days after receipt of the department's notice of denial of facility need review.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific reason with which the applicant disagrees and the reasons for the disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

4. The request shall be considered timely if it is postmarked by the 30th calendar day after receipt of the department's notice of denial.

5. A fee of \$500 must accompany a request for an appeal.

C. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the applicant in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. place of the hearing.

2. Repealed.

D. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A copy of the recording may be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the recording.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call an examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;

d. impeach any witness, regardless of which party first called him to testify; and

e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

c. The rules of privilege recognized by law shall be given effect.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. A party has the burden of proving whatever facts he/she must establish to sustain his/her position.

8. An applicant who has been denied through the facility need review process shall present his case first and has the burden to show by a preponderance of the evidence that facility need review approval should have been granted by the department pursuant to the provisions of this Rule.

9. After an applicant denied facility need review has presented his evidence, the department will then have the opportunity to present its case and to refute and rebut the testimony and evidence presented by the applicant.

E. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the applicant.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

F. - M. Repealed.

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

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

§12543. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplifications of issues;
2. resolution of controversial matters;
3. exchange of documents and information;
4. stipulations of fact to avoid unnecessary introduction of witnesses;
5. other matters which may aid disposition of the issues; and
6. scheduling a hearing date that is convenient to all parties.

B. When the Bureau of Appeals 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. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an

administrative hearing shall be scheduled on those matters still in controversy.

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

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

§12545. Responsibilities of the Administrative Law Judge

A. The administrative law judge shall have the power to:

1. administer oaths and affirmations;
2. regulate the course of the hearings;
3. set the time and place for continued hearings;
4. fix the time for filing briefs and other documents;

and

5. direct the parties to appear and confer to consider simplification of the issues.

B. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
2. prepare a written proposed decision which will contain:
 - a. findings of fact;
 - b. a determination of the issues presented;
 - c. a citation of applicable policy and regulations;

and

- d. an order.

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

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

§12547. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the administrative hearing.

B. A subpoena to compel the attendance of a witness shall be issued by the administrative law judge upon written request by a party or on his own motion.

C. The party is required to notify the administrative law judge in writing at least 10 days in advance of the hearing of those witnesses whom he wishes to be subpoenaed.

D. No subpoena shall be issued until the party (other than the department) who wishes to subpoena a witness first deposits with the hearing officer a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

E. The department may request issuance of subpoenas without depositing said sum of money. The witness fee may be waived if the person is an employee of the department.

F. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records, or to permit inspection of such, shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served.
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issues involved in the proceedings; and

4. include a statement that, to the best of applicant's knowledge, the witness has such items in his possession or under his control.

G. Any party or witness may file a motion to quash, which shall be scheduled by the administrative law judge for a contradictory hearing.

H. When any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, correspondence, memoranda or other records, or to give testimony as required, any party may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt pursuant to the Administrative Procedures Act.

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

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

§12549. Continuances or Further Hearings

A. The Bureau of Appeals shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Bureau of Appeals upon good cause shown.

1. If the hearing is not commenced within 180 days from the docketing of the appeal, the decision of the department will be considered upheld.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence.

3. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

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

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

§12551. Proposed and Final Decisions

A. The written proposed decision shall be provided to the secretary of the department or his designee. The secretary or his designee may:

1. adopt the proposed decision;
2. reject it based upon the record; or
3. remand the proposed decision to the administrative law judge to take additional evidence.

- a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary or his designee.

B. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the applicant at his last known address or to his authorized representative.

C. Judicial review of the decision of the hearing officer shall be in accordance with the provisions of R.S. 49:964.

D. Motions for Rehearing, Reopening or Reconsideration.

1. A decision or order shall be subject to a motion for rehearing, reopening, or reconsideration by the agency, within 10 days from the date of its entry. Such motion may be made to either the administrative law judge, the director of the Bureau of Appeals, the secretary or the undersecretary, and a copy shall be filed into the administrative record.

2. The grounds for such motion shall be either that:

a. The decision or order is clearly contrary to the law and the evidence;

b. The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

c. There is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. There is other good ground for further consideration of the issues and the evidence in the public interest

3. Such motion shall be ruled upon within 15 days from the date of filing such motion. If the motion for rehearing, reopening or reconsideration is granted, the ALJ shall take further action to rehear, reopen or reconsider the matter.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35: **§12553. Failure to Appear at Administrative Hearings**

A. If an applicant fails to appear at an administrative hearing, a decision shall be issued by the Bureau of Appeals dismissing the appeal. A copy of the decision shall be mailed to each party or his representative at his last known address.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the applicant:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and

2. provides evidence of good cause for his/her failure to appear at the hearing.

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

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

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

Alan Levine
Secretary

0910#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Non-Rural, Non-State
Hospitals—Major Teaching Hospitals
(LAC 50:V.1333)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.1333 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 amended the provisions governing the reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than 30 percent and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana at New Orleans due to the impact of Hurricane Katrina (*Louisiana Register*, Volume 34, Number 5).

The bureau now proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients.

This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services. It is estimated that the implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$17,451,935 for state fiscal year 2009-10.

Effective for dates of service on or after October 1, 2009, 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 hospitals designated as major teaching hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 13. Teaching Hospitals

Subchapter B. Reimbursement Methodology

§1333. Major Teaching Hospitals

A. Effective for dates of service on or after October 1, 2009, a quarterly supplemental payment shall be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. These

payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must:

- a. be designated as a major teaching hospital by the department in state fiscal year 2009;
- b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2008 dates of service; and
- c. have provided at least 4,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2008 dates of service.

2. Payments shall be distributed quarterly and will be applicable to the Medicaid paid days for state fiscal year 2008.

3. Payments are applicable to Medicaid service dates provided during each quarter and shall be discontinued for the remainder of the state fiscal year in the event that the maximum payment cap is reached or by June 30, 2011, whichever occurs first.

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

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

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

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

Alan Levine
Secretary

0910#003

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Non-Rural, Non-State
Hospitals—Supplemental Payments
(LAC 50:V.Chapter 9)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 18 of the 2007 Regular Session of the Louisiana Legislature, the department amended the

provisions governing the reimbursement methodology for non-rural, non-state (private) hospitals to increase the Medicaid reimbursement rates paid for inpatient hospital services, including non-rural, non-state acute care hospitals, long term hospitals, hospital intensive neurological rehabilitation units, free-standing psychiatric hospitals and distinct part psychiatric units (*Louisiana Register*, Volume 34, Number 5). In May 2008, the department also amended these provisions to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than 30 percent and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana at New Orleans due to the impact of Hurricane Katrina (*Louisiana Register*, Volume 34, Number 5). As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). In anticipation of expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau promulgated an Emergency Rule to further reduce the reimbursement rates paid for inpatient hospital services (*Louisiana Register*, Volume 35, Number 5).

Act 228 of the 2009 Regular Session of the Louisiana Legislature directed the department to issue a supplemental payment to hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike. In compliance with Act 228, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state hospitals (*Louisiana Register*, Volume 35, Number 7). Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the rate reduction provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and amended the reimbursement methodology for inpatient hospital services to adjust the reimbursement rate reductions (*Louisiana Register*, Volume 35, Number 8). The department now proposes to amend the provisions of the July 1, 2009 Emergency Rule to incorporate the provisions of the August 4, 2009 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 ensuring recipient access to providers of these medically necessary services.

Effective October 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the July 1, 2009 Emergency Rule governing inpatient hospital services provided by non-rural, non-state 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
§953. Acute Care Hospitals

A. – J. ...

K. Hospitals Impacted by Hurricane Katrina (Region 1). Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with those in §963.A and outpatient supplemental payments) will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

L. Other Hospitals Impacted by Hurricanes Katrina and Rita. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with those in §959.C and §963.B payments) will not exceed \$10,000,000.

1. Qualifying criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E provisions may receive a supplemental payment if the hospital is located in either the New Orleans or Lake Charles metropolitan statistical area (MSA), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 1,000, but less than or equal to 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$130 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

M. Hospitals Impacted by Hurricanes Gustav and Ike. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying

non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §959.D and §963.C payments) will not exceed \$7,500,000.

1. Qualifying criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either DHH Administrative Region 2 (Baton Rouge) or 3 (Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 2,500, but less than or equal to 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$105 per Medicaid paid day.

iii. Qualifying hospitals with greater than 1,000, but less than or equal to 2,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$225 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

N. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. Payments to small rural hospitals as defined in R.R. 40:1300 shall be exempt from this reduction.

2. - 2.b.Repealed.

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

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

§955. Long Term Hospitals

A. – C. ...

D. Hurricane Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying long term hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §961.A payments) will not exceed \$500,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the long term hospital must have had at least 100 paid Medicaid days for state fiscal year 2008 service dates and must be located in one of the following DHH administrative regions:

- a. Region 1 (New Orleans);
- b. Region 2 (Baton Rouge);
- c. Region 3 (Thibodaux);
- d. Region 5 (Lake Charles); or
- e. Region 9 (Mandeville).

2. Each eligible hospital shall receive quarterly supplemental payments at the rate of \$40 per Medicaid paid day for state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the \$500,000 maximum payment limit for this group is reached, whichever occurs first.

E. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. - 2. Repealed

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§959. Inpatient Psychiatric Hospital Services

A. - C. ...

D. Free-Standing Psychiatric Hospitals Impacted by Hurricanes Katrina and Rita. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying free-standing psychiatric hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.F and §961.A payments) will not exceed \$10,000,000.

1. Qualifying criteria. Non-rural, non-state free-standing psychiatric hospitals that do not qualify for payment under §953.F provisions may receive a supplemental payment if the hospital is located in either the New Orleans or Lake Charles metropolitan statistical area (MSA), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 1,000, but less than or equal to 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$130 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

E. Free-Standing Psychiatric Hospitals Impacted by Hurricanes Gustav and Ike. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying free-standing psychiatric hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.G and §961.C payments) will not exceed \$7,500,000.

1. Qualifying criteria. Non-rural, non-state free-standing psychiatric hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either DHH Administrative Region 2 (Baton Rouge) or 3

(Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 2,500, but less than or equal to 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$105 per Medicaid paid day.

iii. Qualifying hospitals with greater than 1,000, but less than or equal to 2,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$225 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

F. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals shall be reduced by 5.8 percent of the rate on file as of August 3, 2009.

G. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state distinct part psychiatric units shall be reduced by 6.3 percent of the rate on file as of August 3, 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 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§961. Inpatient Hospital Rehabilitation Services

A. Hurricane Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state hospitals for rehabilitation services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §955.D payments) will not exceed \$500,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the hospital intensive neurological rehabilitation care unit must have had at least 100 paid Medicaid days for state fiscal year 2008 service dates and must be located in one of the following DHH administrative regions:

- a. Region 1 (New Orleans);
- b. Region 2 (Baton Rouge);
- c. Region 3 (Thibodaux);
- d. Region 5 (Lake Charles); or
- e. Region 9 (Mandeville).

2. Each eligible rehabilitation unit shall receive quarterly supplemental payments at the rate of \$40 per Medicaid paid day for state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the \$500,000 maximum payment limit for this group is reached, whichever occurs first.

AUTHORITY NOTE: Promulgated in 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:

§963. Public Hospitals

A. Hospitals Impacted by Hurricane Katrina (Region 1). Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.F and outpatient supplemental payments) will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

B. Other Hospitals Impacted by Hurricanes Katrina and Rita. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.G and §959.D payments) will not exceed \$10,000,000.

1. Qualifying criteria. Non-rural, non-state public hospitals that do not qualify for payment under §961.A provisions may receive a supplemental payment if the hospital is located in either the New Orleans or Lake Charles MSA, had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 1,000, but less than or equal to 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$130 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

C. Hospitals Impacted by Hurricanes Gustav and Ike. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for services rendered

from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.H and §959.E payments) will not exceed \$7,500,000.

1. Qualifying criteria. Non-rural, non-state public hospitals that do not qualify for payment under §961.A or §961.B may receive a supplemental payment if the hospital is located in either DHH Administrative Region 2 (Baton Rouge) or 3 (Thibodaux) and had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 2,500, but less than or equal to 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$105 per Medicaid paid day.

iii. Qualifying hospitals with greater than 1,000, but less than or equal to 2,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$225 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

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

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

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

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

Alan Levine
Secretary

0910#049

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medicaid Eligibility—Express Lane Eligibility
(LAC 50:I.Chapter 11)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:III.Chapter 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum

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

Act 407 of the 2007 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to utilize income determinations made by the Food Stamp Program, Women, Infants and Children (WIC) Program or the National School Lunch Program to determine income eligibility for the Medicaid Program or the Louisiana Children's Health Insurance Program (LaCHIP) as soon as federal legislation allowing the same was enacted.

Federal regulations in the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 established provisions to allow states to rely on a finding from an Express Lane agency to more effectively reach out and enroll eligible, but uninsured, children in the Medicaid Program. Express Lane eligibility is an administrative streamlining option that uses data from other government agencies to identify, enroll and retain children who are eligible for Medicaid or the Children's Health Insurance Program (CHIP).

In compliance with Act 407 and CHIPRA of 2009, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to establish Express Lane eligibility in order to expedite identification and enrollment of uninsured children in the Medicaid/LaCHIP Program. This action is being taken to promote the health and well-being of children by increasing access to health care coverage. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,269,017 for state fiscal year 2009-2010.

Effective October 10, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions governing Express Lane eligibility.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 11. Express Lane Eligibility

§1101. General Provisions

A. The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, Public Law No. 111-3, established provisions which allowed states to rely on a finding from an Express Lane agency to more effectively reach out and enroll eligible but uninsured children in the Medicaid Program or the Children's Health Insurance Program (CHIP).

B. Express Lane eligibility is an administrative streamlining option that uses data from other government agencies to identify, enroll and retain children who are eligible for Medicaid or CHIP.

C. Express Lane eligibility shall be utilized for enrollment of uninsured children under the age of 19.

D. These provisions shall not apply to eligibility determinations made after September 30, 2013.

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

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

§1103. Eligibility Determinations

A. The department shall rely on the findings from an Express Lane agency to satisfy one or more of the eligibility

components (regardless of any differences in the income budget unit, disregards, deeming of income or other methodologies) required to make an eligibility determination.

1. An Express Lane agency is a public agency that is determined by the department to be capable of making the determinations of one or more of the eligibility requirements defined in the Medicaid State Plan. Express Lane agencies are need-based programs/agencies.

B. The department shall utilize eligibility findings from Express Lane agencies that administer the:

1. Supplemental Nutrition Assistance Program (SNAP), also known as the Food Stamp Program;

2. National School Lunch Program (Free Lunch program); or

3. Women, Infants and Children (WIC) program.

C. Verification requirements for citizenship or nationality status are applicable to Express Lane eligibility determinations.

D. If a finding from an Express Lane agency results in a determination that a child does not satisfy an eligibility requirement for Medicaid or CHIP, the department shall determine eligibility for assistance using its regular procedures.

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

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

§1105. Automatic Enrollment

A. The department may initiate and determine Medicaid eligibility based on data from sources other than the child (or the child's family) without an application form; however, a child can only be automatically enrolled for coverage if the:

1. child or family consents to being enrolled through affirmation and signature on an Express Lane agency application; and

2. department has informed the parent, guardian or custodial relative of the:

a. services that will be covered;

b. appropriate methods for using such services;

c. premium or other cost-sharing charges that apply (if applicable);

d. medical support obligations created by enrollment (if applicable); and

e. actions the parent, guardian or relative must take to maintain enrollment and renew coverage.

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

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

§1107. Disclosure of Eligibility Data

A. Notwithstanding any other provisions of law, Express Lane agencies in possession of data directly relevant to Express Lane eligibility determinations shall convey such data to the department and shall ensure that the individual (or his parent, guardian, caretaker relative, authorized representative) whose circumstances are described in the data has either provided consent to disclosure, or has not objected to disclosure.

1. Such individuals shall be provided with advance notice of disclosure and a reasonable opportunity to object to the disclosure of their information.

B. Express Lane agency sources of data shall include, but is not limited to, the following:

1. eligibility files;
 2. unemployment compensation benefits;
 3. wages and income information;
 4. Social Security Administration and Internal Revenue Service information;
 5. employer wage reports to a state agency;
 6. vital records information about births in any state;
- or
7. third party health insurance information.

C. Improper Disclosure Penalties

1. Civil Monetary Penalty. A private entity that publishes, discloses, or makes known in any manner or to any extent not authorized by the department any information obtained for the purposes of Express Lane eligibility may be subject to civil monetary penalties for each unauthorized publication or disclosure, pursuant to §1942 of Title XIX of the Social Security Act.

2. Criminal Penalty. A private entity that willfully publishes, discloses, or makes known in any manner or to any extent not authorized by the department any information under this section shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both, for each unauthorized publication or disclosure.

3. The limitations and requirements that apply to Express Lane eligibility data disclosure shall not be construed to prohibit the conveyance or disclosure of data or information otherwise permitted under federal law.

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

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

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

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

Alan Levine
Secretary

0910#052

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medicaid Eligibility
Youth Aging Out of Foster Care
(LAC 50:III.2307)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:III.2307 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 Foster Care Independence Act of 1999, Public Law 106-109, established provisions which allow states to offer programs designed to better assist adolescents with the transition from foster care to self-sufficiency once they reach age 18. Section 477 of the Act, referred to as the John H. Chafee Foster Care Independence Program or “Chafee Option,” established a new eligibility group to provide health care benefits to former foster care recipients between the ages of 18 and 21.

Act 352 of the 2008 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals to adopt provisions pursuant to the Chafee Option which provide regular Medicaid coverage or an alternative benefits package to independent youth aging out of foster care. In compliance with Act 352, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions to establish a new Medicaid eligibility group to provide Medicaid coverage to youth between the ages of 18 and 21 who are transitioning out of foster care (*Louisiana Register*, Volume 35, Number 2). This Emergency Rule is being promulgated to continue the provisions of the March 1, 2009 Emergency Rule.

This action is being taken to promote the health and well-being of individuals in foster care by maintaining their access to health care services after they have aged out of the foster care system.

Effective October 29, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to establish a new Medicaid eligibility group for youth who are aging out of foster care.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2307. Youth Aging Out of Foster Care

A. Pursuant to Section 477 of the Foster Care Independence Act of 1999 (Public Law 106-169) and Act 352 of the 2008 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals hereby implements a Medicaid eligibility group, effective March 1, 2009, to provide health care coverage to youth who are transitioning out of foster care to self-sufficiency upon reaching age 18. This eligibility group will be called Youth Aging out of Foster Care.

B. Eligibility Requirements. Youth who are aging out of foster care on or after March 1, 2009 and meet all of the following requirements may receive Medicaid health care coverage under this new eligibility group.

1. The youth must be from age 18 up to age 21.
2. The youth must have been in foster care and in state custody, either in Louisiana or another state, upon obtaining age 18.
3. The youth must live in Louisiana.

C. Income, resources and insurance status are not considered when determining eligibility.

D. Individuals determined eligible in this group shall receive coverage of medically necessary health care services provided under the Medicaid State Plan.

1. The assistance unit shall consist of the youth only.

E. Eligibility for the program will continue until the youth reaches age 21 unless the youth:

1. moves out of state;
2. requests closure of the case;
3. is incarcerated; or
4. dies.

F. Application Process. No application is required for this eligibility group. Closure of a foster care case due to the youth reaching age 18 establishes eligibility.

G. Certification Period. The certification period shall begin the month the youth reaches age 18 and will end on the last day of the month in which the youth reaches age 21.

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

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

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

Alan Levine
Secretary

0910#057

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities
Reimbursement Methodology
Rate Determination
(LAC 50:VII.1305)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.1305 in the Medical Assistance Program as authorized by R.S. 46:2742.B.7, Act 244 of the 2009 Regular Session of the Louisiana Legislature 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 amended the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (*Louisiana Register*, Volume 33, Number 10).

Act 244 of the 2009 Regular Session of the Louisiana Legislature directed the Department to establish provisions which provide for the periodic rebasing of nursing facility rates utilizing the most current cost reports. In compliance

with Act 244, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for nursing facilities to implement periodic rebasing of the nursing facility rates (*Louisiana Register*, Volume 35, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 3, 2009 Emergency Rule. This action is being taken to promote the health and well-being of nursing facility residents by assuring that nursing facility providers receive reimbursement commensurate with actual cost of providing care to assure their continued participation in the Medicaid Program.

Effective November 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to implement periodic rebasing of the nursing facility rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. ...

B. For dates of service on or after January 1, 2003, the Medicaid daily rates shall be based on a case-mix price-based reimbursement system. Rates shall be calculated from cost report and other statistical data.

1. Effective July 3, 2009, and at a minimum, every second year thereafter, the base resident-day-weighted median costs and prices shall be rebased using the most recent four month or greater unqualified audited or desk reviewed cost reports that are available as of the April 1, prior to the July 1, rate setting. The department, at its discretion, may rebase at an earlier time.

a. For rate periods between rebasing, an index factor shall be applied to the base resident-day weighted medians and prices.

C. - E. ...

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

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

Alan Levine
Secretary

0910#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities Reimbursement Rate Reduction (LAC 50:VII.1305 and 1309)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.1305 and §1309 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (*Louisiana Register*, Volume 33, Number 10).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the department promulgated an Emergency Rule to reduce the reimbursement rates paid to non-state nursing facilities (*Louisiana Register*, Volume 35, Number 7). The department now proposes to amend the July 3, 2009 Emergency Rule to repeal the reduction to the per diem rates of non-state nursing facilities. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging the continued participation of non-state nursing facilities in the Medicaid Program.

Effective October 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the July 3, 2009 Emergency Rule governing the reimbursement methodology for non-state nursing facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - D.1.h.Example ...

i. For dates of service on or after July 3, 2009, the facility-specific direct care rate will be adjusted in order to reduce the wage enhancement from \$4.70 to a \$1.30 wage enhancement prior to the case-mix adjustment for direct care staff. The \$1.30 wage enhancement will be included in the direct care component of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

i. Effective with the next rebase, on or after July 1, 2010, the wage enhancement will be eliminated.

D.2. - 4.b. ...

5. Adjustment to the Rate. Adjustments to the Medicaid daily rate may be made when changes occur that will eventually be recognized in updated cost report data (such as a change in the minimum wage, a change in FICA or a utility rate change). These adjustments would be effective until the next rebasing of cost report data or until such time as the cost reports fully reflect the change.

6. Budget Shortfall. In the event the department is required to implement reductions in the nursing facility program as a result of a budget shortfall, a budget reduction category shall be created. Without changing the parameters established in these provisions, this category shall reduce the statewide average Medicaid rate by reducing the reimbursement rate paid to each nursing facility using an equal amount per patient day.

a. Repealed.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§1309. State-Owned or Operated and Non-State, Government-Owned or Operated Facilities

A. - B.2. ...

C. Repealed.

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 28:1793 (August 2002), amended LR 30:53 (January 2004), LR 31:1596 (July 2005), LR 32:2265 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

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

Alan Levine
Secretary

0910#054

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Major Teaching Hospitals
(LAC 50:V.6533)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 65 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for outpatient hospital services rendered by acute care hospitals (*Louisiana Register*, Volume 22, Number 1).

The bureau proposes to amend the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients.

This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services. It is estimated that the implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$27,633,757 for state fiscal year 2009-10.

Effective for dates of service on or after October 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals designated as major teaching hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospitals

Chapter 65. Teaching Hospitals

Subchapter B. Reimbursement Methodology

§6533. Major Teaching Hospitals

A. Effective for dates of service on or after October 1, 2009, a quarterly supplemental payment shall be issued to qualifying non-rural, non-state acute care hospitals for outpatient services rendered during the quarter. These payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must:

a. be designated as a major teaching hospital by the department in state fiscal year 2009;

b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2008 dates of service;

c. have provided at least 4,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2008 dates of service; and

d. provided at least 20,000 Medicaid outpatient paid visits for state fiscal year 2008 dates of service.

2. Payments shall be distributed quarterly and will be applicable to the Medicaid paid visits for state fiscal year 2008.

3. Payments are applicable to Medicaid service dates provided during each quarter and shall be discontinued for the remainder of the state fiscal year in the event that the maximum payment cap is reached or by June 30, 2011, whichever occurs first.

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

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

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

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

Alan Levine
Secretary

0910#002

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Supplemental Payments
(LAC 50:V.5315, 5515, 5717, 5915 and 6117)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.5315, §5515, §5717, §5915 and §6117 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 which established the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the

bureau amended the provisions governing the reimbursement methodology for outpatient hospital services to increase the reimbursement rates paid to private (non-state) acute care hospitals for cost-based outpatient services (*Louisiana Register*, Volume 33, Number 2). As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau promulgated an Emergency Rule to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau promulgated an Emergency Rule to further reduce the reimbursement rates paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 5).

Act 228 of the 2009 Regular Session of the Louisiana Legislature directed the department to issue a supplemental payment to hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike. In compliance with Act 228, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state public hospitals (*Louisiana Register*, Volume 35, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2009 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 ensuring recipient access to providers of these medically necessary services.

Effective October 30, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing outpatient hospital services provided by non-rural, non-state public hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5315. Non-Rural, Non-state Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for outpatient surgical services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a

specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

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

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

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5515. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for clinic services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

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

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

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5717. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for laboratory services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

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

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

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5915. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for rehabilitation services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

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

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

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6117. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries and rehabilitation services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

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

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

Alan Levine
Secretary

0910#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Program—Medication Administration
H1N1 Immunizations (LAC 50:XXIX.123 and 991)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXIX.123 and §991 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The U.S. Department of Health and Human Services (DHHS) renewed the declaration of a public health emergency involving novel influenza A (2009 H1N1) on July 24, 2009. The Centers for Medicare and Medicaid Services (CMS) subsequently provided guidance and technical assistance regarding coverage of vaccine administration and the provision of vaccinations at non-traditional care sites. In response to the renewed declaration and CMS guidance, the Louisiana State Health Officer issued an Emergency Order and Protocol to allow eligible pharmacists to administer influenza vaccinations. The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the Pharmacy Program to incorporate provisions to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists.

This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to the H1N1 vaccine. It is estimated that the implementation of this proposed Rule will increase expenditures in the Medicaid Program by approximately \$1,876,200 for state fiscal year 2009-2010.

Effective October 10, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Pharmacy Program to allow payment to qualified pharmacists for administration of the H1N1 vaccine.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy

Chapter 1. General Provisions

§123. Medication Administration

A. H1N1 Vaccine Administration. The department shall provide coverage for administration of the H1N1 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 35:

Chapter 9. Methods of Payment

Subchapter H. Medication Administration Payments

§991. Vaccine Administration Fees

A. Effective for dates of service on and after October 10, 2009, reimbursement to qualified pharmacists for immunization administration (intramuscular or intranasal) is a maximum of \$15.22. 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 35:

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

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

Alan Levine
Secretary

0910#053

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Targeted Case Management
Nurse Family Partnership Program
Reimbursement Rate Reduction
(LAC 50:XV.10701, 11101 and 11103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50.XV.10701 and §11101 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 of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management (TCM) services to: 1) require case management agencies to bill in 15 minute increments; 2) establish cost reporting requirements; and 3) increase the reimbursement rate paid for targeted case management services provided to infants and toddlers (*Louisiana Register*, Volume 35, Number 1). As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for TCM to reduce the reimbursement rates. This rate reduction was not applicable to Infants and Toddlers and Early and Periodic Screening, Diagnosis and Treatment case management (*Louisiana Register*, Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau promulgated an Emergency Rule to amend the February 1, 2009 Emergency Rule to further reduce the reimbursement rates paid for targeted case management services, including the TCM services provided in the Nurse Family Partnership Program (*Louisiana Register*, Volume 35, Number 5).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions of the May 1, 2009 Emergency Rule to further reduce the reimbursement rates paid for TCM services provided in the Nurse Family Partnership Program and restrict reimbursement of TCM services in the Nurse Family Partnership Program to prenatal and postnatal services only (*Louisiana Register*; Volume 35, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2009 Emergency Rule.

This action is being taken to avoid a budget deficit in the medical assistance programs and to assure that reimbursements for targeted case management services remain within budget allocations.

Effective October 30, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing targeted case management services provided in the Nurse Family Partnership Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 7. Targeted Case Management

Chapter 107. Reimbursement

§10701. Reimbursement

A. – D. ...
E. Effective for dates of service on or after February 1, 2009, the reimbursement for case management services provided to the following targeted populations shall be reduced by 3.5 percent of the rates on file as of January 31, 2009:

1. participants in the Nurse Family Partnership Program;
2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and
3. individuals with disabilities resulting from HIV.

F. Effective for dates of service on or after May 1, 2009, the reimbursement to non-state providers of case

management services provided to the following targeted populations shall be reduced by 6.25 percent of the rates on file as of April 30, 2009:

1. participants in the Nurse Family Partnership Program;
2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and
3. individuals with disabilities resulting from HIV.

G. Effective for dates of service on or after July 1, 2009, the reimbursement for case management services provided to participants in the Nurse Family Partnership Program shall be reduced to \$115.93 per visit.

1. Medicaid reimbursement shall be limited to prenatal and postnatal services only. Case management services provided to infants and toddlers shall be excluded from reimbursement under the Nurse Family Partnership Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), LR 35:73 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Chapter 111. Nurse Family Partnership Program

§11101. Introduction

A. – B. ...

C. Case management services rendered in the Nurse Family Partnership Program shall be limited to prenatal and postnatal services only.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), LR 34:1036 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§11103. Recipient Qualifications

A. – B. ...

C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), LR 34:1037 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

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

Alan Levine
Secretary

0910#060

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Board of Private Security Examiners

Security Officers—Documentation and Fees
(LAC 46:LIX.201, 301, and 903)

In accordance with the Emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 37:3288(B), the Louisiana Board of Private Security Examiners has amended Sections 201, 301, and 903.

The Louisiana Board of Private Security Examiners has adopted this Emergency Rule, finding that without these regulations in place, the Board would not be able to provide for safety and welfare of the public at large. These funds are needed to administer the program to assure that the private security officers have the proper training, whether armed or unarmed.

Also, currently only the Social Security number is given upon registration, and sometime is illegible. A copy of the card would alleviate any confusion in the application process and also prevent identity issues. The new amendments would also add a requirement that an applicant for registration who was previously exempt for paying processing fees because they worked less than 20 days at a time, will now be required to submit a registration fee and administrative processing fee with documentation that was previously required. The amount of the administrative fee for security officer applicant is also clearly stated at the end of the new rule.

The effective date for this Emergency Rule is October 1, 2009. This Emergency Rule shall be in effect a period of 120 days.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIX. Private Security Examiners

Chapter 2. Company Licensure

§201. Qualifications and Requirements for Company Licensure

A. - E.8. ...

9. copy of applicant's or qualifying agent's Social Security card.

F. - I.2. ...

3. \$110 annual licensing fee to cover administrative costs.

I.3.Note. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:847 (October 1989), LR 18:190 (February 1992), LR 23:588 (May 1997), LR 26:1068 (May 2000), LR 28:96 (January 2002), LR 28:2203 (October 2002), LR 31:1599 (July 2005), LR 35:

Chapter 3. Security Officer Registration
§301. Qualifications and Requirements for Security Officer Registration

A. - D.3. ...

4. if applicant has worked less than 20 consecutive calendar days, documentation must nevertheless be submitted along with the required fees and a termination form is included showing the dates worked;

D.5. - P.2. ...

Q. An administrative fee of \$10 made payable to the board will be assessed on all initial company applications and renewal applications, and any other fees that may be assessed by the board under this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:753 (December 1987), amended LR 15:12 (January 1989), LR 15:848 (October 1989), LR 18:191 (February 1992), LR 23:588 (May 1997), LR 26:1072 (May 2000), LR 27:1241 (August 2001), LR 28:2204 (October 2002), LR 31:1599 (July 2005), LR 34:667 (April 2008), LR 35:

Chapter 9. Administrative Penalties
§903. Administrative Penalties
Pursuant to R.S. 37:3288.B

Penalty Fee Schedule	Not to Exceed
Licensee's failure to submit security officer application, fingerprint card, and/or necessary registration fees within prescribed time period. If the application, fingerprint card, and/or registration fees are not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50
Licensee's failure to resubmit fingerprint card after two written requests by the board when a deadline date is given. If the fingerprint card is not resubmitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50
Licensee's failure to notify the board in writing within prescribed time period of security officers in their employ who have been terminated. If termination is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50
Licensee or registrant's failure to submit information as requested by the board when a deadline date is given. If information is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50
Licensee's failure to submit company license renewal fee prior to expiration date.	\$50/day up to \$500
Licensee's failure to submit renewal application and renewal fee for a registrant in their employ prior to expiration date. If the renewal application and renewal fee are not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50
Licensee's failure to have registrant in their employ trained within prescribed time period. If registrant is not trained within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50

Penalty Fee Schedule	Not to Exceed
Licensee's failure to submit to the board a training verification form on a registrant in their employ within prescribed time period. If training verification is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed \$500.	\$50
Registrant's failure to carry on his person a temporary or permanent registration card while on duty.	\$50
Fingerprint cards repeatedly rejected by the Department of Public Safety as non-classifiable due to smudges, not being fully rolled, etc.	\$50
Registrant's performing security duties for any other person other than the licensee with whom he is registered.	\$50
Registrant's failure to sign registration card.	\$50
Registrant's failure to affix a photograph of registrant, taken within the last six months, to registration card.	\$50
Registrant's failure to timely surrender registration card when required to do so.	\$50
Registrant's possession or use of any registration card which has been improperly altered.	\$50
Registrant's defacing of a registration card.	\$50
Registrant's allowing improper use of a registration card.	\$50
Registrant carrying an unauthorized weapon while on duty.	not less than \$50 nor more than \$100
Licensee or registrant's submission of a check to the board that is returned from the bank deemed non-sufficient funds.	\$50
Licensee allowing registrant to carry an unauthorized weapon while on duty.	not less than \$50 nor more than \$100

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3288.B

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:757 (December 1987), amended LR 15:14 (January 1989), LR 18:196 (February 1992), LR 26:1077 (May 2000), LR 35:

Wayne R. Rogillio
 Executive Secretary

0910#001

DECLARATION OF EMERGENCY
Department of Public Safety and Corrections
Corrections Services

Restoration of Good Time
 (LAC 22:I.319)

In accordance with the provisions of R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an emergency rule for the implementation of Department Regulation No. B-04-006 Restoration of Good Time is necessary and that for the following reasons failure to adopt the rule on an emergency basis will result in imminent peril to the public's safety, health and welfare.

The department's goals and priorities are centered around and focus on the opportunities created by reentry initiatives.

It is the secretary's policy to strengthen the department's commitment to promoting initiatives for an offender's successful reentry into society. To accomplish this goal, the

department is implementing positive rewards for offenders demonstrating improved institutional behavior by complying with institutional rules and policies.

Louisiana's incarceration rate ranks first in the nation. Under this rule, offenders that have successfully adjusted to incarceration and who have exhibited improved behavior for a two year period could have previously taken good time credits restored. Thereby, release from physical custody and commencement of parole supervision could occur at an earlier date. This would result in significant cost savings for the state. Implementation of this rule could result in a reduction in the total number of incarcerated offenders.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of an emergency rule is necessary for the adoption and implementation of Department Regulation No. B-04-005 and hereby provides notice of its declaration of emergency effective on October 10, 2009, in accordance with R.S. 49:953. This emergency rule shall be in effect for 120 days or until adoption of the final rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§319. Restoration of Good Time

A. Purpose. To establish the secretary's policy regarding the restoration of previously forfeited good time for disciplinary violations for offenders who have demonstrated satisfactory progress in faithfully observing the Disciplinary Rules and Procedures for Adult Offenders.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, the Sheriff or Administrator of local jail facilities and the Director of the Office of Information Services. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to strengthen the department's commitment to an offender's successful reentry efforts by implementing positive rewards for offenders who have demonstrated improved institutional behavior.

D. Definition

1. Regional Facility—a state correctional facility located within one of nine regions of the state, as designated by the secretary. Each warden of a regional facility shall be responsible for certain requirements pursuant to the provisions of this regulation for offenders housed in their state correctional facility, as well as DPS&C offenders housed in local jail facilities within their respective region.

E. General Procedures

1. As of the effective date of this regulation, offenders who have previously forfeited good time as a result of disciplinary action and have remained disciplinary report free for a consecutive 24 month period may be eligible for restoration of the previously forfeited good time. Restoration of previously forfeited good time shall not exceed 540 days during an offender's instant term of incarceration.

2. Forfeiture of good time resulting from any Schedule A or Schedule B rule violation may be restored in accordance with the provisions of this regulation, with the

exception of Rule #8, Escape or Attempt to Escape, or any rule violation that was a result of battery of an employee, visitor, guest or their families. All Rule #21 offenses shall be carefully reviewed for consideration of restoration of good time.

3. For offenders released on parole or good time parole supervision and returned to custody as a parole violator, the availability of forfeited good time is limited to the amount earned during the instant term of incarceration. Time spent in custody prior to release on parole or good time parole supervision shall not apply toward the 24 consecutive month period required for review.

4. Even though an offender may receive approval for restoration of goodtime, the department shall retain authority to void or adjust the amount of the restoration at any time during the offender's incarceration if a review of the record reveals the restoration calculation was erroneous.

5. Under no circumstances shall an offender's restoration of previously forfeited good time under the provisions of this regulation cause him to be considered overdue for release at the time of approval.

F. Review and Outcome Process

1. Offenders housed in state correctional facilities who have not been found guilty of a disciplinary violation for a consecutive 24 month period, except as noted in Paragraph E.2, shall complete an Application for Restoration of Good Time (Form B-04-006-A) and submit the application to the institution's records office.

2. The appropriate regional facility shall provide an Application for Restoration of Good Time (Form B-04-006-A) to the sheriff or administrator of each local jail facility within their region. Offenders housed in local jail facilities who meet the eligibility requirements stated in Section F.1. shall complete the application and submit it to the sheriff or administrator, who shall forward all completed applications to the records office of the appropriate regional facility within which the local jail facility is located.

3. The records supervisor/manager or designee shall review the application and disciplinary record to verify the offender's eligibility for restoration of forfeited good time. If the offender is eligible for restoration of forfeited good time, the records supervisor/manager shall indicate the number of days eligible for restoration on the Application for Restoration of Good Time (Form B-04-06-A.)

4. The warden shall develop a screening and review process for consideration of restoration of forfeited good time. This process shall include a recommendation for the number of days to be restored. The number of days to be restored shall include consideration of participation or failure to participate in rehabilitative programs. Upon completion, the reviewer shall forward the offender's application to the warden of the state facility or the warden of the appropriate regional facility for review and consideration.

5. If the offender is ineligible for restoration of forfeited good time, the records supervisor/manager shall indicate the reason for ineligibility on the application form and return a copy to the offender. The original application shall be filed in the offender's master prison record.

6. The warden of the state facility or the warden of the regional facility shall review the offender's application and

verification of eligibility and shall approve or disapprove the recommendation.

7. If approved, the records supervisor/manager or designee shall restore the amount of good time approved by the warden. Only that amount which was actually forfeited can be restored. A copy of the approved application, as well as the revised master prison record shall be sent to the offender. For offenders housed in local jail facilities, a copy of the approved application and the revised master prison record shall be returned to the sheriff or administrator of the local jail facility who shall notify the offender. The originals shall be filed in the offender's master prison record.

8. If denied, the warden of the state facility shall provide a written reason on the Application for Restoration of Good Time (Form B-04-006-A) and provide a copy to the offender. For offenders housed in local jail facilities, a copy of the application (including the justification for denial) shall be returned to the sheriff or administrator of the local jail facility who shall notify the offender. The original application shall be filed in the offender's master prison record.

9. If an offender's request for restoration of good time is denied or good time is partially restored, the offender may reapply for reconsideration in six months from the date of the original application.

10. The warden's decision regarding restoration of good time is final and shall not be appealed through the administrative remedy procedure.

11. In addition to the current CAJUN procedures in place regarding the maintenance of the amount of good time forfeited per offender, the Office of Information Services shall implement a program to also track the restoration of good time pursuant to this regulation and Act No. 17 of the 2009 Regular Session. The amount of good time restored shall be displayed on the CAJUN master prison record screen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 36:

James M. Le Blanc
Secretary

0910#069

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Prepaid Wireless 911 Service Charge (LAC 61:I.5401)

Act 531 of the 2009 Regular Session of the Legislature imposed a service charge upon the sales of prepaid wireless telecommunications. In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, and R.S. 47:1511, which allows the department to make reasonable rules and regulations, the secretary hereby finds that imminent peril to the public welfare exists and accordingly

adopts the following Emergency Rule. This Emergency Rule shall be effective January 1, 2010 and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to allow the secretary to provide needed information to Louisiana taxpayers regarding the collection and remittance of the prepaid wireless 911 service charge as provided by R.S. 33:9101.1. The effective date of this new law is January 1, 2010. The Department of Revenue is charged with the responsibility of administering the prepaid wireless 911 service charge.

Title 61

REVENUE AND TAXATION

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

Chapter 54. Prepaid Wireless 911 Service Charge §5401 Prepaid Wireless 911 Service Charge

A. Revised Statute 33:9109.1, as enacted by Act 531 of the 2009 Regular Session of the Legislature imposes a service charge of 2 percent upon a consumer's retail purchase of prepaid wireless telecommunications service. .

B. Definitions

Consumer—a person who purchases prepaid wireless telecommunications service in a retail transaction.

Person—includes both businesses and individuals.

Prepaid Wireless Telecommunications Service—a wireless telecommunications system that allows a caller to dial 911 to access the 911 system, which service shall be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

Prepaid Wireless 911 Service Charge—the charge that is required to be collected by a seller from a consumer.

Provider—a person that provides prepaid wireless telecommunications service from a seller pursuant to a license issued by the Federal Communications Commission.

Retail Transaction—each individual purchase of prepaid wireless telecommunications from a seller for any purpose other than resale.

Seller—a person who sells prepaid wireless telecommunications to another person.

Wireless Telecommunications Service—commercial mobile radio service as defined by 47 C.F.R. 20.3, as amended.

C. Calculation of the Service Charge. Retail sellers of prepaid wireless telecommunications service will collect a 2 percent 911 service charge.

1. The seller must separately state the service charge for each transaction on an invoice, receipt or similar document provided to the consumer.

2. If the seller fails to separately state the service charge, the seller will be deemed to have collected the service charge.

3. When a tax or other fee is calculated on the retail transaction, the prepaid wireless 911 service charges is not included in the base for measuring the tax, fee, surcharge or other charge imposed by the state, political subdivision of the state or any intergovernmental agency.

4. There is no service charge imposed on the sale of a cellular phone that does not contain preloaded minutes or units of airtime or rebates for minutes or units of airtime.

D. To determine whether or not a transaction occurs in Louisiana and is subject to the prepaid wireless 911 service charge, the following criteria should be used.

1. If a consumer purchases prepaid wireless telecommunications at a Louisiana location of a seller's business, then the transaction is to be treated as occurring in Louisiana.

2. If a customer does not physically purchase the prepaid wireless telecommunication service at the vendor's place of business, then the retail transaction shall be deemed to take place in the following locations:

- a. the consumer's shipping address, if there is a shipment;
- b. the consumer's billing address;
- c. another address of the consumer, that is known by the vendor; or
- d. the vendor's address or alternatively in the case of prepaid wireless calling service, the location associated with the mobile telephone number.

E. Quarterly Filing and Payment

1. Sellers must file and remit all prepaid wireless service charges collected to the Louisiana Department of Revenue (LDR) on a quarterly basis.

2. The return must be filed on or before the 20th day of the month following the end of the quarter.

3. The first quarter return for fees collected January 1, through March 30, 2010, will be due on or before April 20, 2010.

4. Sellers must file a return for the first quarter, even if no service charges were collected to be remitted to LDR.

F. Electronic Filing and Payment of 911 Service Fee Required

1. Sellers must file the 911 service fee return and pay the 911 service fees collected electronically via the LDR web site.

2. Sellers must register for the electronic filing system and select an electronic payment method.

G. Administration Fee

1. Sellers are allowed to deduct and retain 4 percent of the prepaid wireless 911 service charges collected from consumers as compensation for administering the service charge.

2. For the first quarter of 2010, sellers will be permitted to deduct and retain all service charges collected from consumers on retail transactions as compensation for establishing a system for administering the service charge.

3. LDR is allowed to retain up to 2 percent of the remitted service charges for reimbursement of direct administrative costs.

4. For the fiscal year 2009-2010, LDR may retain up to \$800,000 of the remitted service fees for implementation costs to establish an electronic system for collection and remittance of the prepaid wireless 911 service charges.

H. Distribution of 911 Service Charges to Eligible Communication Districts

1. Each communications district will receive a distribution of the 911 service charges remitted within 30 days of the end of each quarter.

2. The distribution will be calculated on a per capita basis by dividing the communication district's population by the state's population and multiplying the quotient by the

total revenues remitted after deducting the administrative fee retained by LDR.

I. Audit and appeal procedures applicable to state sales tax under Chapter 2 of Title 47 of the Louisiana Revised Statutes shall apply to the prepaid wireless 911 service charge. Prescription of the prepaid wireless 911 service charge is governed by Article VII § 16 of the Louisiana Constitution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

Cynthia Bridges
Secretary

0910#046

DECLARATION OF EMERGENCY

Department of Social Services Office of Community Services

Residential Licensing
(LAC 67:V.6115, 6709, 2903, 6905,
6909, 6953, 6955, and 6959)

The Department of Social Services (DSS), Office of Community Services, has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to amend and adopt LAC 67:V.Subpart 8, Residential Licensing, Chapters 61, 67 and 69, effective October 7, 2009, in order to carry into effect the provisions of Acts 194 and 343 of the 2009 Regular Session of the Louisiana Legislature.

The Secretary has determined that an imminent threat to the public health and safety exists requiring adoption of this Emergency Rule during the pendency of regular rule-making. Acts 2009, No. 194 amended the provisions of the Child Care Facilities and Child-Placing Agencies Licensing Act to give DSS authority to enact regulations and to revoke or deny licenses to operate child care facilities. Acts 2009, No. 343 directed the Department to provide current information on influenza, including known risks of the various strains of the disease and the risks and benefits of immunization, to parents of children in child care facilities, including child residential care facilities. It is essential to the public health and safety that the most current information be provided as quickly as possible. The procedures governing child residential facilities contain a number of features incorporating former statutory law which would impede the rapid dissemination of such information. This emergency rule conforms the child residential regulations with existing statutory law and provides for the immediate provision of influenza information to parents and guardians of children in out-of-home care as mandated by Act 343.

Act 194 transferred sole authority over rule-making and decisions to deny or revoke a child care facility license from external committees to DSS and shortens the time during which a center may remain open following revocation. This emergency rule conforms the revocation, denial and appeal provisions with existing statutory law and allows the department to exercise the authority granted it by the

Legislature. Without this Emergency Rule the department would remain bound by the constraints of prior law, limiting its ability to promulgate rules and to revoke licenses of non-compliant child care facilities, thereby imperiling the public health and safety. Were the department to delay implementation of this Rule until the completion of ordinary rule-making the influenza season would have been well-advanced before the remedial measures in this Rule could be carried out, increasing the risks of influenza epidemic.

This Emergency Rule shall remain in effect for a period of 120 days.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 8. Residential Licensing

Chapter 61. Emergency Shelter

§6115. Required Records

NOTE: This Section has been moved from LAC 67:I.1115.

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

5. Influenza Notice to Parents. In accordance with Act 343 of the 2009 regular legislative session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1st of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and 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), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2677 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1552 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

Chapter 67. Maternity Homes

§6709. Organization and Administration

NOTE: This Section has been moved from LAC 67:I.1709.

A. - G.2. ...

H. Influenza Notice to Parents. In accordance with Act 343 of the 2009 regular legislative session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of

Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and 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), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1571 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

Chapter 69. Child Residential Care

§6903. Authority

NOTE: This Section has been moved from LAC 67:I.1903.

A. - C.3. ...

D. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, only if the health, safety, and well-being of the staff/children are not imperiled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and 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 24:2129 (November 1998), LR 25:2458 (December 1999), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2698 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1574 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6905. Procedures

NOTE: This Section has been moved from LAC 67:I.1905.

A. - E.1. ...

2. The administrator or owner may appeal this decision by submitting a written request with the reasons to the secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P.O. Box 2994, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 15 days of the receipt of the notification in §1905.E.1 above, in the case of a revocation or non-renewal, or within 30 days of denial of a new application.

3 - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and 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 24:2130 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2699 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1575 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6909. Administration and Organization

NOTE: This Section has been moved from LAC 67:I.1909.

A - P.3. ...

Q. Influenza Notice to Parents. In accordance with Act 343 of the 2009 regular legislative session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and 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 24:2132 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2701 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1578 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6953. Authority

NOTE: This Section has been moved from LAC 67:I.1953.

A. Legislative Provisions. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq., and R.S. 46:51 which mandate the licensing of all child care facilities and child placing agencies, including child residential facilities. A Class "B" child residential facility is defined as any place, facility or home operated by any institution, society, agency, corporation, person or persons or any other group to provide full-time care (24-hour residential care) for four or more children under the age of 18 years who are not related to the operators, and whose parents or guardians are not residents of the same facility, with or without transfer of custody, and no state or federal funds received for the care of the children.

B - C.3. ...

D. - D.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6955. Procedures

NOTE: This Section has been moved from LAC 67:I.1955.

A - D.2.g. ...

E. Appeal Procedure

1. If a license is denied or revoked because a facility does not meet the minimum requirements for licensure, the Department of Social Services shall notify the licensee or applicant in writing of the denial or revocation, of the

reasons for the denial or revocation, and of the right to appeal the agency action.

2. The administrator or owner may appeal this decision by submitting a written request for a fair hearing, together with the reasons he/she believes the decision to be incorrect, to the Department of Social Services Appeals Bureau, P.O. Box 2994, Baton Rouge, LA 70821. The written request must be submitted within fifteen (15) days of receipt of notice of the department's notice, in the case of a revocation or non-renewal, or within thirty (30) days of receipt of the notice of denial of a new application for an initial license.

3. A fair hearing shall be conducted by an administrative law judge within thirty (30) days of filing the request for hearing.

4. Following the hearing, the administrative law judge shall render a decision within 90 days and shall notify the appellant in writing of the decision, either affirming or reversing the department's original action. If the department's action is upheld, the revocation or denial shall be effective immediately.

5. If a facility continues to operate without a license following a decision upholding revocation the Department may file suit in the district court in the parish in which the facility is located seeking injunctive relief and statutory fines of not less than \$75 per day nor more than \$250 per day for each day the facility has operated without a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6959. Administration and Organization

NOTE: This Section has been moved from LAC 67:I.1959.

A. Class "B" facilities must comply with all regulations set by the Office of the State Fire Marshal, the Office of Public Health, local zoning laws and all laws regarding child abuse or neglect. Client-staff ratios and minimum space requirements will be enforced by the Department of Social Services. Class "B" facilities must comply with regulations restricting hiring felons, prohibiting racial discrimination and prohibiting the use of corporal punishment without parental permission, and with all other regulations promulgated by the Department of Social Services. Core regulations must promote safe physical facilities, adequate supervision and qualified staff, healthful food service, procedures for nighttime care, and procedures for the disposition of complaints.

B. - B.2. ...

3. Repealed.

C - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), re-promulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential

Licensing, LR 33:2743 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1620 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

Kristy H. Nichols
Secretary

0910#044

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Daycare Services and Child Care Quality Rating System
(LAC 67:III.7302, 7303, 7305, 7355,
7357, 7359, 7361, and 5121)

The Department of Social Services (DSS), Office of Family Support (OFS), has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III.Subpart 21, Child Care Licensing, and LAC 67:III.Subpart 12, Child Care Assistance, to become effective upon the signature of the Secretary.

The secretary has determined that an imminent threat to the public health and safety exists requiring adoption of this Emergency Rule during the pendency of regular rule-making. Acts 2009, No. 194 amended the provisions of the Child Care Facilities and Child-Placing Agencies Licensing Act to give the Department of Social Services authority to enact regulations and to revoke or deny licenses to operate child care facilities. Acts 2009, No. 343 directed the department to provide current information on influenza, including known risks of the various strains of the disease and the risks and benefits of immunization, to parents of children in child care facilities, including child residential care facilities. Acts 2009, No. 351 directed child day care facilities to make available to parents information on violations of the child care minimum standards at those facilities. It is essential to the protection of children that parents be notified as quickly as possible of potential hazards at their child's day care facility. It is essential to the public health and safety that the most current information about influenza be provided as soon as it becomes available to health authorities. The procedures governing child care facilities contain a number of features incorporating former statutory law which would impede the rapid dissemination of such information. This emergency rule conforms the child care regulations with existing statutory law and provides for the immediate provision of child care and influenza information to parents and guardians of children in out-of-home care as mandated by Act 343.

Act 194 transferred sole authority over rule-making and decisions to deny or revoke a child care facility license from external committees to the Department of Social Services and shortens the time during which a center may remain open following revocation. This Emergency Rule conforms the revocation, denial and appeal provisions with existing statutory law and allows the department to exercise the authority granted it by the Legislature. Without this Emergency Rule the department would remain bound by the constraints of prior law, limiting its ability to promulgate rules and to revoke licenses of non-compliant child care

facilities, thereby imperiling the public health and safety. Were the department to delay implementation of this Rule until the completion of ordinary rule-making the influenza season would have been well-advanced before the remedial measures in this Rule could be carried out, increasing the risks of influenza epidemic.

This Emergency Rule shall remain in effect for a period of 120 days.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A" Regulations for Child Care Centers

§7302. Authority

A. Legislative Provisions. The State of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care centers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq. making mandatory the licensing of all child care facilities and child placing agencies, including child care centers. Under R.S. 46:1403, a child day care center is defined as a place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least 12 1/2 hours in a continuous 7-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

B. - C.3. ...

D. The Louisiana Advisory Council on Child Care and Early Education

1. The Louisiana Advisory Council on Child Care and Early Education is hereby created in accordance with La. R.S. 46:1414, as amended by Acts 2009, No. 194, to provide input and guidance to the Department of Social Services on matters pertaining to rules, regulations and standards for licensure of Class A and Class B day care centers as defined in R.S. 46:1403(A)(4).

2. The Council shall be composed of 11 voting members, appointed by the Secretary of the Department of Social Services and 9 non-voting ex-officio members. The membership shall consist of:

a. one parent of a child currently enrolled in a licensed child care facility.

b. three owners or directors of licensed child care facilities in Louisiana.

c. two professionals and/or faculty of child development and/or early childhood education programs at community technical colleges or universities located in Louisiana.

d. one representative from each of the following advocacy organizations: the Louisiana Head Start Association, Louisiana Partnership for Children and Families, the Louisiana Association for the Education of Young Children, the Child Care Association of Louisiana, and the Louisiana Early Childhood Association of Louisiana.

e. nine non-voting ex-officio members consisting of one representative of each of the following offices or agencies: the Department of Education Pre-Kindergarten Program, the Department of Education Child and Adult Care Food Program, Louisiana Office of State Fire Marshal, Department of Health and Hospitals Office of Sanitarian Services, Louisiana Workforce Commission, Louisiana State Police Bureau of Criminal Identification, and three representatives from the Department of Social Services.

3. Members will be appointed to serve an initial two-year term on the council and may be eligible to be reappointed to serve an additional two-year term.

4. A member shall be automatically removed from the advisory council if he/she has two or more unexcused absences during any 12-month period. An absence is excused for purposes of this Section when the cause is one which a reasonably-prudent person would deem to take precedence over fulfillment over a solemn public duty; or, if the absence is known in advance to be probable, if the member notifies the chairperson of his/her expected absence not less than 24 hours in advance of the scheduled meeting.

5. A quorum shall consist of a simple majority of the active voting members.

6. Whenever a vacancy occurs in any council seat, whether by death, resignation, or automatic removal, such vacant seat shall no longer be counted as an active voting member in determining a quorum until a successor has been appointed by the secretary to fill the unexpired term.

7. Officers of the council shall include a chair, vice-chair and secretary.

8. All meetings shall be conducted in accordance with the state's Open Meetings law. Procedural matters shall be conducted in accordance with the latest edition of Robert's Rules of Order.

9. Members shall serve without compensation or reimbursement.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7303. Procedures

A. - C.2. ...

3. If the survey reveals that the provider is not meeting minimum requirements, a decision may be made by the Department for adverse action.

D. - E.1. ...

2. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the notice within 15 days of receipt of the notice of revocation or non-renewal. In the case of a denial of an initial application for a license, a provider may appeal the denial by submitting a written request to appeal the decision within 30 days of receipt of the notice of denial of application. A request for appeal should include the specific reasons the decision is believed

to be erroneous and/or the specific reasons the decision is believed to be incorrect, and mailed to: Department of Social Services, Bureau of Appeals, P. O. Box 2944, Baton Rouge, LA 70821-9118.

3. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7305. General Requirements

A. - K. ...

L. Licensing Surveys; Notice Requirements. In accordance with Act 351 of the 2009 Regular Legislative Session, providers shall prominently post information advising parents or guardians that findings from licensing surveys are available online which includes the current web address and that findings from licensing surveys are also available upon written request to the Department of Social Services.

M. Influenza Notice to Parents. In accordance with Act 343 of the 2009 Regular Legislative Session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1st of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2760 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter B. Licensing Class "B" Regulations for Child Care Centers

§7355. Authority

A. The Louisiana Advisory Council on Child Care and Early Education

1. The Louisiana Advisory Council on Child Care and Early Education is hereby created in accordance with La. R.S. 46:1414, as amended by Acts 2009, No. 194, to provide input and guidance to the Department of Social Services on matters pertaining to rules, regulations and standards for

licensure of Class A and Class B day care centers as defined in R.S. 46:1403(A)(4).

2. The council shall be composed of 11 voting members appointed by the Secretary of the Department of Social Services and 9 non-voting ex-officio members. The membership shall consist of:

a. one parent of a child currently enrolled in a licensed child care facility;

b. three owners or directors of licensed child care facilities in Louisiana;

c. two professionals and/or faculty of child development and/or early childhood education programs at community technical colleges or universities located in Louisiana;

d. one representative from each of the following advocacy organizations: the Louisiana Head Start Association, the Louisiana Partnership for Children and Families, the Louisiana Association for the Education of Young Children, the Child Care Association of Louisiana, and the Louisiana Early Childhood Association of Louisiana;

e. nine non-voting ex-officio members consisting of one representative of each of the following offices or agencies: the Department of Education Pre-Kindergarten Program, the Department of Education Child and Adult Care Food Program, Louisiana Office of State Fire Marshal, Department of Health and Hospitals Office of Sanitarian Services, Louisiana Workforce Commission, Louisiana State Police Bureau of Criminal Identification; and three representatives from the Department of Social Services.

3. Members will be appointed to serve an initial two-year term on the Council and may be eligible to be reappointed to serve an additional two-year term.

4. A member shall be automatically removed from the advisory council if he/she has two or more unexcused absences during any 12-month period. An absence is excused for purposes of this Section when the cause is one which a reasonably-prudent person would deem to take precedence over fulfillment over a solemn public duty; or, if the absence is known in advance to be probable, if the member notifies the chairperson of his/her expected absence not less than 24 hours in advance of the scheduled meeting.

5. A quorum shall consist of a simple majority of the active voting members.

6. Whenever a vacancy occurs in any council seat, whether by death, resignation, or automatic removal, such vacant seat shall no longer be counted as an active voting member in determining a quorum until a successor has been appointed by the Secretary to fill the unexpired term.

7. Officers of the council shall include a chair, vice-chair and secretary.

8. All meetings shall be conducted in accordance with the state's Open Meetings law. Procedural matters shall be conducted in accordance with the latest edition of Robert's Rules of Order.

9. Members shall serve without compensation or reimbursement.

B. Penalties. The penalty for the operation of a center without a valid license is a fine of not less than \$75 not more than \$250 for each day of operation without a license.

C. Injunctions. If any child care facility operates without a valid license issued by the department, the department may file suit in the district court in the parish in which the facility

is located for injunctive relief. This injunctive order may include a temporary restraining order to restrain the institution, society, agency, corporation, person or persons, or any other group operating the child care facility from continuing the violation.

D. Inspections. It shall be the duty of the Department of Social Services, through its duly authorized agents, to inspect at regular intervals not to exceed one year or as deemed necessary by the Department and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401 et seq.). The facility shall be open to inspection at all times during working hours or when children are in care by the parents or legal guardians of children in care and by all authorized inspection personnel.

E. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical. These standards may be waived only if the health and well being of the staff and/or the children are not placed in danger.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1635 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7357. Definitions

A. The following are definitions of terms used in these minimum standards:

Bureau—Bureau of Licensing of the Louisiana Department of Social Services.

Child Care Center—any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least twelve and one-half hours in a continuous seven-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Child Care Staff—an individual directly involved in the care and supervision of the children in the center.

Committee on Private Child Care—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 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7359. Procedures

A. - F.10. ...

G. Appeal Procedure

1. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the notice within 15 days of receipt of the notice of revocation or non-renewal. A prospective provider may appeal the denial of an initial application by submitting a written request to appeal the decision within 30 days of receipt of the notice of denial of application. A request for appeal shall include the specific reasons the provider believes the decision to be erroneous and/or the specific reasons the decision is believed to be incorrect, and mailed to: Department of Social Services, Bureau of Appeals, P.O. Box 2944, Baton Rouge, LA 70821-9118.

G.2. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7361. General Requirements

A. - J. ...

K. Licensing Surveys; Notice Requirements. In accordance with Act 351 of the 2009 Regular Legislative Session, providers shall prominently post information advising parents or guardians that findings from licensing surveys are available online which includes the current web address and that findings from licensing surveys are also available upon written request to the Department of Social Services.

L. Influenza Notice to Parents. In accordance with Act 343 of the 2009 Regular Legislative Session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1st of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1638 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2773 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

Subpart 12. Child Care Assistance
Chapter 51. Child Care Assistance Program
Subchapter C. Child Care Quality Rating System
§5121. Participation

A. - C. ...

D. Centers that have achieved a star rating will have their rating revoked if the child care license is revoked.

E. ...

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 Social Services, Office of Family Support, LR 36:

Kristy H. Nichols
Secretary

0910#043

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

TANF—LA 4 Public Pre-Kindergarten
(LAC 67:III.5585)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III, Subpart 12 Chapter 55, Section 5585, LA 4 Public Pre-Kindergarten Program as a new TANF Initiative.

Pursuant to House Bill 1 of the 2009 Regular Session of the Louisiana Legislature, the agency is adopting the LA 4 Public Pre-Kindergarten Program to provide high quality early childhood education for low-income, 4-year olds to be provided in participating public school districts. This program intends to provide high quality early childhood education to foster an interest in learning, increase literacy levels and increase the likelihood of developing responsible behavior. This Rule is effective October 29, 2009, and shall remain in effect for a period of 120 days.

This declaration is necessary to extend the original Emergency Rule which was published July 20, 2009, and was effective July 1, 2009, since it is effective for a maximum of 120 days and will expire before the final rule takes effect. (The final Rule will be published in the December 20, 2009, issue).

The authorization for emergency action in this matter is and is contained in House Bill 1 of the 2009 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

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

Chapter 55 TANF Initiatives

§5585. LA 4 Public Pre-Kindergarten Program

A. Effective July 1, 2009, the Office of Family Support shall enter into a contract with the Department of Education for the LA 4 Public Pre-kindergarten Program.

B. Services include providing high quality early childhood education for low income 4-year-olds in participating public school districts.

C. These services meet TANF goal 3, to prevent and reduce the incidence of out-of-wedlock pregnancies and TANF goal 4, to encourage the formation and maintenance of two-parent families by placing children in learning environments at the pre-school level to foster an interest in learning, increase literacy levels and increase the likelihood of developing responsible behavior.

D. Eligibility for services is limited to at risk families in which the child is one year younger than the eligible age for kindergarten and is eligible to receive free or reduced school lunch meals pursuant to the Federal Child Nutrition Program as documented by a completed application for such meals, whether or not such meals are sought.

E. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; House Bill 1 of the 2009 Regular Session Louisiana Legislature.

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

Kristy H. Nichols
Secretary

0910#041

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Elmer's Island Wildlife Refuge
(LAC 76:III.337)

The Elmer's Island Wildlife Refuge was opened for public access on July 3, 2009. More than 800 people participated in fishing, crabbing, swimming and sun bathing during that holiday weekend. Since the refuge's opening it has been heavily used by the public, as it is commonly regarded as one of the premiere bank fishing locations in south central Louisiana. A recent attempt to clean up the refuge yielded in excess of 6,000 pounds of trash being removed.

Because of this heavy use, and in some instances misuse of the area, there is an urgent need to establish rules in order to protect the public health, safety and welfare. There is an immediate need to regulate the possession of glass containers, excessive vehicle speed and careless vehicle operations on the refuge and to enact and enforce other rules necessary for the health, safety and welfare of the visiting public. The absence of an existing rule impairs the department's legal authority to enforce and protect the public health, safety and welfare. For these reasons, it is imperative that regulations be put in place immediately.

It is necessary for the Wildlife and Fisheries Commission to invoke the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt these rules. This Declaration of Emergency shall become effective October 1, 2009 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

Chapter 3. Particular Game and Fish Preserves, Wildlife Management Areas, Refuges and Conservation Areas

§337. Elmer's Island Wildlife Refuge

A. Visitor Regulations for Elmer's Island Wildlife Refuge

1. Use of the refuge will be permitted from thirty minutes before official sunrise to 30 minutes after official sunset. This includes any land access routes to the refuge. No person or vehicle shall remain on the Elmer's Island Wildlife Refuge or any land access routes during the period from 30 minutes after official sunset to thirty minutes before sunrise.

2. No person shall possess any glass bottles, glass drink containers or other glass products on Elmer's Island Wildlife Refuge.

3. The secretary of the department may restrict access to the refuge whenever circumstances exist such that restrictions are necessary to protect the Refuge or the public from harm. No person shall enter onto or be on the grounds of Elmer's Island Wildlife Refuge during a restricted access period; or alternatively shall do so only in accordance with restrictions set forth by the secretary.

4. No person shall commercially fish, conduct any guiding service, hunt, pursue, kill, molest or intentionally disturb any type of wildlife on the refuge, except for the legal recreational harvest of living aquatic resources.

5. No person shall be in areas marked as restricted by signs posted by the department.

6. No person shall operate any vehicles in a restricted area. No person shall operate a vehicle in an unsafe or careless manner as to endanger life or property or at any speed in excess of five miles per hour.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:109, R.S. 56:109.2, R.S. 56:763 and R.S. 56:781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 35:

Robert J. Samanie, III
Chairman

0910#004

Rules

RULE

Department of Economic Development Office of Business Development Office of Entertainment Industry Development

Musical and Theatrical Income Tax Credit Program (LAC 61:I.1615-1627)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 47:6034, the Department of Economic Development hereby adopts the following Rule of the Musical and Theatrical Production Income Tax Credit program.

Title 61

REVENUE AND TAXATION

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

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter C. Musical and Theatrical Production Income Tax Credit Program

§1615. Purpose

A. The purpose of this Chapter is to administer the Musical and Theatrical Production Income Tax Credit Program as established by R.S. 47:6034.

B. The purpose of this program is to encourage development of the state as a leader in the live performance industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2173 (October 2009).

§1617. General Description

A. The program offers five types of tax credits, which fall into two categories:

1. productions:

a. qualified production expenses made from investments in a state-certified musical or theatrical production;

b. qualified transportation costs for performance related property;

c. payroll of Louisiana residents employed in connection with a state-certified musical or theatrical production;

d. employment of Louisiana college, universities and vocational-technical students in connection with a state-certified musical or theatrical production;

2. infrastructure projects:

a. construction of new facilities, or repair or renovation of existing facilities related to such productions and performances.

B. Tax credits are earned in the calendar year expended, to the extent the expenditures receive final certification from the department.

C. Tax credits associated with a state-certified musical or theatrical production or a state-certified musical or theatrical facility infrastructure project shall never exceed the total base investment in that production or infrastructure project and transportation expenditures.

D. Tax credits shall be available on a first come, first served basis, based upon date of final certification and qualification of expenditures. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

E. Base investment tax credits shall be transferable only once.

F. No tax credits shall be granted under this program until the rules are approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, in accordance with the provisions of the Administrative Procedures Act.

G. Applicants may apply for more than one entertainment tax credit program administered by the department, provided that:

1. separate applications are submitted for each program;

2. expenditures shall only qualify for one specified program; and

3. multiple applications shall not result in any duplication of tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2173 (October 2009)

§1619. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6034, unless the context clearly requires otherwise.

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

Base Investment—actual investment made and expended in this state by a state-certified musical or theatrical production:

a. as production-related costs; or

b. as capital costs of a state-certified musical or theatrical facility infrastructure project.

Begin Construction—construction of an infrastructure project shall be deemed to begin when:

a. In the case of construction a new building, either:

i. materials to be used in the project, representing at least 5 percent of total budgeted costs, are placed on the project site; or

ii. other work representing at least 5 percent of the preliminary construction budget and visible from a simple inspection (such as landfill, soil reinforcement or

pouring a foundation) is performed on the site. (Such "other work" shall not include services in preparation for construction such as surveying, engineering, cutting or removal of trees, demolition of existing structures, clearing the land surface.)

b. In the case of repairs to or renovation of an existing structure:

i. materials to be used in the project, representing at least 10 percent of the total budgeted costs of materials, are placed at the project site; or

ii. written evidence of other work representing at least 10 percent of the preliminary construction budget, is submitted for approval to the department. Such other work may include research, planning and design purposes, such as environmental studies as may be required for historic renovation projects.

Department—Louisiana Department of Economic Development, or its successor, represented by its secretary or his designee.

Director—Director of the Office of Entertainment Industry Development or his designee.

Expended in the State or Expenditures in the State—shall mean:

a. an expenditure to acquire or lease immovable property located in the state;

b. an expenditure to acquire movable property from a source within the state which is subject to state sales and use tax; or

c. an expenditure as compensation for services performed within the state which is subject to state income tax.

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

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

Limited State-Certified Musical or Theatrical Production—a musical or theatrical production or a series of productions occurring in Louisiana by a non-profit community theater that held a public performance before an audience within this state during the 2008 calendar year which has been certified, verified, and approved in accordance with R.S. 47:6034(B)(11).

Louisiana Resident—

a. a natural person who:

i. is a Louisiana domiciliary;

ii. maintains a permanent place of abode within Louisiana and spends in the aggregate more than six months of each year in Louisiana; or

b. pays taxes to Louisiana on the amount of money paid to such person for which a tax credit is sought.

c. a company:

i. in which a Louisiana resident has ownership or control;

ii. organized or authorized to do business in Louisiana;

iii. that lends the services of such Louisiana resident for a state-certified musical or theatrical production; and

iv. pays taxes to Louisiana on the amount of money paid to such person for such services.

Non-Profit Community Theater—a non-profit resident theater or producing organization incorporated as a 501(C)(3) organization recognized by the Louisiana Secretary of State.

Office—Office of Entertainment Industry Development.

Originate—shall include, but not be limited to, state-certified musical or theatrical productions which are:

a. pre-Broadway try-outs;

b. resident or regional productions;

c. national touring companies producing their first public performance in Louisiana; or

d. concert tours producing their first public performance in Louisiana.

Payroll—all salary, wages, and other compensation, including related benefits, for services performed in Louisiana.

Production Expenditures—a contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, or operating expenditures in this state for a state-certified production as follows.

a. Eligible expenditures shall include, but not be limited to set construction and operation, special and visual effects, costumes, wardrobes, make-up accessories, costs associated with sound, lighting, staging, payroll and other related costs.

b. Ineligible expenditures shall include, but not be limited to any expenditures later reimbursed by a third party, any costs related to the transfer of tax credits, and any other indirect costs.

Secretary—Secretary of the Department of Economic Development, or his designee.

State-Certified Musical or Theatrical Infrastructure Project—a capital infrastructure project in the state directly related to the production or performance of musical or theatrical productions as defined in this Section, and movable and immovable property and equipment related thereto, or any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair, or renovation of such project, which are certified, verified, and approved as provided for in this Section.

State-Certified Musical or Theatrical Production—a concert, musical or theatrical production, or a series of productions occurring over the course of a 12-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before a paying audience within Louisiana, or which have their United States debut within Louisiana, and the production expenditures, expenditures for the payroll of residents, transportation expenditures, and expenditures for employing college and vocational-technical students related to such production or productions, that are certified, verified, and approved as provided for in this Section. Non-qualifying projects include, but are not limited to non-touring music and cultural festivals, industry seminars and trade shows.

Student—a natural person enrolled in a Louisiana higher education facility, such as a college, university, or a vocational-technical college.

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

Transferor—an individual or entity that makes a transfer of base investment tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2173 (October 2009).

§1621. Certification Procedures

A. Application

1. An application for a state-certified production or a state-certified infrastructure project shall be submitted to the department, including:

a. all information required by R.S. 47:6034(E)(2)(a);

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

c. the applicant shall provide additional information upon request.

2. Each application shall identify only one production or infrastructure project and only one contact person for such production or project.

B. Qualification

1. The department shall determine whether a production or infrastructure project qualifies, by meeting all requirements of R.S. 47:6034 and these regulations, and taking the following factors into consideration:

a. the contribution of the production or infrastructure project to establishing the state as a leader in the live performance industry;

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

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

d. in the case of productions, the potential for students to gain work experience in an arts related position;

e. in the case of infrastructure projects, the availability and kind of existing facilities in the proposed area.

C. Initial Certification

1. Upon finding the production or infrastructure project qualifies, the department shall issue an initial certification letter which shall include:

a. classification as a state-certified production or state-certified infrastructure project;

b. a unique identifying number;

c. the total base investment to be expended;

d. the persons to whom tax credits are to be allocated and the estimated amount of tax credits allocated to each; and

e. for state-certified infrastructure projects, the years in which tax credits may be taken or transferred.

2. Brand. As a condition for receiving tax credits, state certified productions and infrastructure projects may be required to display the state brand or logo. Any such requirement will be detailed in the initial certification letter.

3. Duration of Effect

a. The applicant shall countersign the initial certification letter, acknowledging the conditions therein stated, and return an original to the department within 30 business days of receipt.

b. If a countersigned original is not returned to the department, within the allotted time frame, it shall be nullified unless reissued or confirmed by the department.

c. For productions, initial certification shall be effective for a period of 12 months prior to and 12 months after the date of initial certification.

i. Productions returning to the state after Broadway performances shall be eligible for recertification, provided that the production returns to the state within 24 months of the date of original certification.

D. Final Certification and Audit Requirements

1. After review and upon a determination of qualification and initial certification, an applicant may obtain final certification as follows.

a. A cost report shall be submitted by the applicant, certified by an independent certified public accountant and complying with the minimum standards as required by R.S. 47:6034.

b. The cost report may be subject to additional audit at the applicant's expense. The department shall select the auditor and determine the audit standards.

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

d. The department shall review the cost report and supporting information, and following verification of qualifying expenditures, shall issue a final tax credit certification letter.

e. Multiple requests for final certification may be submitted.

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

ii. Two submissions shall be certified at no additional fee by the department.

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

E. Appeal Process

1. In the event that an application for certification is denied, the applicant may appeal as follows.

a. An applicant may appeal within 30 days from receipt of a denial. A rebuttable presumption of receipt will occur from the sending of the denial by electronic mail to an address provided by the applicant or by a return receipt evidencing delivery by U.S. Postal Service or private carrier.

b. The appeal is made by delivery of a written objection with supporting documentation to the secretary.

c. The secretary shall review the objection and supporting documentation and provide the applicant with a written response within 30 business days. This written response shall be the final agency determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009).

§1623. Additional Program Procedures—Production

A. Production Expenses Made from Investment in State-Certified Musical or Theatrical Productions

1. Qualification of Tax Credits

a. The department shall determine which production expenditures qualify under these regulations and the terms of R.S. 47:6034.

b. Examples of qualifying expenditures are set forth in R.S. 47:6034(B)(6)(a).

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6034 until such statute is amended, modified or repealed.

3. Amount of and Limitations upon Tax Credits

a. Tax credits shall be available on a first come, first served basis, based upon date of final certification and qualification of expenditures. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

b. For State Certified Musical or Theatrical Productions

i. If the total base investment is more than \$100,000 dollars, but less than \$300,000 dollars, a tax credit of 10 percent applies.

ii. If the total base investment is more than \$300,000 dollars, but less than \$1,000,000 dollars, a tax credit of 20 percent applies.

iii. If the total base investment is more than \$1,000,000 dollars, a tax credit of 25 percent applies.

c. For Limited State-Certified Musical or Theatrical Productions

i. A tax credit may be granted for base investments made by non-profit community theaters for each of the 2009 and 2010 calendar years.

ii. If the total base investment is more than \$25,000 but less than \$300,000, a tax credit of 10 percent of the base investment applies.

iii. Applicants shall be limited to a maximum of two applications per year, for the 2009 and 2010 calendar years.

iv. The total amount of tax credits eligible to be issued shall not exceed \$250,000 for each of the calendar years 2009 and 2010.

4. Earning of Tax Credits

a. Credits are earned when qualified expenditures receive final certification.

b. A state certified production may submit multiple requests for final certification.

c. Tax credits associated with a state-certified musical or theatrical production shall never exceed the total base investment in that production and transportation expenditures.

B. Transportation Costs for Performance-Related Property

1. The department shall determine which transportation expenditures qualify under these regulations and the terms of R.S. 47:6034.

2. Transportation expenditures shall mean:

a. type of services covered shall include, but not be limited to:

- i. packaging;
- ii. crating; and
- iii. transportation;

b. items covered, shall include but not be limited to:

- i. sets;

ii. costumes; or
iii. other tangible property whether such items are manufactured in or out of the state;

c. transportation with a Louisiana nexus, with transportation either:

i. to the state, for use in a state certified production; or

ii. from the state, after use in a state certified production.

iii. provided that services are purchased through a company which has a significant business presence in Louisiana;

iv. significant business presence in the state shall mean a transportation company that:

(a). is registered to do business in the state;

(b). has one office in the state; and

(c). employs at least one full-time employee in the state.

3. An additional tax credit shall apply for qualified transportation expenditures that receive final certification, as follows:

a. 100 percent for qualified expenditures incurred until December 31, 2010;

b. 50 percent for qualified expenditures incurred between January 1, 2011 and December 31, 2011;

c. 25 percent for qualified expenditures incurred between January 1, 2012 and December 31, 2012;

d. no credits are available for transportation expenditures incurred after December 31, 2012.

C. Employment of State Residents

1. An additional 10 percent tax credit shall be available for payroll expenditures of state residents.

2. No more than \$1,000,000 paid to a single person shall be eligible for payroll tax credit.

3. This payroll tax credit may not be combined with the student tax credit component of R.S. 47:6034.

D. Employment of College and Vocational-Technical Students

1. An additional 0.10 percent tax credit shall be available for production expenditures of students in connection with a state-certified musical or theatrical production, including but not limited to, the following positions:

a. actor;

b. writer;

c. producer;

d. stage hand;

e. director or technical positions relating to lighting, sound, actual stage work; and

f. positions indirectly serving the production in accounting, law, management and marketing.

2. This tax credit may not be combined with the state resident tax credit component of R.S. 47:6034.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009).

§1625. Certification Procedures—Infrastructure

A. Qualification of the Infrastructure Project

1. Tax credits may be granted only for:
 - a. infrastructure projects directly related to the production or performance of musical or theatrical productions;
 - b. equipment, movable and immovable property related thereto; and
 - c. any other facility which supports and is a necessary component of such a facility.
2. The department shall determine which projects are "directly related" to the production or performance of musical or theatrical productions, taking into consideration all relevant factors such as; the frequency of performances, the configuration of stage and seating, and the presence of specialized lighting and/or sound equipment.
3. The department shall determine whether a facility "supports" or is a "necessary component" of a state certified infrastructure project. Examples of qualifying facilities would be a parking garage, gift shop or costume storage. Examples of non-qualifying facilities would be hotels, golf courses and shopping centers.
4. The department shall determine whether a "multi-purpose" infrastructure project qualifies under the terms of R.S. 47:6034.

- a. Upon a determination of qualification as a multi-purpose infrastructure project, the applicant must provide contractual assurances that:
 - i. the facility will be used to produce or support musical or theatrical productions, for the useful life of the facility;
 - ii. the useful life of the facility shall be determined by the department and shall be set forth in the initial certification.

B. Duration of Tax Credit

1. Tax credits may be granted under R.S. 47:6034 until January 1, 2014.

C. Amount of and Limitations upon Tax Credit

1. If the total base investment is more than \$100,000, but less than \$300,000, a tax credit of 10 percent applies.
2. If the total base investment is more than \$300,000, but less than \$1,000,000, a tax credit of 20 percent applies.
3. If the total base investment is more than \$1,000,000, a tax credit of 25 percent applies.
4. No more than \$10,000,000 may be granted per state certified infrastructure project.
5. No more than \$60,000,000 may be granted, per year, for all state certified infrastructure projects.

- a. Tax credits shall be available on a first come, first served basis, based upon date of final certification and qualification of expenditures. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year,

- b. Fifty percent of the tax credits annually granted for infrastructure projects shall be reserved for projects located outside of Jefferson and Orleans parishes, provided that the availability of tax credits for infrastructure projects in Jefferson and Orleans parishes shall not be conditioned upon the granting of infrastructure tax credits for projects outside of those parishes.

D. Earning of Tax Credits

1. Construction of the infrastructure project shall begin within six months of the date of initial certification.
2. Credits are earned when qualified expenditures receive final certification.
3. An infrastructure project may submit multiple requests for final certification, however;
 - a. Twenty-five percent of the total base investment must be expended before requesting the first certification of qualified expenditures.
 - b. Fifty percent of the total base investment must be expended within two years of the date of initial certification.
 - c. In the case of multiple use facilities, no tax credits will be earned until the facility directly used in the theatrical or musical productions is complete.
4. Tax credits associated with a state-certified infrastructure project shall never exceed the total base investment and transportation expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2177 (October 2009).

§1627. Application of the Tax Credit

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

- B. After receiving final certification, a person may transfer the credit as follows

1. Only one transfer is allowed.
2. The credit, and/or refund of an overpayment, may be transferred by sending a written notice of such transfer to the Department of Revenue.

- C. An owner of tax credits may claim tax credits against its Louisiana income tax liability by submitting its final certification, or written notice of transfer pursuant to this rule, evidencing the dollar amount of tax credits being claimed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2177 (October 2009).

Sherri McConnell
Director

0910#031

RULE

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

Methods of Payment

(LAC 33:I.1203, 1411, 1911, 2305, 2307;
III.215; V.5111, 5119, 5127; VI.709, 917;
VII.1505; IX.1309, 1507; XI.307; XV.2509)(MM009)

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 Environmental Quality regulations, LAC 33:I.1203, 1411, 1911, 2305, 2307; III.215; V.5111, 5119, 5127; VI.709, 917; VII.1505; IX.1309, 1507; XI.307; XV.2509 (Log #MM009).

This Rule provides language that authorizes the department to accept credit card payments and other electronic methods of payment for obligations owed to the state. It also repeals hazardous waste fees no longer collected and clarifies the calculation of hazardous waste Application and Maintenance fees. This Rule is required in order to implement Act 119 of the 2008 Regular Session of the Legislature, which amended R.S. 49:316.1(A)(2)(a) and (c) to provide the department with authority to accept credit card payments for obligations owed to the state through use of a third-party processor and authorized the collection of a convenience fee to adequately cover the resulting transaction costs. The basis and rationale for this Rule are to implement Act 119 of the 2008 legislative session. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 12. Requests for Review of Environmental Conditions

§1203. Procedure for Submittal of Request

A. All requests for reviews by the department of reports of environmental conditions shall be accompanied by an initial \$1500 minimum fee.

1. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department with the request.

2. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

3. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

4. Cash is not an acceptable form of payment.

B. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2011(D)(25), and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs

Division, LR 33:447 (March 2007), amended LR 33:2079 (October 2007), LR 35:2178 (October 2009).

Chapter 14. Groundwater Fees

[NOTE: The information contained in Chapter 14 was previously located in LAC 33:XIII.Chapter 13. It was relocated and renumbered in November, 1998.]

§1411. Methods of Payment

A. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

B. Electronic Methods of Payment

1. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

2. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

C. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), repromulgated LR 21:797 (August 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2178 (October 2009).

Chapter 19. Facility Name and Ownership/Operator Changes Process

§1911. Fees for Name and Ownership/Operator Changes

A. - A.Table. ...

B. Methods of Payment

1. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the NOC-1 form.

2. Electronic Methods of Payment

a. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

3. Cash is not an acceptable form of payment.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005), amended LR 35:2178 (October 2009).

Chapter 23. Procedures for Public Record Requests

§2305. Standard Operating Procedures

A. - B. ...

C. Advance payment is required, except for a request for an administrative record of decision required to be lodged with a court.

1. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality.

2. Persons wishing to make payments using the electronic pay method (e-pay) shall access the department's website and follow the instructions provided on the website.

3. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

4. Cash is not an acceptable form of payment.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and 44:1 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 29:702 (May 2003), amended by the Office of Environmental Assessment, LR 30:2020 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:88 (January 2007), LR 35:2178 (October 2009).

§2307. Exceptions to Standard Operating Procedures

A. - A.2. ...

B. Specific Exceptions

1. Exception to LAC 33:I.2305.C. Copies of public records may be requested and delivered by facsimile. The copies may be sent upon receipt of a facsimile of proof of payment made by an approved method of payment, pending receipt of the actual payment.

1.a. - 2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., and 44:1 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 29:702 (May 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2080 (October 2007), LR 35:2179 (October 2009).

Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§215. Methods of Payment

A. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

B. Electronic Methods of Payment

1. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

2. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

C. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, and R.S. 49:316.1(A)(2)(a) and (c)

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009).

**Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—
Hazardous Waste**

Chapter 51. Fee Schedules

§5111. Calculation of Application Fees

A. The applicant is required to calculate the appropriate application fee and, if applicable, siting fee according to the schedule included in the permit application form. Payment shall be made in accordance with the requirements of LAC 33:V.5127.

B. Application Fee Schedule

Item	Fee
Site Analysis—per acre site size	\$330 ¹
Process and Plan Analysis	\$1,320
Facility Analysis—per facility ²	\$660
Management/Financial Analysis	\$1,320

[Note: Fee equals total of the four items.]

¹ Up to 100 acres, no additional fee thereafter.

² Incinerator, land farm, treatment pond, etc., each counted as a facility.

C. Administrative Cost Fee

Application Fee x 0.30 = Administrative Cost Fee
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D. Siting Fee. This fee will be applicable to new commercial hazardous waste treatment, storage, and disposal facilities. This fee will be used to assess the impact of the location of the facility on the citizens in the surrounding area, the local infrastructure, and on the environment. A portion of this fee shall be allocated to the local governmental subdivision for the preparation of an infrastructure assessment report as determined by the secretary. When siting a commercial facility, the secretary shall determine whether the local governmental subdivision should be compensated for any reasonable and necessary cost for preparation of the infrastructure report:

Application Fee x 0.05 = Siting Fee

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

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 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:724 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:288 (March 2001), LR 29:685 (May 2003), LR 29:2048 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009).

§5119. Calculation of Annual Maintenance Fees

A. - C. Table. ...

D. Administrative Cost Fee

Annual Maintenance Fee x 0.30 = Administrative Cost Fee

E. Land Disposal Prohibitions Fee. The land disposal prohibitions fee includes treatment, processing (including use, reuse, recycling), and/or disposal facility annual fee (not on storage facilities). This fee applies to facilities handling wastes subject to the land disposal prohibitions in LAC 33:V.Chapter 22.

On-Site	\$1,320
Off-Site Noncommercial	\$2,640
Reclaimer	\$3,300
Off-Site Commercial	\$6,600

F. Groundwater Protection Fee. (This fee applies only to sites with groundwater monitoring.) This fee shall be calculated in accordance with LAC 33:V.5139.

G. Incinerator and Boiler/Industrial Furnace Inspection and Monitoring Fee. This fee shall be calculated in accordance with LAC 33:V.5141.

H. Annual Landfill Inspection and Monitoring Fee. This fee shall be calculated in accordance with LAC 33:V.5143.

I. Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee. This fee shall be calculated in accordance with LAC 33:V.5145.

J. Formula to Apportion Fees

Annual Maintenance Fee = Fee per Site + Fee per Facility + Fee based on Volume + Administrative Cost Fee + Land Disposal Prohibitions Fee + Groundwater Protection Annual Fee + Incineration Inspection and Monitoring Fee + Boiler/Industrial Furnace Inspection and Monitoring Fee + Annual Landfill Inspection and Monitoring Fee + Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 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 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:684 (August 1990), LR 16:1057 (December 1990), LR 18:723 (July 1992), LR 18:1375 (December 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:685 (May 2003), LR 29:2049 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009).

§5127. Methods of Payment

A. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

B. Electronic Methods of Payment

1. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

2. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

C. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

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 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2180 (October 2009).

Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

Chapter 7. Settlement and Negotiations

§709. De Minimis Settlements

A. - C. ...

D. To attain the goal set forth in Subsection C of this Section, the de minimis settlement should ordinarily involve a payment to the Office of Management and Finance by the settling party or parties, rather than a commitment to perform work. Where a remedial action is being conducted in whole or in part by PRPs, it may be appropriate for the settling de minimis parties to deposit the amount paid in accordance with the de minimis settlement into a site-specific trust fund to be administered by a third party trustee and used for remedial action for that site.

E. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007), LR 35:2180 (October 2009).

Chapter 9. Voluntary Remediation

§917. Fees and Direct Cost Recovery

A. - B.3. ...

4. Methods of Payment

a. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

b. Electronic Methods of Payment

i. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

ii. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

c. Cash is not an acceptable form of payment.

5. - 5.d....

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:519 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2180 (October 2009).

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 15. Solid Waste Fees

§1505. Annual Monitoring and Maintenance Fee

A. - C. ...

D. Methods of Payment

1. All payments made by check, draft, or money order shall be made payable to the Department of Environmental

Quality, and mailed to the department at the address provided on the invoice.

2. Electronic Methods of Payment

a. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

3. Cash is not an acceptable form of payment.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

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 Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2051 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:2241 (December 2006), repromulgated LR 33:1108 (June 2007), amended LR 35:2180 (October 2009).

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 13. Louisiana Water Pollution Control Fee System Regulation

§1309. Fee System

A. - L.3.b. ...

M. Methods of Payment

1. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

2. Electronic Methods of Payment

a. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

3. Cash is not an acceptable form of payment.

N. - N.Table. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B), and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary,

Legal Affairs Division, LR 35:1493 (August 2009), LR 35:2181 (October 2009).

Chapter 15. Water Quality Certification Procedures
§1507. Procedures for Issuance of Water Quality Certification

A. - A.2.a.Table. ...

b. Payment shall accompany the application for certification. The department shall consider the application incomplete and initiation of the application review process will not begin until payment of the processing fee is received. Payment shall be by one of the methods listed in LAC 33:IX.1309.M.1-2.b and shall be nonrefundable.

A.3. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:496 (July 1984), amended by the Office of the Secretary, LR 22:345 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), LR 29:690 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2027 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007), LR 35:2181 (October 2009).

Part XI. Underground Storage Tanks

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§307. Fee Schedule

A. - B.1.Table. ...

2. Methods of Payment

a. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

b. Electronic Methods of Payment

i. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

ii. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

c. Cash is not an acceptable form of payment.

B.3. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, 2014, 2195, and 2195.3 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400 (December 1999), LR 29:690 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2181 (October 2009).

Part XV. Radiation Protection

Chapter 25. Fee Schedule

§2509. Methods of Payment

A. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

B. Electronic Methods of Payment

1. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

2. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

C. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2182 (October 2009).

Herman Robinson, CPM
Executive Counsel

0910#036

RULE

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

Clinical Laboratory Personnel, Licensure
and Certification; Fees (LAC 46:XLV.3529)

The Louisiana State Board of Medical Examiners (the "board"), pursuant to the authority vested in the board by R.S. 37:1270A, 37:1281 and 37:1311-1329, and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has amended its existing Rule prescribing the fees payable by all categories of clinical laboratory personnel for initial licensure or certification, annual renewal and temporary permits issued by the board, LAC 46:XLV, Subpart 2, Chapter 35, Subchapter C, Section 3529.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 35. Clinical Laboratory Personnel

**Subchapter C. Procedures for Obtaining Licensure or
Certification**

§3529. Fees

A. General Provisions. Except as provided in §3529.B, the fee for obtaining or renewing a license or certificate as provided in this Chapter shall be as follows.

- 1. clinical laboratory scientist (all categories) \$65
- 2. cytotechnologist \$65
- 3. laboratory assistant \$40

4. phlebotomist \$40

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(5), 37:1281 and R.S. 37:1311-1329.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1290 (November 1994), amended LR 35:2182 (October 2009).

Robert L. Marier, M.D.
Executive Director

0910#032

RULE

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

Inpatient Hospital Services—Non-Rural, Non-State
Hospitals—Reimbursement Rate Adjustment
(LAC 50:V.953, 955, and 959)

Editor's Note: Sections 953, 955, and 959 are being repromulgated to correct a citation error. This Rule was originally promulgated in the September 20, 2009 Louisiana Register on page 1896.

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.953, 955, and 959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - D. ...

E. Major Teaching Hospitals. Effective for dates of service on or after October 1, 2009, qualifying major teaching hospitals with current per diem rates that are less than 80 percent of the current peer group rate shall have their per diem rates adjusted to equal 80 percent of the current peer group rate.

F. Minor Teaching Hospitals. Effective for dates of service on or after October 1, 2009, qualifying minor teaching hospitals shall have their per diem rates adjusted to equal 103 percent of the current peer group rate.

G. Non-Teaching Hospitals

1. Effective for dates of service on or after October 1, 2009, qualifying non-teaching hospitals with less than 58 beds shall have their per diem rates adjusted to equal 103 percent of the current peer group rate.

2. Effective for dates of service on or after October 1, 2009, qualifying non-teaching hospitals with 58 through 138 beds shall have their per diem rates adjusted to equal 122 percent of the current peer group rate.

3. Effective for dates of service on or after October 1, 2009, qualifying non-teaching hospitals with more than 138 beds shall have their per diem rates adjusted to equal 103 percent of the current peer group rate.

H. Children's Hospitals. Effective for dates of service on or after October 1, 2009, qualifying children's specialty hospitals shall be classified according to the appropriate general peer group based on either their bed size or graduate medical education programs in place as of October 1, 2008. The per diem rates for these hospitals shall be adjusted according to the payment rate criteria established for each peer group.

I. Neonatal Intensive Care Units (NICU)

1. Effective for dates of service on or after October 1, 2009, qualifying NICU Level III services with current per diem rates that are less than the NICU Level III specialty peer group rate shall have their per diem rates adjusted to equal 100 percent of the specialty group rate.

2. Effective for dates of service on or after October 1, 2009, qualifying NICU Level III regional services with current per diem rates that are less than 85 percent of the NICU Level III regional specialty group rate shall have their per diem rates adjusted to equal 85 percent of the specialty peer group rate.

J. Pediatric Intensive Care Unit (PICU)

1. Effective for dates of service on or after October 1, 2009, qualifying PICU Level I services with current per diem rates that are less than 77 percent of the PICU Level I specialty group rate shall have their per diem rates adjusted to equal 77 percent of the specialty peer group rate.

2. Effective for dates of service on or after October 1, 2009, qualifying PICU Level II services with current per diem rates that are less than the PICU Level II specialty group rate shall have their per diem rates adjusted to equal 100 percent of the specialty peer group rate.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1896 (September 2009), repromulgated LR 35:2182 (October 2009).

§955. Long Term Hospitals

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

C. Effective for dates of service on or after October 1, 2009, the prospective peer group per diem rate paid to qualifying long term acute care hospitals for inpatient services other than psychiatric treatment shall be increased by 3 percent of the rate on file.

AUTHORITY NOTE: Promulgated in 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 35:1896 (September 2009), repromulgated LR 35:2183 (October 2009).

§959. Inpatient Psychiatric Hospital Services

A. - B.1. ...

C. Effective for dates of service on or after October 1, 2009, the prospective per diem rate paid to private free-standing psychiatric hospitals and distinct part psychiatric units shall be increased by 3 percent of the rate on file.

AUTHORITY NOTE: Promulgated in 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 35:1896 (September 2009), repromulgated LR 35:2183 (October 2009).

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.

Alan Levine
Secretary

0910#068

RULE

**Department of Natural Resources
Office of the Secretary**

**Beneficial Use of Dredged Material
(LAC 43:I.700 and 723)**

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Section 213.30 of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, with the general authority of the Department of Natural Resources and the secretary thereof under Chapter 8 of Title 36 and Subpart C of Part 2 of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, including R.S. 36:351 et seq., and with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary hereby promulgates a new Rule to govern the Beneficial Use of Dredged Material, LAC 43:I.700 and 723.

The Rule governs the administration of the Beneficial Use of Dredged Material and set forth the standards and procedures for the secretary of the Department of Natural Resources to implement the requirements and authorizations under R.S. 49:213.30 for beneficially using material dredged pursuant to a use or activity for which a coastal use permit is required. The Rule will permit payment into a trust fund in-lieu of performing such beneficial use directly, with any such in-lieu payment to be used for other coastal restoration type purposes. Any such payments shall be remitted voluntarily and at the election of the applicant.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter C. Coastal Use Permits and Mitigation

§700. Definitions

Beneficial Use of Dredged Material—use of dredged material excavated and not replaced pursuant to a proposed activity for which a coastal use permit is required, so as to protect, create, or enhance wetlands; use of material dredged pursuant to an alternative dredging activity to protect, create, or enhance wetlands, so as to offset failure to use the dredged material from the proposed activity to protect, create, or enhance wetlands; or contribution to the Coastal Resources Trust Fund to replace, substitute, enhance, or protect ecological values, so as to offset failure to use the dredged material from the proposed activity to protect, create, or enhance wetlands.

Beneficial Use of Dredged Material Plan—(BUDM Plan) a document submitted to the secretary for approval as part of an application, specifying the beneficial use of dredged material proposed by the applicant.

Dredge or Dredging—(verb) the removal by excavation or any other means of native material, including soil, sand, mud, clay, and semisolid sediment, regardless of whether the material supports or is supporting vegetation, from any lands or water bottoms in the coastal zone of Louisiana.

Dredged Material—soil, mud, and/or other sediment that will be dredged pursuant to a proposed activity for which a coastal use permit or other authorization is required.

Master Plan—Integrated Ecosystem Restoration and Hurricane Protection: Louisiana's Comprehensive Master Plan for a Sustainable Coast, promulgated by the Coastal Protection and Restoration Authority pursuant to R.S. 49:213.1, et seq., as in effect on the date of submission of a complete application.

AUTHORITY NOTES: Promulgated in accordance with R.S. 49:214.21 -49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended Department of Natural Resources, Office of the Secretary, LR 35:2183 (October 2009).

§723. Rules and Procedure for Coastal Use Permits

A. - G.4.b. ...

H. Beneficial Use of Dredged Material

1. Requirement for Beneficial Use

a.i. An application for a coastal use permit or a general permit authorization for an individual activity that involves 25,000 cubic yards or more of dredging shall include a BUDM Plan. The application is incomplete until a BUDM Plan is submitted. The permit/authorization shall be conditioned upon compliance with the BUDM Plan approved by the secretary.

ii. Beneficial use is required only when the primary purpose of the proposed dredging is to facilitate the movement or mooring of vessels.

b. The proposed BUDM Plan shall set forth a plan for the beneficial use of dredged material, in accordance with the provisions of this Section. The applicant may meet the requirements of this Section through the following options or a combination thereof:

i. implementing a project for the beneficial use of the dredged material;

ii. providing for beneficial use of the dredged material on an existing coastal restoration project;

iii. conducting an alternative dredging activity whereby an equivalent volume of material is dredged at another location and put to a beneficial use; and/or

iv. making a contribution to the Coastal Resources Trust Fund.

c. The secretary may disallow conducting an alternative dredging activity or making a contribution to the Coastal Resources Trust Fund as options to meet the requirements of this Section if he finds that such activity or contribution would not replace, substitute, enhance, or

protect ecological values sufficiently to offset failure to use the dredged material.

2. Exceptions

a. A BUDM Plan is unnecessary under the following circumstances:

i. To the extent that dredged material will be replaced at the conclusion of the proposed activity, or in the case of a continuing activity, within a reasonable time after initiation of the proposed activity, as determined by the secretary;

ii. To the extent that the proposed activity is excavation of material for construction of a coastal protection project included within the Master Plan or associated Annual Plan(s); or

iii. As specifically approved by the secretary in writing, under exceptional circumstances and if the secretary expressly finds that beneficial use of dredged material is unnecessary to protect, create, or enhance wetlands.

b. If the applicant asserts an exception pursuant to this paragraph 2, the applicant shall submit a statement with the application setting forth the exception and the basis for its application to the proposed activity. If the exception is pursuant to paragraph 2.a.iii, the written approval of the secretary shall be attached.

3. General Provisions

a. Upon grant of a coastal use permit, beneficial use of dredged material in accordance with the BUDM Plan approved by the secretary shall be deemed compliance with § 707(B) of this Chapter. However, all other requirements of this Chapter, including the guidelines set forth in §§ 701-719, remain applicable.

b. The BUDM Plan shall be treated as part of the coastal use permit application in all respects and shall be subject to all requirements of the application process, including distribution, public notice of the application, public comment, consideration of public comment, public hearings, provision of additional information regarding incomplete or inaccurate applications, review, permit decision, and public notice of a permit decision.

c. In reviewing the BUDM Plan, the secretary shall consider:

i. The recommendations and comments of any state or federal agencies that demonstrated an interest, during application processing, in participating in the approval or disapproval of the BUDM Plan. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during application processing, an interest in participating in approval or disapproval of the BUDM Plan; and

ii. The manner and extent to which a project for dredged material is proposed to be used, a proposed use for material dredged pursuant to an alternative dredging activity, and/or use of a proposed in-lieu contribution will protect, create, or enhance wetlands, including by having an anticipated positive impact on the ecological value of the Louisiana Coastal Zone and/or the hydrologic basin. The proposed project or use shall be designed to provide for the long-term viability of the coastal ecosystem.

d. The applicant shall obtain and provide to the secretary together with the BUDM Plan all permits or permissions required by any other state, federal, or local

agency under any other law, regulation, or ordinance for any project or use proposed in the plan. In particular, if the project or use involves placement of material on state water bottoms, the applicant shall obtain or submit a copy of an approved reclamation permit from the State Land Office in accordance with their regulations and requirements. The secretary may accept the BUDM Plan and grant the permit subject to issuance of permits or permissions by other permitting bodies within a time period determined by the secretary.

e. The applicant shall attach to the BUDM Plan a written affirmation that the applicant has made all reasonable efforts to determine and identify persons who may be affected by the proposed project or use, and has obtained the express consent to the proposed project or use or explaining the nature of any objection and providing contact information for the objecting person.

f. If the proposed project or use involves placement on private property of material dredged from state-owned property, the applicant shall obtain and provide to the secretary together with the BUDM Plan an exemption or waiver from the royalty payment required by state law; or shall make the appropriate payment upon approval of the plan and execution of the project, and submit documentation of payment to the secretary within 15 days of making the payment.

g. The applicant shall attach to the BUDM Plan a written affirmation that the applicant is solely responsible for, and agrees to defend, indemnify, and hold harmless all state and local agencies, officers, and employees from, any responsibility, liability, claim, judgment, or regulatory order or direction arising from the approved BUDM Plan or any activity undertaken by the applicant or its employees, agents, or contractors pursuant to or in relation to the approved BUDM Plan.

4. Implementation of Project for Beneficial Use of Dredged Material

a. An applicant electing to implement a project for the beneficial use of the dredged material shall submit a BUDM Plan proposing the implementation of a specific project for which the dredged material will be used in a manner to protect, create, or enhance wetlands.

b. The BUDM Plan shall include:

i. statement of the nature and location of the proposed project;

ii. statement of the manner in which the material is proposed to be used in the project, including the type of equipment proposed to be used;

iii. statement of the manner and extent to which the project is expected or intended to protect, create, or enhance wetlands;

iv. statement of the manner and extent to which the project may or will create impacts that may require mitigation;

v. statement of the estimated time schedule for the project;

vi. statement of the estimated cost of the project;

vii. design and construction plan for the project; and

viii. any other information or statements required by the secretary.

5. Providing for Use on Existing Coastal Restoration Project

a. An applicant electing to provide for use of the dredged material on an existing coastal restoration project shall submit a BUDM Plan proposing a specific project for which the dredged material will be used in a manner to protect, create, or enhance wetlands. The project may be one being implemented pursuant to the Master Plan, or a specific project to be conducted by a public or private entity.

b. The BUDM Plan shall include:

i. statement of the nature and location of the project for which the dredged material is proposed to be used;

ii. statement of the means by which the material is proposed to be stored pending use and transported to storage and to the project, including the type of equipment proposed to be used;

iii. statement of the manner in which the material is proposed to be used in the project, including the type of equipment proposed to be used;

iv. statement of the estimated time schedule for use of the material for the project;

v. statement whether the project is included in the Master Plan or associated Annual Plan(s), page reference if so, and specific citation of the project by name, number, and/or other appropriate identifying information;

vi. statement of the manner in which the project is expected or intended to protect, create, or enhance wetlands;

vii. statement of the manner in which use of the dredged material for the project is expected or intended to protect, create, or enhance wetlands;

viii. statement of the manner and extent to which use of the material and transportation of the material to the project may or will create impacts that may require mitigation;

ix. contact information for project managers for each state, federal, and/or local agency and each private entity involved in the project;

x. written agreement signed by the agency or person charged with construction of the project, and by the prime contractor responsible for constructing the project, if applicable, agreeing to the proposed use of the dredged material for the project in the proposed time frame, and setting forth the authority of the persons signing the agreement to enter such an agreement;

xi. estimated cost to the applicant for transporting or otherwise processing the material for the proposed project; and

xii. any other information or statements required by the secretary.

6. Conducting an Alternative Dredging Activity

a. An applicant electing to conduct an alternative dredging activity and beneficially use material dredged pursuant to that activity shall submit a BUDM Plan proposing a specific alternative dredging activity, a specific use of material to be dredged pursuant to that activity, and disposition of the dredged material from the proposed activity.

i. The volume of material dredged and used pursuant to the alternative activity shall be equal to or

greater than the volume of dredged material from the proposed activity.

ii. The material dredged pursuant to the alternative activity may be used for an independent activity not associated with a project, a project being implemented pursuant to the Master Plan, or a specific project to be conducted by a public or private entity.

b. The BUDM Plan shall include:

i. statement of the nature and location of the alternative dredging activity;

ii. statement of the means by which material dredged pursuant to the alternative activity is proposed to be stored pending use and transported to storage and to the site of use, including the type of equipment proposed to be used;

iii. statement of the nature and location of the proposed site of use of the material.

iv. statement of the manner in which the material is proposed to be used, including the type of equipment proposed to be used;

v. statement of the estimated time schedule for the proposed use of the material;

vi. statement whether the proposed use is for a project included in the master plan or associated annual plan(s), page reference if so, and specific citation of the project by name, number, and/or other appropriate identifying information;

vii. statement of the manner in which the proposed use is expected or intended to protect, create, or enhance wetlands;

viii. statement of the manner and extent to which the proposed alternative dredging activity, use of the material, and transportation of the material to the site of use may or will create impacts that may require mitigation;

ix. if the proposed dredging activity or use involves an agency or person other than the applicant, contact information for project managers for each state, federal, and/or local agency and each private entity involved in the proposed dredging activity and use;

x. if the proposed use is for a project or other activity being conducted by an agency or person other than the applicant, written agreement signed by the agency or person charged with construction of the project, and by the prime contractor responsible for constructing the project, if applicable, agreeing to the proposed use of the material for the project in the proposed time frame, and setting forth the authority of the persons signing the agreement to enter such an agreement;

xi. statement of the estimated cost to the applicant for the proposed alternative dredging activity, use of the material dredged pursuant to that activity, and transportation or other processing of the material for the proposed use;

xii. design and construction plan for the proposed alternative dredging activity and for the proposed use of the material dredged pursuant thereto;

xiii. statement of the proposed manner of disposition of the dredged material from the proposed activity; and

xiv. any other information or statements required by the secretary.

7. In-Lieu Contribution

a. In lieu of constructing a project, providing for use on another project, or conducting an alternative dredging

activity for the beneficial use of dredged material, the applicant may elect to make a contribution in accordance with this section. An applicant electing to make an in-lieu contribution shall submit a BUDM Plan proposing the contribution in accordance with this section.

b. The amount of the contribution shall be the greater of \$1 or 1.5% of the average of the 12 monthly postings by the United States Department of Energy, Energy Information Administration of the Cushing, Oklahoma West Texas Intermediate Spot Price FOB (dollars per barrel) for crude oil for the fiscal year (July – June) immediately preceding the date of submission of a complete application, per cubic yard of dredged material that will not be replaced at the conclusion of the proposed activity, or within a reasonable time after initiation of the proposed activity in the case of a continuing activity. However, the amount of the contribution shall be limited to one-third of the cost of the dredging component of the proposed activity, unless the dredging is to be accomplished by “prop washing” or any variation thereof, in which case the amount of the contribution shall be limited to one-third of the cost to perform traditional excavation-type dredging of the same volume of material.

c. Prior to issuance of the final coastal use permit or other authorization, an applicant electing to make an in-lieu contribution shall remit payment to the department payable to Louisiana Department of Natural Resources.

d. For a continuing activity for which a coastal use permit or other authorization has been issued and the applicant has elected to make an in-lieu contribution, the contribution shall be paid at the time each individual dredging incident authorized by the permit is approved. The applicant shall remit payment to the department payable to Louisiana Department of Natural Resources.

e. In-lieu contributions are designed to provide a cost-effective mechanism for permit applicants to meet the performance standards established by R.S. 49:214.30(H) without sacrificing safeguards to the coastal ecosystem and opportunities for multiple uses of the coastal zone. In accordance therewith, such contributions shall be paid into the Coastal Resources Trust Fund as provided by R.S. 49:214.40.

i. The department shall keep records clearly showing all deposits to, payments from, and the current net amount in the Coastal Resources Trust Fund attributable to in-lieu contributions.

ii. The secretary may use the funds in the Coastal Resources Trust Fund attributable to in-lieu contributions for the following purposes:

(a). creation of long term management strategy disposal areas for beneficial use of dredged material;

(b). creation of vegetated wetlands, including coastal forests;

(c). creation or enhancement of barrier islands, barrier shorelines, or associated dunes;

(d). structural or non-structural shoreline modifications to hydrology to achieve the creation, enhancement or protection of coastal wetlands, barrier islands, beaches or dune assemblages; or

(e). any other purpose that the secretary determines will result in creation, enhancement, or protection of coastal wetlands.

iii. The secretary shall adopt a method whereby the success of each project undertaken with these funds is determined and monitored.

iv. Funds in the Coastal Resources Trust Fund attributable to in-lieu contributions may not be used for administrative purposes.

8. Non-Compliance.

a. Compliance with the requirements of this section is a condition of approval of the application and of any permit issued to the applicant. If an application is approved and the applicant fails to comply with applicable provisions of this section, the applicant shall be deemed to be in violation of the permit and subject to all applicable penalties.

b. If an application is approved and in the applicant does not comply with the approved BUDM Plan, the applicant shall be deemed to be in violation of the permit and subject to all applicable penalties.

9. Miscellaneous

a. The secretary shall determine whether to cumulate activities sought to be permitted through multiple applications, for purposes of determining whether the 25,000-cubic-yard threshold is exceeded. This determination shall be made on the basis of whether the activities would normally be considered to be parts of a single economic activity and/or whether the applicant has sought to evade the beneficial use requirement.

b. The secretary may approve the accrual of mitigation credits resulting from the beneficial use of dredged material. Any mechanism adopted by the secretary for this purpose shall conform to state mitigation regulations in Subpart C of this Part. The secretary shall also make every reasonable effort to have the mechanism adopted for this purpose conform to federal mitigation regulations of the U.S. Army Corps of Engineers as set forth at 33 CFR Parts 320-330 and the U.S. Environmental Protection Agency as set forth at 40 CFR Part 120.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, L.R. 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended Department of Natural Resources, Office of the Secretary, LR 35:2184 (October 2009).

Lois E. Buatt
Assistant Secretary

0910#015

RULE

**Department of Natural Resources
Office of the Secretary**

**Coastal Use Permit Extensions
(LAC 43:I.723)**

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Section 213 of Chapter 2 of Title 49 of the Louisiana Revised Statute of

1950, with the general authority of the Department of Natural Resources under Chapter 8 of Title 36 of the Louisiana Revised Statutes of 1950 and, Coastal Resources Management Act of 1978, La. R.S. 49:214.21 and with the Administrative Procedure Act, La. R.S. 49:950 et seq., the secretary hereby amends the rules that govern the extension of Coastal Use Permits, LAC 43:I.723.

The Rule amends the Coastal Use Permit Extension rules with regard to the process for requesting an extension of the term to initiate a coastal use permit and the term to complete the use of a coastal use permit. The Rule amends the existing provision of LAC 43:I. Chapter 7, Subchapter C which prohibits a coastal use permit recipient from requesting an extension of the term to complete use of a coastal use permit and authorizes a request to extend the term to complete use pursuant to the same guidelines set forth for requesting an extension of the term to initiate a coastal use permit. The Rule will authorize the secretary to issue an administrative order to extend the terms to initiate or complete use of a coastal use permit up to thirty days, without public notice of the request, a public comment period, or further formality upon a showing of good cause. The Rule will also authorize the Secretary to modify, suspend or extend the terms of all or an individual coastal use permit when an executive order or proclamation has been issued declaring an emergency.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

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

C. Permit Application, Issuance, and Denial

1. - 8.c. ...

9. Conditions of Permit

a. - c.ii ...

d. The term of issuance of permits shall be as follows.

i. The term to initiate a coastal use permit shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance.

ii. Repealed.

D. Modification, Suspension or Revocation of Permits

1. - 4. ...

5. Extension

a. The term to initiate a coastal use permit or the term to complete the use of a coastal use permit may be extended, notwithstanding the provision of Subparagraph j below, as follows:

i. The term to initiate a coastal use permit may be extended for an additional 2 years beyond the term set forth in Subsection C.9.d.

ii. The term to complete the use may be extended for up to a total of an additional 3 years beyond the term for completion of use set forth in Subsection C.9.d.

iii. A grant of an extension request for the term to initiate a coastal use permit does not automatically extend the term to complete use of a coastal use permit. Requests to extend the term to initiate a coastal use permit and complete use of the same permit may be submitted separately or together in accordance with Subparagraph f. Each request

shall include the appropriate fee consistent with schedule of fees set forth in Subparagraphs f-g. Each request shall be considered separately consistent with Subparagraph a.iv.

iv. The secretary may, in his discretion, upon a showing of good cause and upon receipt of a complete request for an extension, grant a permittee an extension up to 30 days beyond the last day of the term to initiate work on a use pursuant to a permit, or 30 days beyond the last day of the term to complete the permitted use without public notice of the request, a public comment period, or further formality, except that notice required in Subparagraph i below, of the secretary's decision to grant or deny the extension shall be made.

b. The secretary shall review extension requests subject to this Part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

c. If the secretary determines that extension may be considered, the Permits, Mitigation and Support Division shall cause to be issued for public comment, for a period of 10 days, a notice containing a brief summary of the original permit in accordance with Subparagraph i below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

d. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. A nonrefundable extension request fee in the amount of \$80 shall be included with such a request, and the request must be received by the Permits, Mitigation and Support Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall be eligible for consideration for extension, however a permittee who fails to make a timely request for an extension shall not engage in any activity requiring a coastal use permit past the original permit expiration date until an extension of the lapsed permit or a new permit is granted.

g. If the appropriate fees are not included along with the request for an extension to initiate a coastal use permit and/or to complete the use, the request will be considered incomplete, and returned to the permittee.

h. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

i. The Permits, Mitigation and Support Division shall issue notice of the extension request to all members of the joint public notice mailing list, and shall publish notice that the extension request has been granted or denied in the bi-weekly status report that is published in the state journal as well as mailed to joint public notice mailing recipients.

j. The secretary may issue administrative orders that modify, suspend, or extend the terms of all coastal use permits, or the secretary may order or delegate the authority to order modification, suspension, or extension of an individual permit when, in either case, the permits are in an area where an executive order or proclamation is issued declaring an emergency, and the need for the modification, suspension, or extension is related to the emergency.

E. - G.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21- 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, L.R. 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), LR 35:2187 (October 2009).

Robert D. Harper
Undersecretary

0910#014

RULE

Department of Public Safety and Corrections Corrections Services

Americans with Disabilities Act
(LAC 22:I.308)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has promulgated the contents of Section 308 Americans with Disabilities Act.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT
Part I. Corrections

Chapter 3. Adult Services

§308. Americans with Disabilities Act

A. Purpose. To establish the secretary's commitment to compliance with the Americans with Disabilities Act and related legislation as it pertains to services for offenders and to establish formal procedures regarding reasonable accommodations for those offenders.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole, Director of Prison Enterprises and offenders who have a disability. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to provide offenders with access to housing, programs and services regardless of their disability to the extent possible within the context of the department's fundamental mission to preserve the safety of the public, staff and offenders and consistent with other classification variables that may affect custody, housing and program assignments. Equal access to programs, services and activities will be provided to all offenders based upon their classification.

1. Access to housing, programs and services includes the initiation and provision of reasonable accommodations including, but not limited to facility modifications, assistive equipment and devices and interpreter services. However, such accommodation should not constitute a danger to the offender or others and should not create undue hardship on the department or its employees.

2. Staff who are aware of or have reason to believe that an offender has a disability for which he may need accommodation are required to advise the unit ADA coordinator, who will evaluate the circumstances to determine if auxiliary aids and services and reasonable accommodations are required.

D. Definitions

Americans with Disabilities Act (ADA)—a comprehensive federal law which requires the state to provide equal access for people with disabilities to programs, services and activities of the department.

Auxiliary Aids and Services—external aids used to assist people who are hearing-impaired and may include qualified sign language or oral interpreters, written materials, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD/TTY), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Disability—a physical or mental impairment that substantially limits one or more of the major life activities of an individual, including a record of such impairment or being regarded as having such impairment.

Effective Communication—communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing

appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs or activities of the department.

Major Life Activity—walking, seeing, hearing, breathing, caring for one's self, sitting, standing, lifting, learning, thinking, working and reproduction. This list is illustrative only. The impairment to a major live activity must be long term.

Offender—anyone committed to the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole.

Qualified Interpreter—an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

a. An employee who signs "pretty well" or has only a rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter pursuant to this regulation. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone else signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter. A departmental employee should not be allowed to interpret if his presence poses a conflict of interest or raises confidentiality and privacy concerns. On occasion, an offender may possess the skill level necessary to provide interpreting services; however, the impartially concerns remain, and in many, if not most, situations, offender interpreters should not be used due to confidentiality, privacy and security reasons.

Reasonable Accommodation—a modification or adjustment to a job, service, program or activity, etc that enables a qualified individual with a disability to have an equal opportunity for participation.

Requestor—a person who requests an accommodation for a disability.

E. Procedures

1. Initiation of Requests for Accommodation

a. A qualified individual with a known disability of a long term nature should be accommodated where reasonably possible. A request for accommodation may be filed orally or in writing.

b. An offender with a disability may be able to function in the unit without any accommodation other than that which may already have been provided. If not, the offender may request accommodation.

c. The ADA does not require that a request for accommodation be provided in any particular manner; therefore, the department is charged with having knowledge, or deemed with having knowledge, of the request regardless of the form of the request.

d. The department has in place a formal grievance mechanism through which an offender may seek formal review of a complaint relative to any request for reasonable accommodation.

e. An offender may submit a written request for accommodation through the ARP process or staff shall direct or assist the offender to write his request if the request is made verbally.

f. The ADA block on the ARP form shall be checked by the ARP screening officer and directed to the unit ADA coordinator.

2. Accommodation Review Process

a. Upon receipt of a request for accommodation, the unit ADA coordinator shall seek to determine the following:

i. if the medical condition is of a temporary or long-term nature;

ii. if additional medical information is needed. At this point of the process, the unit ADA coordinator may request that the unit medical director determine the following:

(a). what specific symptoms and functional limitations are creating barriers;

(b). if the limitations are predictable, subject to change, stable or progressive;

(c) how the limitations impact the offender's ability to fully participate in the activities and services provided;

iii. whether the condition complained of impairs a major life activity.

b. Once the initial information is gathered, a dialogue between the requestor and the unit ADA coordinator regarding resolution of the problem shall begin.

NOTE: It may take only a change in duty status to resolve the problem.

c. An exception to the need to make an accommodation includes, but is not limited to, the following:

i. not a qualified disability;

ii. threat to one's self or others. Considerations include:

(a). duration of the risk involved;

(b). nature and severity of the potential harm;

(c). likelihood the potential harm will occur;

(d). imminence of the potential harm;

(e). availability of any reasonable accommodation that might reduce or eliminate the risk;

iii. undue hardship. The decision to use this exception can only be made by the headquarters ADA coordinator after consultation with appropriate personnel. A written description of the problem with the requested accommodation and the difficulty anticipated by the unit should be sent to the headquarters ADA coordinator. Considerations include the following:

(a). scope of the accommodation;

(b). cost of the accommodation;

(c). budget of the department;

(d). longevity of the accommodation;

iv. alteration would fundamentally change the nature of the service, program or activity.

3. Decision

a. Consideration should be given on a case-by-case basis.

b. Once the decision to accommodate or not is made, the requestor must be informed in writing of the decision of whether or not an accommodation will be made, the reason for the decision and the accommodation to be made, if applicable, including any specific details concerning the accommodation. This decision shall be conveyed through the ARP First Step Process. The requestor shall also be informed of the right to appeal the decision through the ARP process.

i. For each decision, a copy of the packet of information containing the decision, all information used to reach a decision and all attempts to resolve the request shall be forwarded to the headquarters ADA coordinator. The unit ADA coordinator shall ensure that all requests for accommodation are properly and timely entered into the department's ADA database.

4. Appeal

a. The offender has the right to appeal to the second step in accordance with the ARP process.

b. The ARP response shall be issued in conjunction with the headquarters ADA coordinator and shall contain the relevant issues raised in Subparagraphs E.2.a, b and c.

5. Recordkeeping

a. The Headquarters ADA coordinator shall maintain records of all requests for accommodation made throughout the department.

b. To ensure uniform and consistent compliance with the provisions of this regulation, the headquarters ADA coordinator shall maintain and track statistics concerning all requests for accommodation from offenders and the nature and outcome of the accommodations requested.

c. If a pattern becomes apparent following review of the statistics, the headquarters ADA coordinator shall seek to remedy and/or correct any problems noted and report same to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, amended LR 35:2189 (October 2009).

James M. Le Blanc
Secretary

0910#023

RULE

Department of Public Safety and Corrections Corrections Services

Effective Communication with the Hearing Impaired (LAC 22:I.312)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has promulgated the contents of §312, Effective Communication with the Hearing Impaired.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§312. Effective Communication with the Hearing Impaired

A. Purpose. To establish procedures to provide auxiliary aids and services whenever necessary to ensure effective communication with qualified individuals with disabilities.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole, Director of

Prison Enterprises, offenders, employees and visitors who are hearing-impaired. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to ensure that communication with offenders, employees and visitors with disabilities is to the same extent as communicating with others. The department shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity conducted by the department where the auxiliary aids or services does not constitute an undue administrative and financial burden or fundamentally alter the service, program, or activity. Any male offender whose hearing cannot be restored to a "within normal limits" medical level with an auxiliary aid will be housed at either the Louisiana State Penitentiary (LSP) or Rayburn Correctional Center (RCC). Any female offender whose hearing cannot be restored to a "within normal limits" medical level with an auxiliary aid will be housed at the Louisiana Correctional Institute for Women (LCIW.)

D. Definitions

Americans with Disabilities Act (ADA)—a comprehensive federal law which requires the state to provide equal access for people with disabilities to services, programs, and activities of the department.

Auxiliary Aids and Services (AAS)—external aids used to assist people who are hearing-impaired and may include qualified sign language or oral interpreters, written materials, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD/TTY), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Departmental Personnel—for the purpose of this regulation, this shall include, but not be limited to, nurses, physicians, social workers, therapists, admitting personnel, security staff, probation and parole officers and any other administrative staff who have or are likely to have direct contact with offenders and/or visitors.

Disability—a physical or mental impairment that substantially limits one or more of the major life activities of an individual, including a record of such impairment or being regarded as having such impairment.

Effective Communication—communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs and activities of the department.

Major Life Activity—walking, seeing, hearing, breathing, caring for one's self, sitting, standing, lifting, learning, thinking, working and reproduction. This list is illustrative only. The impairment to a major life activity must be long term.

Offender—anyone committed to the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole.

Qualified Interpreter—an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

NOTE: An employee who signs "pretty well" or has only a rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter pursuant to this regulation. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone else signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter. A departmental employee should not be allowed to interpret if his presence poses a conflict of interest or raises confidentiality and privacy concerns. On occasion, an offender may possess the skill level necessary to provide interpreting services; however, the impartiality concerns remain, and in many-if not most-situations, offender interpreters should not be used due to confidentiality, privacy and security reasons.

Reasonable Accommodation—a modification or adjustment to a job, service, program or activity, etc. that enables a qualified individual with a disability to have an equal opportunity for participation.

Requestor—a person who requests an accommodation for a disability.

TTY/TDD—a device that is used with a telephone or computer that has telephone text capability to communicate (by typing and reading communication) with persons who are deaf or hearing-impaired.

Visitor—for the purpose of this regulation, includes any non-departmental employee who is authorized to be on institutional grounds. i.e., volunteers, contractors, official guests, etc.

E. Procedures

1. Establishment of Auxiliary Aids and Services (AAS) Program. The department shall design and institute a program to provide auxiliary aids and services, schedule, announce and promote all training required, and draft, provide and maintain all reports as required by this regulation.

2. Designation of an official or office responsible for AAS.

a. Each unit ADA coordinator will be responsible for the AAS Program and shall maintain all necessary information about access to and the operation of the program.

b. LSP, RCC and LCIW unit ADA coordinators shall maintain a combination voice, TDD/TTY telephone line or dedicated TDD/TTY telephone line and shall publicize the purpose and telephone number broadly within the unit and to the public.

c. Each unit ADA coordinator shall provide appropriate assistance regarding immediate access to, and proper use of, the appropriate auxiliary aids and services available. It is the responsibility of the unit ADA coordinators to know where the appropriate auxiliary aids are stored, how to obtain services and how to operate them and shall facilitate maintenance, repair, replacement and distribution.

d. Each unit ADA coordinator shall maintain a recording system for inquiries regarding the provision of auxiliary aids and services and the response.

3. Provision of Appropriate Auxiliary Aids and Services

a. The department shall provide to offenders, employees and visitors who are deaf or hearing-impaired an appropriate auxiliary aid or service that may be necessary for effective communication as soon as practicable after determining that the aid or service is necessary.

b. The determination of which appropriate auxiliary aids and services are necessary and the timing, duration and frequency with which they will be provided shall be made by unit personnel, who are otherwise primarily responsible for coordinating and/or providing offender services, in consultation with the person with a disability. When an auxiliary aid or service is required to ensure effective communication, the unit shall provide an opportunity for an individual with a disability to request the auxiliary aid or service of the requestor's choice and shall give consideration to the choice expressed, but shall have the final decision regarding the accommodation to be provided.

c. The initial offender communication assessment shall be made at the time of the intake interview at a reception and diagnostic center or other appropriate classification center within 48 hours of arrival. Properly trained staff shall perform and document a communication assessment to determine the offender's level of effective communication. This assessment shall be conducted by an outside provider or departmental staff, barring any unusual or emergency condition within 10 weeks from the initial assessment. The written assessment shall be made a part of the offender's master prison record.

i. During the initial communication assessment, each offender shall be given a Request for Accommodation Form. This form shall also be made available to the current offender population. Offenders are free to reject or to fail to request auxiliary aids and services, but failure to use the designated form does not relieve the reception center/institution of its duty to assess the offender, nor to inform the offender of the availability of appropriate auxiliary aids and services. Refusal or failure by an offender to complete or return the Request for Accommodation shall not constitute a violation of the ADA or of the Resolution Agreement by the department.

ii. If the initial assessment reveals that an offender's hearing is below normal limits as defined by the Occupational Safety and Health Administration, a male offender shall be transferred to LSP for continuation and completion of the classification process.

d. Each unit shall conduct a minimum of a yearly assessment of each offender with hearing or speech disability regarding the provision of appropriate auxiliary aids and services. If an intervening problem or adjustment is required, the offender shall request a medical call-out. Each unit shall maintain appropriate documentation that reflects the ongoing assessments. The information shall be filed in the offender's medical record.

4. Nothing in this regulation shall require that an electronic device or piece of equipment used as an appropriate auxiliary aid be used when or where its use may be inconsistent with other departmental regulations or unit policies or when use may pose security concerns. (For example, closed-captioned televisions are provided consistently for offenders with hearing disabilities with the same duration and frequency as televisions are provided to

the other offenders classified in the same status. No offender will be provided a television if his status would not otherwise permit access.)

5. The department shall maintain an effective complaint resolution mechanism regarding the provision of auxiliary aids and services. Records shall be kept of all complaints filed and actions taken in response. All complaints shall be handled through each unit ADA coordinator and the grievance systems currently in effect. The warden designated to oversee the operation of the ADA Program at each institution or division shall conduct a meaningful review of this regulation on a semi-annual basis.

6. If an offender who is deaf or hearing-impaired does not request appropriate auxiliary aids or services, but departmental and/or unit personnel have reason to believe that the offender would benefit from appropriate auxiliary aids or services, the offender may be asked if the use of auxiliary aids would be beneficial and initiate the testing procedure without violating ADA.

F. Qualified Interpreters

1. The department shall provide qualified sign language or oral interpreters when necessary for effective communication with, or effective participation in, departmental programs and activities by employees, offenders and visitors who are deaf or hearing-impaired. In addition, the department shall offer qualified sign language interpreters to offenders who are deaf or hearing-impaired and whose primary means of communication is sign language and qualified oral interpreters to offenders who rely primarily on lip reading, as necessary, for effective communication.

a. The following are examples of circumstances when it may be necessary to provide interpreters:

- i. initial intake and classification processing;
- ii. regularly scheduled health care appointments and programs, such as medical, dental, visual, mental health and drug and alcohol recovery services;
- iii. emergency health care where having an interpreter would not present an undue burden (e.g., interpreter can arrive at the scene quickly);
- iv. treatment and other formal programming;
- v. educational classes and activities;
- vi. parole board hearings;
- vii. disciplinary board hearings;
- viii. criminal investigations (to the extent controlled by the department);
- ix. classification review interviews;
- x. grievance interviews;
- xi. religious services; and
- xii. formal internal investigations.

2. The department shall establish a contract with individual sign language interpreters or with interpretive agencies for hearing impaired offenders, employees or visitors who require this service, or shall provide other effective means to ensure that qualified interpreters or oral interpreters are provided within three hours of an unscheduled request and timely for scheduled requests. Additionally, as a back-up measure, the headquarters ADA coordinator shall maintain a list of all qualified sign language and oral interpreters (and their contact information) residing or working within a 50-mile radius of any unit

housing deaf or hearing-impaired offenders. The headquarters ADA coordinator shall provide this information to the unit ADA coordinators at LSP, RCC and LCIW.

NOTE: The department shall ensure by contract or other arrangements that all services, programs or activities provided or operated by contractors are in compliance with ADA. Contracts with those entities that fail or refuse to comply with ADA shall be subjected to formal termination proceedings.

3. Between the time an interpreter is requested and when an interpreter arrives, unit personnel shall continue to try to communicate with the person who is hearing-impaired to the same extent as they would communicate with a person without a hearing impairment, using all available methods of communication. However, in an emergency, seeking the services of an interpreter shall not mean that medical treatment will be delayed until the interpreter arrives. In addition, upon arrival of the interpreter, unit personnel shall review and confirm with the offender, employee or visitor all information received prior to the interpreter's arrival.

4. Offenders requesting auxiliary aids and/or services, after the initial assessment and which would require a medical evaluation, shall be charged the standard medical co-pay.

EXCEPTION: The offender may be assessed the total costs of replacement of an auxiliary aid if it is determined that replacement is a direct result of the offender's negligence/damage to property.

G. Hearing Aids and Batteries

1. Each unit shall purchase appropriate types of hearing aid batteries and keep them in stock in the medical supply room during the length of time an offender who wears a hearing aid is housed at that unit. Replacement hearing aid batteries shall be provided to offenders who request them on the first business day following receipt of the request. If the request is made on a weekend or holiday or a night after regular business hours, the replacement battery will be provided on the first standard business day following the request.

2. Each unit shall send offender hearing aids to a hearing aid repair company as soon as possible, but no later than 24 hours (excluding weekends and holidays) following a request for repair of the offender's hearing aid. The unit shall inform the offender in writing, as soon as possible, when his hearing aid was sent for repair and when it is expected to be returned by the repair company. The unit shall maintain written documentation of all hearing aid repairs, including detailed information regarding the vendor used, the date of the repair and the specific repairs performed. This information shall be submitted by each unit to the medical department at the Louisiana State Penitentiary quarterly for statistical compilation purposes.

H. Telephones

1. The department shall provide telecommunication devices for the deaf (TDDs/TTYs) for offenders who are deaf or hearing-impaired in a manner that ensures effective access to telephone services. In addition, the following is required so that those offenders who do hear will have access to TDDs/TTYs to communicate with family members or friends who are deaf or hearing-impaired.

a. Each unit shall make at least one TDD/TTY device available in each of the visiting areas where non-contact visits are conducted and the communication exchanged is accomplished over a telephone device. The unit can either permanently install the required TDD/TTY or

make available a sufficient number of portable TDDs/TTYs for these visits.

b. Each unit shall provide a TDD/TTY to all deaf or hearing-impaired offenders residing in housing areas to the extent that pay telephones are available to other offenders. In those situations where the unit provides portable TDDs/TTYs, the housing officers shall provide them upon the offender's request, absent emergency circumstances such as lockdown.

c. The department shall take the necessary steps to provide offenders, with toll-free access to "800" numbers for telephone relay services and TDD/TTY operators. These numbers will be posted near all offender telephones, with notice that they are toll-free numbers. The telephone calls to the TDD/TTY operator will be provided free of charge, but any charges incurred to the receiving party will be handled as a standard offender telephone call. Thus, the offender or the receiving party shall be responsible for any long distance charges accrued.

d. Due to the fact that telephone calls placed via a TDD/TTY take longer than telephone calls placed using standard voice telephone equipment, the unit shall allow offenders needing TDD/TTY assistance to have 30 minutes per telephone call, barring any unusual circumstances.

2. Each unit shall ensure that at least one and no less than 25 percent of all offender telephones are equipped with volume control mechanisms and appropriate signs are displayed indicating the phone is volume controlled.

3. Each unit shall ensure that no less than 25 percent of all of its offender telephones are hearing aid compatible in the general population.

4. Each unit shall maintain records of all offenders who have been medically evaluated for any type of hearing impairment, the results of such assessment, date of any reassessment, any transfer or discharge of offenders assessed with a hearing impairment, requests for accommodations including the date requested and the determination and the provision of auxiliary aids or services and the date(s) provided. This information shall be submitted by each unit to the medical department of the Louisiana State Penitentiary quarterly for statistical compilation purposes.

I. Visual and Tactile Alarms

1. Where there are audible emergency alarms in visiting areas, each unit shall add visual alarms when an individual who is deaf or hearing-impaired is anticipated to spend significant periods of time in these areas.

2. Each unit shall place visual emergency alarms in rooms where offenders who are deaf may reside alone or work alone to ensure that they will always be alerted when an emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply.

3. Where each unit has audible alarms in housing areas, the unit shall add visual signal devices, when necessary, to alert offenders who are deaf or hearing-impaired to announcements (e.g., roll call.)

J. Televisions

1. Each unit shall provide and maintain closed-captioned television decoders (or built-in decoder televisions) in television rooms to enable offenders who are

deaf or hearing-impaired to enjoy the same opportunity for television viewing as that afforded to other offenders.

K. Training

1. Annual training regarding this regulation shall be provided by the department to all employees through the regularly scheduled ADA Training Program.

2. The training program shall be sufficient in duration and content to instruct a reasonable number of personnel in access to the AAS Program, use of the program, and sensitivity to the needs of the deaf and hearing-impaired offender population. Such training shall include:

- a. topics relevant to the health care needs of deaf and hearing-impaired offenders, such as the various degrees of hearing impairment;
- b. language and cultural diversity in the deaf community;
- c. dispelling myths and misconceptions about persons who are deaf or hearing-impaired;
- d. identification of communication requirements of persons who are deaf or hearing-impaired;
- e. the unique needs and problems encountered by late-deafened individuals;
- f. psychological implications of hearing loss and its relationship to interaction with hearing health care professionals;
- g. types of auxiliary aids and services as required pursuant to this regulation;
- h. the proper use and role of qualified sign language interpreters;
- i. procedures and methods for accessing the AAS Program for providing interpreters;
- j. making and receiving calls through TDDs/TTYs and the Louisiana Relay or other relay service providers;
- k. third party resources which can provide additional information about people who are deaf or hearing-impaired; and
- l. the existence of the department's complaint resolution process.

L. Recordkeeping

1. The Headquarters ADA Coordinator shall maintain records of all requests for accommodation made throughout the department.

2. The headquarters ADA coordinator shall maintain and track statistics concerning all requests for accommodation from offenders, employees and visitors and the nature and outcome of the accommodations requested.

3. If a pattern becomes apparent following review of the statistics, the headquarters ADA coordinator shall seek to remedy and/or correct any problems noted and report same to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, amended LR 35:2190 (October 2009).

James M. LeBlanc
Secretary

0910#021

RULE

**Department of Public Safety and Corrections
Corrections Services**

Equal Employment Opportunity
(Includes Americans with Disabilities Act)
(LAC 22:I.201)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of Section 201 Equal Employment Opportunity.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 2. Personnel

**§201. Equal Employment Opportunity
(Includes Americans with Disabilities Act)**

A. Purpose. To establish the secretary's commitment to equal employment opportunities and to establish formal procedures regarding reasonable accommodation for all employees, applicants, candidates for employment (including qualified ex-offenders) and visitors.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole, Director of Prison Enterprises, employees, applicants, candidates for employment (including ex-offenders) and visitors. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy to assure equal opportunities to all employees, applicants, candidates for employment (including ex-offenders) and visitors without regard to race, religion, color, national origin, sex, disability or age.

1. Exceptions:

a. where age, sex or physical requirements constitute a bona fide occupational qualification necessary for proper and efficient operations;

b. where the implications of nepotism restrict such employment or employment opportunity; and

c. preferential hiring will be given to persons who actively served in the Iraqi/Afghanistan conflicts in accordance with Civil Service Rules.

2. Equal opportunities will be provided for employees in areas of compensation, benefits, promotion, recruitment, training and all other conditions of employment. Notices of equal employment opportunities will be posted in prominent accessible places at each employment location.

3. Equal access to programs, services and activities will be provided to all visitors. Advance notice of a requested accommodation shall be made during normal business hours to ensure availability at the time of the visit.

4. If any employee is made aware of or has reason to believe that a visitor to the unit is deaf or hard of hearing,

the employee is required to advise the person that appropriate auxiliary aids and services will be provided. The employee should then direct the visitor to the unit ADA Coordinator or designee. Likewise, such information must be forthcoming in response to any request for auxiliary aid or services.

D. Definitions

Age Discrimination in Employment Act (ADEA)—a federal law to protect individuals 40 years of age and over from arbitrary discrimination in employment practices, unless age is a bona fide occupational qualification. The state of Louisiana has passed similar legislation and the term ADEA will refer to both federal and state prohibitions against age discrimination in this regulation.

Americans with Disabilities Act (ADA)—a comprehensive federal law which requires the state to provide equal access for people with disabilities to programs, services and activities of the department, as well as to employment opportunities.

Applicant—a person who has applied for a job and whose qualification for such is unknown.

Auxiliary Aids and Services—external aids used to assist people who are hearing-impaired and may include qualified sign language or oral interpreters, written materials, telephone handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons (TDD/TTY), videotext displays or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

Candidate—a person who has successfully passed the required test and/or meets the Civil Service minimum qualifications for the job sought.

Disability—a physical or mental impairment that substantially limits one or more of the major life activities of an individual, including a record of such impairment or being regarded as having such impairment.

Effective Communication—communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs or activities of the department.

Equal Employment Opportunity (EEO)—the operation of a system of human resources administration which ensures an environment that will provide an equal opportunity for public employment to all segments of society based on individual merit and fitness of applicants without regard to race, color, religion, sex, age, national origin, political affiliation or disability (except where sex, age or physical requirements constitute a bona fide occupational qualification necessary to the proper and efficient operation of the department.)

a. The Equal Employment Opportunity Commission (EEOC) is the federal regulatory body for EEO related complaints and charges.

Essential Functions—basic job duties that an employee/applicant must be able to perform, with or without reasonable accommodation.

Ex-Offender—those offenders who are no longer in the physical custody of the DPS&C or no longer under the supervision of the Division of Probation and Parole.

Family and Medical Leave—leave for which an employee may be eligible under the provisions of the Family and Medical Leave Act of 1993.

Major Life Activity—walking, seeing, hearing, breathing, caring for one's self, sitting, standing, lifting, learning, thinking, working and reproduction. This list is illustrative only. The impairment to a major life activity must be long term.

Qualified Individual with a Disability—an individual with a disability (as previously defined herein) who can perform the essential functions of the job with or without reasonable accommodation.

Reasonable Accommodation—a modification or adjustment to a job, service, program or activity, etc., that enables a qualified individual with a disability to have an equal opportunity for participation.

Requestor—a person who requests an accommodation for a disability.

Seniority—a calculation of the number of years of service to the department and used in comparison to another employee's or applicant's number of years of service to the department. Seniority may be used as a factor in employment decisions but may never be used as a substitute for age discrimination.

Visitor—for the purpose of this regulation, includes any non-departmental employee who is authorized to be on institutional grounds. i.e., volunteers, contractors, official guests, etc.

E. Procedures

1. Coordination of ADA Matters

a. The secretary will establish and designate a Headquarters ADA Coordinator. This employee is charged with reviewing, recording and monitoring ADA matters for the department and will also advise and make recommendations to the secretary or designee regarding such matters as appropriate.

b. Each unit head will designate a primary unit ADA Coordinator to coordinate unit ADA matters. All units will prominently post the name and telephone number of the unit ADA Coordinator.

2. Initiation of Requests for Accommodation

a. A qualified requestor with a known disability of a long term nature should be accommodated where reasonably possible, providing the accommodation does not constitute a danger to the requestor or others and does not create undue hardship on the department or its employees.

NOTE: If a requestor is an employee, applicant or a candidate for employment, the requestor must be able to perform the essential functions of the job with the accommodation.

b. The ADA does not require that a request for accommodation be provided in any particular manner; therefore, the department is charged with having knowledge, or deemed with having knowledge, of the request regardless of the form of the request.

c. If an employee, applicant or candidate for employment informs anyone in his chain of command, Human Resources personnel or the unit ADA Coordinator

that he has difficulty performing his job duties or participating in a program or service due to a medical condition, the employee, applicant or candidate for employment is deemed to have made a request for accommodation.

d. If a visitor informs an employee that he cannot participate in the visiting process or any other program or service that the visitor is entitled to participate in, the visitor is deemed to have made a request for accommodation.

e. Once any request for accommodation has been received, either verbally or in writing, the person receiving the request should immediately relay the request to the unit ADA Coordinator or designee.

f. An employee, applicant, candidate for employment (including ex-offenders) or visitor may complete a Request for Accommodation Form. The requestor completing the form must forward it to the unit ADA Coordinator for processing.

3. Accommodation Review Process

a. Upon receipt of the completed Request for Accommodation Form, the unit ADA Coordinator shall seek to determine the following:

i. if the medical condition is of a temporary or long-term nature;

ii. if additional medical information is needed from the requestor's physician or through a second opinion. At this point of the process, the unit ADA Coordinator may inform the requestor that his doctor must complete an Essential Function Form to determine the following:

NOTE: The Index of Essential Job Functions contains the Essential Functions Form for each job category used by the Department. The Index is maintained in each unit Human Resources Office)

(a). what specific symptoms and functional limitations are creating barriers;

(b). if the limitations are predictable, subject to change, stable or progressive;

(c). how the limitations impact the requestor's ability to perform the job, and for visitors, how the limitations impact the requestor's ability to fully participate in the activities and services to which the requestor is entitled;

iii. the condition impairs a major life activity.

b. If questions remain, staff may contact the requestor's treating physician directly.

c. The unit ADA Coordinator shall ensure that a formal request is submitted on a Request for Accommodation Form and provide assistance as needed.

d. Once the initial information is gathered, a dialogue between the requestor and unit ADA Coordinator regarding resolution of the problem shall begin.

e. The discussion may include the following matters:

i. if the problem is of a temporary nature, use of FMLA or sick leave, Workman's Compensation or a temporary halt of some job duties may resolve the problem;

ii. if a second medical opinion is needed, this is to be performed at the department's cost with a physician of the department's choosing;

iii. if the medical condition is deemed to be a qualified disability, this decision shall be documented;

NOTE: Due to the nature of a disability, the disability may progress and require additional modifications at a later date)

iv. the goal is to reach a mutually acceptable accommodation, if possible. The secretary or designee shall make the final decision on what the actual accommodation will be.

f. An exception to the need to make an accommodation includes, but is not limited to the following:

i. not a qualified disability;

ii. threat to one's self or others. Considerations are as follows:

(a). duration of the risk involved;

(b). nature and severity of the potential harm;

(c). likelihood that potential harm will occur;

(d). imminence of the potential harm;

(e). availability of any reasonable accommodation that might reduce or eliminate the risk;

iii. undue hardship. The decision to use this exception may be made by the Headquarters ADA Coordinator only after consultation with the undersecretary. A written description of the problem with the requested accommodation and the difficulty anticipated by the unit should be sent to the Headquarters ADA Coordinator. Considerations are as follows:

(a). scope of the accommodation;

(b). cost of the accommodation;

(c). budget of the department;

(d). longevity of the accommodation.

iv. alteration would fundamentally change the nature of the program, service or activity.

4. Decision

a. Consideration should be given on a case-by-case basis.

b. The granting of leave can be an accommodation.

c. Once the decision to accommodate or not is made, the requestor shall be informed in writing of the decision of whether or not an accommodation will be made, the reason for the decision and the accommodation to be made, if applicable, including any specific details concerning the accommodation. The requestor must also be informed of the right to appeal the decision to the Headquarters ADA Coordinator.

i. For each decision, a copy of the packet of information containing the decision, all information used to reach the decision and all attempts to resolve the request shall be forwarded to the Headquarters ADA Coordinator. The unit ADA Coordinator shall ensure that all requests for accommodation are properly and timely entered into the department's ADA database.

d. The original of the packet of information concerning the request with the decision shall be maintained in a confidential file for three years after the requestor has left the department's employ or notification has been received that a requestor no longer wishes to be afforded visitor status.

5. Appeal

a. The requestor has the right to appeal the unit's decision for the following reasons only:

i. the finding that the medical condition is not a qualifying disability;

ii. the denial of an accommodation; or

iii. the nature of the accommodation.

b. The requestor shall forward the appeal of the unit's decision to the Headquarters ADA Coordinator.

c. At the discretion of the Headquarters ADA Coordinator, additional information or medical documentation may be requested.

d. After consultation with the Undersecretary, the Headquarters ADA Coordinator shall issue a written appeal decision to the requestor, a copy of which shall also be sent to the appropriate Unit Head and unit ADA Coordinator.

e. No additional appeal will be accepted as the Headquarters ADA Coordinator's decision shall be final.

6. Recordkeeping

a. The Headquarters ADA Coordinator shall maintain records of all requests for accommodation made throughout the department.

b. To ensure uniform and consistent compliance with the provisions of this regulation, the Headquarters ADA Coordinator shall maintain and track statistics concerning all requests for accommodation from employees, applicants, candidates for employment and visitors and the nature and outcome of the accommodations requested.

c. If a pattern becomes apparent following review of the statistics, the Headquarters ADA Coordinator will seek to remedy and/or correct any problems noted and report same to the secretary.

7. Essential Job Functions

a. General Requirements

i. Employment candidates must complete an Essential Functions Form at the time of interview for employment and/or return to employment. Employees may be required to complete an up-to-date Essential Functions Form as appropriate and when deemed necessary by the unit head in order to ensure that the fundamental mission of the department is sustained.

ii. The Index of Essential Job Functions contains the Essential Functions Form for each job category used by the department. The Index is maintained in each unit Human Resources Office.

b. Employee and Unit Specific Requirements. Employees may be required to complete an up-to-date Essential Functions Form under the following conditions (not necessarily all inclusive):

i. exhaustion of sick leave and if applicable, exhaustion of FMLA entitlement;

ii. expressed inability to participate in a mandatory work-related activity (i.e., training) and/or to perform essential job functions; and/or

iii. appearance of the inability to perform essential job functions. When any of the described conditions exist, the unit head will require the employee to provide a new Essential Functions Form and "Medical Certification" from the employee's health care provider so the employee's status under the ADA can be assessed. The Medical Certification Form must include a prognosis, whether the condition is temporary or permanent, when the condition began, the expected date of return to duty, whether the employee is able to perform the essential functions of the job with or without accommodation and a description of the accommodation needed.

NOTE: In certain situations, a second opinion by an independent third party may be appropriate. This opinion will be at the unit's expense.

8. Conciliation Options for EEO and ADA Concerns

a. Should a requestor feel that he has experienced discrimination in any manner or not be satisfied with the results of the request for accommodation, he may seek conciliation through Corrections Services' grievance process, through the EEOC for employment related complaints and/or the U.S. Department of Justice (USDOJ) for issues not related to employment.

b. Requestors are encouraged to use the internal procedures to address and resolve complaints to the extent possible. Use of these internal procedures does not restrict a requestor from filing with the appropriate federal agency prior to exhaustion of the department's internal process(es).

9. Departmental Conciliation of EEO and ADA Matters

a. The Headquarters Human Resources Section shall coordinate the Department's response(s) to complaints and charges of discrimination regarding equal employment opportunity matters. Complaints/charges may be addressed through the internal grievance procedure when such a grievance has been filed and heard at the appropriate unit levels.

b. For formal charges generated by the EEOC or the USDOJ, the unit head and the applicable unit's attorney will develop the department's response and conciliation opinion (if applicable.) Any unit receiving a "Notice of Charge of Discrimination" document from the EEOC or similar notice from the USDOJ shall forward the notice to the Headquarters Legal Services upon receipt.

10. Employment Applications of Ex-Offenders

a. All applications for employment received from persons who are ex-offenders will be reviewed by a committee appointed by the secretary. The committee shall be composed of the chief of operations or designee, assistant secretary or designee and the headquarters human resources director or designee. Consideration will be given to the unit head's recommendation, the ex-offender's crime, sentence, institutional record and length of time free from other convictions. The committee's recommendations will then be submitted to the secretary or designee for review with the Unit Head.

b. Ex-offenders will not be eligible for employment in positions which require an employee to carry a firearm in the performance of duty. This restriction is based on applicable Civil Service job qualifications and state and federal law.

11. Training

a. The department shall provide comprehensive annual training for all departmental personnel regarding this regulation.

b. Additional information pertaining to EEO, ADA and ADEA is available in any human resources office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1308 (June 2000), amended LR 35:2194 (October 2009).

James M. Le Blanc
Secretary

0910#022

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Accounting Regulations
(LAC 42:VII.2723, IX.2723, and XIII.2723)

The Louisiana Gaming Control Board hereby gives notice that it has amended LAC 42:VII.2723; IX.2723; and XIII.2723.

**Title 42
LOUISIANA GAMING
Part VII. Pari-Mutuel Live Racing Facility Slot Machine
Gaming**

**Subpart 1. Economic Development
and Gaming Corporation
Chapter 27. Accounting Regulations
§2723. Internal Controls; Slots**

A. Any reference to Slot Machines or slots in this Section includes all Electronic Gaming Devices. Provisions within this Section shall not apply to coinless and tokenless devices.

B. - D.2.e. ...

3. Jackpot slips that are voided shall be clearly marked "Void" across the face of all copies. On manual slips, only the first and second copies shall have "Void" written across the face. The cashier and slot or cage Supervisor shall print their employee numbers and sign their names on the voided slip. The Supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

4. Computerized jackpot/Payout systems shall be restricted so as to prevent unauthorized access and fraudulent Payouts by an individual.

5. Jackpot payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures, or by altering the amount paid subsequent to the payout, and misappropriating the funds. One copy of the jackpot payout slip shall be retained in a locked box located outside the change booth/cage where jackpot payout slips are executed or as otherwise approved by the division.

D.6. - W.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:751 (April 2000) amended LR 26:2305 (October 2000), LR 31:1603 (July 2005), LR 34:2648 (December 2008), LR 35:2198 (October 2009).

**Part IX. Landbased Casino Gaming
Subpart 1. Economic Development and Gaming
Corporation**

**Chapter 27. Accounting Regulations
§2723. Internal Controls; Slots**

A. Any reference to Slot Machines or slots in this Section includes all Electronic Gaming Devices. Provisions

within this Section shall not apply to coinless and tokenless devices.

B. - W.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1936 (October 1999), amended LR 26:2306 (October 2000), LR 31:1605 (July 2005), LR 34:2657 (December 2008), LR 35:2198 (October 2009).

**Part XIII. Riverboat Gaming
Subpart 2. State Police Riverboat Gaming Division
Chapter 27. Accounting Regulations
§2723. Internal Controls; Slots**

A. Any reference to Slot Machines or slots in this Section includes all Electronic Gaming Devices. Provisions within this Section shall not apply to coinless and tokenless devices.

B. - D.2.e. ...

3. Jackpot slips that are voided shall be clearly marked "Void" across the face of all copies. On manual slips, only the first and second copies shall have "Void" written across the face. The cashier and slot or cage Supervisor shall print their employee numbers and sign their names on the voided slip. The Supervisor who approves the void shall print or stamp the date and time the void is approved. A brief statement of why the void was necessary shall be written on the face of all copies. All copies shall be forwarded to accounting for accountability and retention on a daily basis.

4. Computerized jackpot/Payout systems shall be restricted so as to prevent unauthorized access and fraudulent Payouts by an individual.

5. Jackpot payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures, or by altering the amount paid subsequent to the payout, and misappropriating the funds. One copy of the jackpot payout slip shall be retained in a locked box located outside the change booth/cage where jackpot payout slips are executed or as otherwise approved by the division.

6. ...

7. Jackpot payout slips shall be used in sequential order.

E. - W.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1887 (October 1999), repromulgated LR 25:2243 (November 1999), amended LR 26:2306 (October 2000), LR 31:1607 (July 2005), LR 34:2667 (December 2008), LR 35:2198 (October 2009).

Dane K. Morgan
Chairman

0910#011

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Advertising—Compulsive and Problem Gaming
(LAC 42:VII.2927; IX.2919; and XIII.2927)

The Louisiana Gaming Control Board hereby gives notice that it has amended LAC 42:VII.2927; IX.2919; and XIII.2927 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

**Part VII. Pari-Mutual Live Racing Facility Slot Machine
Gaming**

Chapter 29. Operating Standards

§2927. Advertising

A. - C. ...

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the casino. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. The casino operator or casino manager may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:765 (April 2000), amended LR 33:856 (May 2007), LR 35:2199 (October 2009).

Part IX. Landbased Casino Gaming

**Subpart 1. Economic Development and Gaming
Corporation**

Chapter 29. Operating Standards Generally

§2919. Advertising; Mandatory Signage

A. - C. ...

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the casino. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. The casino operator or casino manager may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1953 (October 1999), amended LR 26:335 (February 2000), LR 33:857 (May 2007), LR 35:2199 (October 2009).

Part XIII. Riverboat Gaming Commission

Subpart 2. State Police Riverboat Gaming Division

Chapter 29. Operating Standards

§2927. Advertising

A. - C. ...

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the riverboat. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. Licensees may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Correction, Gaming Control Board, LR 33:858 (May 2007), LR 35:2199 (October 2009).

Dane K. Morgan
Chairman

0910#013

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Compulsive and Problem Gaming (LAC 42:III.304)

The Louisiana Gaming Control Board has amended LAC 42:III.304, in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part III. Gaming Control Board

Chapter 3. Compulsive and Problem Gaming

§304. Self Exclusion

A. - C.5. ...

D. Self-Exclusion List

1. - 5. ...

6.a. Except as otherwise provided herein, neither the casino operator, casino manager, nor any casino gaming licensee, employee, or agent thereof shall disclose the Self-Exclusion List or the name of, or any information about, any person who has requested self-exclusion to anyone other than employees and agents of the casino operator, casino manager, or casino gaming licensee whose duties and functions require access to such information.

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Operation of Video Draw Poker Devices
(LAC 42:VII.2729; IX.2729; and XIII.2729)

Notwithstanding the foregoing, the casino operator, casino manager, and each casino licensee may disclose the name of and information about a self-excluded person to appropriate employees of other casino licensees in Louisiana for the purpose of alerting other casinos that a self-excluded person has tried to gamble or otherwise obtain gaming related privileges or benefits in a casino gaming establishment. Nothing herein shall be construed to prohibit the licensee from disclosing the identity of self-excluded persons to affiliated entities in Louisiana and other gaming jurisdictions for the limited purpose of assisting in the proper administration of compulsive and problem gaming programs operated by such affiliated entities.

b. The casino operator, casino manager, or a casino gaming licensee may release the names and identifying information of those persons on the Self-Excluded List to contracted service providers that provide check cashing, marketing, credit evaluations, automated teller machines, cash advances, or other financial services provided:

i. the identifying information shall be limited to the address, driver's license or state issued identification number, photograph, and physical description;

ii. only the name and identifying information may be disclosed to the contracted service provider. The casino operator, casino manager, or a casino gaming licensee shall neither disclose the reasons for providing the name and identifying information nor shall it be disclosed that the person is on the Self-Excluded List;

iii. the casino operator, casino manager, or a casino gaming licensee shall require by written contract that the contracted service provider implement measures designed to ensure the confidentiality of the names and identifying information and to prohibit the release of the names and identifying information to any other person or entity;

iv. the casino operator, casino manager, or a casino gaming licensee shall immediately report to the Division all instances of a self-excluded person accessing or attempting to access the services provided by the contracted service providers and investigate the incident as required by LAC 42:III.304(E).

c. Administrative hearings regarding or related to self-excluded persons shall be closed to the public and any record created or evidence introduced in conjunction with such hearings shall be maintained confidential and not made available for public inspection.

E. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 28:1990 (September 2002), amended LR 30:2493 (November 2004), LR 35:2199 (October 2009).

Dane K. Morgan
Chairman

0910#010

The Louisiana Gaming Control Board hereby gives notice that it has amended LAC 42:VII.2729.U, IX.2729.U, and XIII.2729.U in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming

Chapter 27. Accounting Regulations

§2729. Internal Controls; Cage, Vault and Credit

A. - T. ...

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of patron, date marker issued, date paid, method of payment (if combination, i.e., chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence.

V. - NN.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:759 (April 2000), amended LR 35:2200 (October 2009).

Part IX. Landbased Casino Gaming

Subpart 1. Economic Development and Gaming Corporation

Chapter 27. Accounting Regulations

§2729. Internal Controls; Cage, Vault and Credit

A. - T. ...

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of patron, date marker issued, date paid, method of payment (if combination, i.e., chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence.

V. - NN.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1944 (October 1999), amended LR 35:2200 (October 2009).

Part XIII. Riverboat Gaming

Subpart 2. State Police Riverboat Gaming Division

Chapter 27. Accounting Regulations

§2729. Internal Controls; Cage, Vault and Credit

A. - T. ...

U. Marker log documentation shall be maintained by numerical sequence, indicating marker number, name of

patron, date marker issued, date paid, method of payment (if combination, i.e., chips/cash, amount paid by each method), and amount of credit remaining. This marker log documentation shall also be maintained by patron name in alphabetic sequence.

V. - NN.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1896 (October 1999), repromulgated LR 25:2251 (November 1999), amended LR 35:2200 (October 2009).

Dane K. Morgan
Chairman

0910#012

RULE

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

Permit Fee (LAC 55:IX:107)

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 40:1846 and with the Administrative Procedure Act., R.S. 49:950 et seq., hereby amends LAC 55:IX:107, Requirements. This text has been amended to reduce the permit fee assessed to Liquefied Petroleum Gas dealers by eight percent, as was ordered by full vote of the Liquefied Petroleum Gas Commission on May 20, 2009.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter A. New Dealers

§107. Requirements

A. - A.5.c. ...

6. Applicant must have paid a permit fee in the amount of \$75, except for Class VII-E, which shall be \$100, and R-1, R-2 registrations, which shall be \$37.50 and Class VI-X shall be in the amount of \$75 for the first location, plus \$50 for each 2-11 locations, plus \$25 for each 12-infinity locations. For succeeding years the permit fee shall be 0.1242 of 1 percent of annual gross sales of liquefied petroleum gas with a minimum of \$75, except in the case of Class VI-X which the minimum permit fee shall be \$75 for the first location, plus \$50 for each 2-11 locations, plus \$25 for each 12-infinity locations; or 0.1242 of 1 percent of annual gross sales of liquefied petroleum gases of all locations whichever is greater. For classes not selling liquefied petroleum gases in succeeding years the permit fee shall be \$75, except registrations shall be \$37.50 per year.

A.6.a.-A.15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas

Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:1487 (July 2000), LR 27:2256 (December 2001), LR 28:2553 (December 2002), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1140 (June 2007), effective July 1, 2007, LR 35:2201 (October 2009).

Jill Boudreaux
Undersecretary

0910#039

RULE

**Department of Public Safety and Corrections
Office of State Police**

Towing Recovery and Storage (LAC 55:I.1907)

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., hereby amends its rules regulating the towing industry to formally adopt a schedule of fines to be assessed for violations of the various statutes and rules governing this industry.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 19. Towing, Recovery, and Storage

Subchapter A. Authority, Exemptions, Definitions, Scope

§1907. Administrative Penalty Assessment; Arbitration; Recovery of Penalties

A. Administrative Penalty Assessment

1. - 3. ...

4. Schedule of Fines

SCHEDULE OF FINES	
SCOPE AND RELATIONSHIP TO OTHER LAWS (LAC 55:I.1903 and 1905)	
	032.366 FAILURE TO HAVE/USE REQ. TOW TRUCK EQUIPMENT (BROOM, SHOVEL, OIL DRY; FAILURE TO CLEAR DEBRIS FROM ROADWAY)
	032.863.1 IMPROPER RELEASE OF VEHICLE WITH INSURANCE HOLD
	055.1903 NO PROOF OF OWNERSHIP OF TOWED VEHICLES
\$125-1000	055.1909 FAILURE TO COMPLY WITH OTHER LAWS/REGULATIONS
\$75	055.1909-ISB INOPERATIVE/NO SEATBELT ASSEMBLY
\$25 Driver Fine	055.1909-SB FAILURE FOR TOW TRUCK OPERATOR TO WEAR SEATBELT
\$100	055.1909-UD UNSECURED DUNNAGE/TOW EQUIPMENT
\$200-1000 Driver Fine	055.1909NCT-DR IMPROPER NONCENSENSUAL TOW (DRIVER: REF LRS 32:1736B)
\$200-1000 Company Fine	055.1909NCT-TC IMPROPER NONCENSENSUAL TOW (COMPANY: REF LRS 32:1736B)
	055.1909NCTC FAILURE TO POSSESS CONTRACT FOR NONCENSENSUAL TOW (REF: LRS 32:1736B)
TOW TRUCK LICENSE PLATES	
\$100	055.1911A2-IC EXPIRED LA VEHICLE INSPECTION CERTIFICATE
\$150	055.1911A2-SC SWITCHED LA VEHICLE INSPECTION CERTIFICATE

SCHEDULE OF FINES	
SCOPE AND RELATIONSHIP TO OTHER LAWS (LAC 55:1.1903 and 1905)	
\$200 Driver Fine	055.1911A2-NL UNQUALIFIED DRIVER - NO DRIVER'S LICENSE
\$100 Driver Fine	055.1911A2-EL UNQUALIFIED DRIVER - EXPIRED DRIVER'S LICENSE
\$100-300	055.1911B2D FILING A FALSE OR FICTITIOUS STATEMENT
\$100-1000	055.1911B2E EMPLOYING PROHIBITED PERSONS
\$500 Driver Fine	055.1911B2F-AB OPERATOR UNDER INFLUENCE - ALCOHOLIC BEVERAGE
\$500 Driver Fine	055.1911B2F-CS OPERATOR UNDER INFLUENCE - NARCOTICS
\$500 Driver Fine	055.1911B2F-II FAILURE FOR TOW TRUCK OPERATOR TO SUBMIT TO CHEMICAL TEST
\$200-1000	055.1911C1 UNAUTHORIZED SOLICITING OF TOW BUSINESS
\$200-1000	055.1911C2-DV UNAUTHORIZED MOVING OF A DAMAGED/DISABLED VEH
\$500	055.1911C3 ILLEGAL POSSESSION OF POLICE MONITORING DEVICE(S)
\$100	055.1913A3A FAILURE TO USE APPROVED TRADE NAME
\$100	055.1913A3C FAILURE TO DISPLAY TRADE NAME/PHONE #/ADDRESS TOW TRUCK
\$100	055.1913A3D FAILURE TO USE UNIQUE TRADE NAME ON BUSINESS DOCUMENTS
\$250-1000	055.1913B1-FI SUBMITTING FALSE INFORMATION ON TOWING APPLICATION
\$250-1000	055.1913B2-RV FAILURE TO REGISTER VEHICLE AS LA TOW TRUCK
\$125-1000	055.1913B2E-NL NO TOWING LICENSE DISPLAYED
\$250-1000	055.1913B2E-SP SWITCHED TOWING LICENSE PLATE
\$250-1000	055.1913B2C-NT PROHIBITED USE/NON TRANSFERABLE TOWING PLATE
\$100-1000	055.1913B2D FAILURE TO SURRENDER TOW PLATE
\$200-1000	055.1913B2B-AC FAILURE TO NOTIFY DEPT. OF ADDRESS CHANGE
\$100-200	055.1913B2-DL FAILURE TO DISPLAY VALID TOWING LICENSE PLATE
\$100	055.1913B2-NC NO LA VEHICLE INSPECTION CERTIFICATE
\$50	055.1913B2-NR NO VEHICLE REGISTRATION WITH TOW TRUCK
\$125-1000	055.1913B3-UW LICENSING UNAUTHORIZED TOW TRUCK / GVWR (#) LBS
\$250-1000	055.1913B4-EL EXPIRED TOWING LICENSE PLATE
\$100-300	055.1915C-NI NO PROOF OF ALL REQ INSURANCES W/TOW TRUCK
COMMERCIAL DRIVER LICENSE, SKILL, AND KNOWLEDGE REQUIRED (LAC 55:1.1917)	
\$50 Driver Fine	055.1917A1 NO DRIVER'S LICENSE IN POSSESSION
\$200 Driver Fine	055.1917A1-DD DISQUALIFIED DRIVER - LICENSE SUSPENDED/REVOKED
\$100 Driver Fine	055.1917A1-OS UNQUALIFIED DRIVER - OUT OF STATE LICENSE
200-1000	055.1917A-UD ALLOWING UNQUALIFIED DRIVER TO OPERATE VEH (CARRIER)
\$100 Driver Fine	055.1917A2-HM FAILURE TO HAVE HAZMAT ENDORSEMENT ON CDL
\$300 Driver Fine	055.1917A2-RL FAILURE TO OBTAIN REQUIRED CDL FOR VEH DRIVEN
\$100 Driver Fine	055.1917A2-CL UNQUALIFIED DRIVER - IMPROPER CLASS LICENSE
\$100 Driver Fine	055.1917A3-RK FAILURE TO POSSESS REQUIRED KNOWLEDGE/ABILITY
\$150 Driver Fine	055.1917A3-UO UNSAFE OPERATION OF TOW TRUCK BY DRIVER
\$100 Driver Fine	055.1917A4-UA UNQUALIFIED DRIVER - UNDER 18 YRS OF AGE
\$25 Driver Fine	055.1917A5 FAILURE OF DRIVER TO WEAR REQUIRED CLOTHING

SCHEDULE OF FINES	
SCOPE AND RELATIONSHIP TO OTHER LAWS (LAC 55:1.1903 and 1905)	
GENERAL TOW TRUCK LIGHTING AND EQUIPMENT (LAC 55:1.1919) LIGHTS	
\$25 (each)	055.1919A-SL {#} INOPERATIVE STOP LAMP(S)
\$25 (each)	055.1919A-FT {#} INOPERATIVE FRONT TURN SIGNAL LAMP(S)
\$25 (each)	055.1919A-RT {#} INOPERATIVE REAR TURN SIGNAL LAMP(S)
WL	055.1919A-RI {#} INOPERATIVE REAR ID LAMP(S)
WL	055.1919A-FI {#} INOPERATIVE FRONT ID LAMP(S)
WL	055.1919A-CL {#} INOPERATIVE CLEARANCE LAMP(S)
WL	055.1919A-SM {#} INOPERATIVE SIDE MARKER LAMP(S)
\$25 (each)	055.1919A-HL {#} INOPERATIVE HEADLAMP(S)
\$25 (each)	055.1919A-TL {#} INOPERATIVE TAIL LAMP(S)
WL	055.1919A-BL {#} INOPERATIVE BACK UP LAMP(S)
\$75	055.1919A-IW {#} INOPERATIVE EMERGENCY WARNING LAMP(S)
WL	055.1919A-CC {#} CLEARANCE LAMP(S) OF IMPROPER COLOR
WL	055.1919A-MC {#} SIDE MARKER LAMP(S) OF IMPROPER COLOR
WL	055.1919A-IC {#} ID LAMP(S) OF IMPROPER COLOR
WL	055.1919A-BC {#} BACK UP LAMP(S) OF IMPROPER COLOR
WL	055.1919A-OL {#} OBSCURED _____ LAMP(S)
\$250	055.1919A-AL FAILURE TO USE AUXILIARY TOW LIGHTS WHEN REQUIRED
\$100	055.1919C-NB NO/INSUFFICIENT AMBER WARNING LIGHTS
\$50-100	055.1919C-IWL INADEQUATE ILLUMINATION OF AMBER WARNING LIGHTS
\$50	055.1919D FAILURE TO ACTIVATE ROTATING/FLASHING BEACON LIGHTS
VEHICLE COMPONENTS/ACCESSORIES	
\$25 (each)	055.1919B-WT {#} EXCESSIVELY WORN TIRE(S)
\$25 (each)	055.1919B-CS TIRE WITH DAMAGED SIDEWALL/EXPOSED CORD
\$25 (each)	055.1919B-FL EXCESSIVE FLUID LEAK
\$75 (each)	055.1919B-DW {#} DEFECTIVE/CRACKED WHEEL(S)
\$75 (each)	055.1919B-MB {#} MISSING BRAKE(S)
\$75 (each)	055.1919B-IB {#} INOPERATIVE BRAKE(S)
\$75 (each)	055.1919B-DB {#} DEFECTIVE BRAKE(S)
WL-\$25	055.1919B-CW CRACKED WINDSHIELD(S)
WL-\$25	055.1919B-IWW {#} INOPERATIVE WINDSHIELD WIPERS
\$25	055.1919B-MW {#} MISSING WINDSHIELD WIPER(S)
\$75	055.1919B-TW IMPROPER TINTING OF WINDOW / WINDSHIELD(S)
\$25	055.1919B-IH INOPERATIVE HORN
\$25-100	055.1919B-IE IMPROPER EXHAUST SYSTEM
\$25 (each)	055.1919B-RV {#} MISSING/BROKEN REAR VIEW MIRROR(S)
\$25	055.1919B-FC MISSING/DEFECTIVE FUEL CAP
\$25 (each)	055.1919B-SG {#} MISSING/DEFECTIVE SPLASH GUARD(S) (MUD FLAPS)
TOW TRUCK COMPONENTS AND REQUIRED EQUIPMENT MUST BE IN GOOD OPERATING CONDITION (LAC 55:1.1921)	
\$25	055.1921A1-IM INADEQUATE AMOUNT OF OIL ABSORBING MATERIAL
\$25	055.1921A1-MC OIL ABSORBING MATERIAL EXPOSED TO THE ELEMENTS
\$25	055.1921A1-NM NO OIL ABSORBING MATERIAL
\$25	055.1921A2-NB NO/INADEQUATE BROOM
\$25	055.1921A3-AS NO/INADEQUATE SHOVEL
\$25	055.1921A4-IF INOPERATIVE FLASHLIGHT
\$25	055.1921A4-NF INSUFFICIENT/NO FLASHLIGHT
\$25	055.1921A5-DE DISCHARGED FIRE EXTINGUISHER

SCHEDULE OF FINES	
SCOPE AND RELATIONSHIP TO OTHER LAWS (LAC 55:I.1903 and 1905)	
\$25	055.1921A5-IE IMPROPER TYPE OF FIRE EXTINGUISHER - 10BC
\$50	055.1921A5-NE NO FIRE EXTINGUISHER
\$25	055.1921A5-UF UNSECURED FIRE EXTINGUISHER
\$25	055.1921A6-ME DEFECTIVE EMERGENCY WARNING DEVICES
\$50	055.1921A6-NE NO EMERGENCY WARNING DEVICES
\$25	055.1921A7-IC INADEQUATE STEERING WHEEL CLAMP
\$25	055.1921A7-NC NO STEERING WHEEL CLAMP
\$25	055.1921A8-DS DEFECTIVE TOW SLING
\$100	055.1921A8-ES EXCESSIVE SLACK IN TOW PLATE
\$25	055.1921A8-IP IMPROPERLY/UNSECURED MOUNTED TOW PLATE
\$25-100	055.1921A8-MS MISSING TOW SLING
\$25	055.1921A8-TS IMPROPERLY/UNSECURED MOUNTED TOW SLING
\$25	055.1921A8-TT INADEQUATE TOW SLING/PLATE/BAR
\$25	055.1921A8-UP UNSECURED TOW PLATES/SLING/BAR
\$100	055.1921A9-BC IMPROPERLY SECURED BOOM CABLE
\$25-100	055.1921A9-BL NO/INADEQUATE BED LOCKS (SLIDE BACK VEHICLES)
\$25	055.1921A9-CS CRACKED/BROKEN SHEAVES
\$25 (each)	055.1921A9-CT {#} CRACKED/BROKEN/EXCESSIVELY WORN THIMBLE(S)
\$100	055.1921A9-DC EXCESSIVELY WORN/DEFECTIVE CABLE
\$25 (each)	055.1921A9-MT {#} MISSING SHEAVES/THIMBLE(S)
\$25-100	055.1921A9-NC NO/DEFECTIVE TOW VEHICLE COMPONENT
\$100	055.1921B1-NC NO/IMPROPER SAFETY DEVICES (CHAINS)
\$25	055.1921B2-ES EXCESSIVE SLACK IN TOWING ATTACHMENTS
CAPACITIES AND SPECIFICATIONS OF TOWING EQUIPMENT (LAC 55:I.1923)	
\$200-1000	055.1923A-LW IMPROPER LICENSING OF GVWR WEIGHT OF TOW TRUCK
\$300	055.1923A-WE EXCEEDING WEIGHT CAPACITY OF TOWING EQUIPMENT
\$300	055.1923A-WT EXCEEDING WEIGHT CAPACITY OF TOW TRUCK
\$100-1000	055.1923B NO / IMPROPERLY CERTIFIED TOW ASSEMBLY
\$100-1000	055.1923D-VN MISSING ORIGINAL VIN/GVWR LABEL
TOW TRUCK EQUIPMENT SPECIFICATIONS (LAC 55:I.1925)	
\$300-1000	055.1925P-ER EXCEEDING TOW TRUCK'S MANUFACTURERS GVWR
\$300-1000	055.1925B-EC EXCEEDING RATING CAPACITY OF TOWING ASSEMBLY
\$100-1000	055.1925A-UM UNSAFE MOVEMENT OF TOWED VEHICLE
INSPECTION BY THE DEPARTMENT (LAC 55:I.1927)	
\$300-1000	055.1927B-TK FAILURE TO ALLOW INSPECTION OF TOW TRUCK(S)
\$1000-2750	055.1927B6 OPERATING TOW TRUCK DECLARED OUT OF SERVICE
\$2750	055.1927B6B ALLOWING THE OPERATION OF TOW TRUCK DECLARED OUT OF SERVICE
TOWING SERVICES TO USE DUE CARE (LAC 55:I.1929)	
\$200-1000	055.1929A FAILURE TO EXERCISE DUE CARE/REMOVAL OPERATION
\$300-1000	055.1929B FAILURE TO OBEY LAW ENFORCEMENT OFFICER
INSURANCE REQUIREMENTS (LAC 55:I.1931)	
\$500	055.1931B6 NO REQUIRED TOWING/STORAGE INSURANCES
\$100-1000	055.1915A-II IMPROPER AMOUNT OF REQUIRED TOWING/STORAGE INSURANCE

SCHEDULE OF FINES	
SCOPE AND RELATIONSHIP TO OTHER LAWS (LAC 55:I.1903 and 1905)	
\$300-1000	055.1915C-NI NO PROOF OF REQ TOWING/STORAGE INSURANCE
TOWING/STORAGE FACILITY BUSINESS PRACTICES (LAC 55:I.1941)	
\$100	055.1945A1 VIOLATION OF STORAGE FACILITY BUSINESS HOURS
\$200-1000	055.1941A-LF FAILURE TO STORE VEHICLE IN LICENSED STORAGE FACILITY
\$100	055.1941D-AB NO VISIBLE AFTER BUSINESS HOURS PHONE # POSTED
\$200-1000	055.1941E-RI FAILURE TO ALLOW REMOVAL OF PERSONAL ITEMS
\$200-1000	055.1941J IMPROPER STORAGE / CHARGING FOR STORAGE OF VEHICLES
\$100-1000	055.1941K IMPROPER THIRD PARTY TOWS / STORAGE
\$100-1000	055.1941L IMPROPER HANDLING OF TOWED/STORED VEHICLES (DAMAGED)
\$200-1000	055.1941P2 NO TOWING BILLING INVOICES
\$100	055.1941P2B BILLING INVOICES NOT CONSECUTIVELY NUMBERED
\$100	055.1941P1C FAILURE TO DENOTE SERVICE TO BE PERFORMED
\$100-1000	055.1941P2C IMPROPER/INCOMPLETE BILLING INVOICES (ALL INVOICES)
\$100-1000	055.1941P3 IMPROPER/INCOMPLETE BILLING INVOICES (TOW INVOICES)
\$100-1000	055.1941P3-I FAILURE TO DEVELOP ITEMIZED TOW BILL / INVOICE
\$200	055.1941P3-TI FAILURE TO MAINTAIN TOW INVOICE WITH VEHICLE TOWED
\$100-1000	055.1941Q-RC VIOLATION OF BUSINESS RECORDS KEEPING LOCATION
\$100-1000	055.1941N FAILURE TO LIST STORAGE AREA(S)/VEH REDEMPTION
\$100-1000	055.1943B-SH FAILURE TO STAFF TOWING HEADQUARTERS FACILITY
\$200-1000	055.1931D1 BUSINESS RECORDS UNAVAILABLE FOR INSPECTION
STORAGE PROCEDURES (LAC 55:I.1941)	
\$100-1000	055.1941B FAILURE TO PROPERLY RELEASE VEHICLE
\$100-1000	055.1941C-CV INADEQUATE SAFEGUARDS FOR VEHICLE AND CONTENTS
\$100-1000	055.1941L IMPROPER HANDLING OF TOWED/STORED VEHICLES (DAMAGED)
\$100-1000	055.1941M ILLEGAL DISPOSITION OF PERSONAL PROPERTY
\$200-1000	055.1941E-RI FAILURE TO ALLOW REMOVAL OF PERSONAL ITEMS
\$100-1000	055.1941E-IV FAILURE TO ALLOW INSPECTION/VIEWING OF VEHICLE
\$100-1000	055.1941E-CV ILLEGAL CHARGING OF INSPECTION/VIEWING FEES
STORAGE FACILITY (LAC 55:I.1941)	
\$100-1000	055.1941C-IS IMPROPERLY SECURED STORAGE FACILITY AREA (FENCE MISSING, ETC)
\$100-1000	055.1941F IMPROPER/INADEQUATE STORAGE LOT
\$100-300	055.1941C IMPROPER/INADEQUATE FENCE SECUREMENT (TYPE OF FENCE MATERIAL, ETC)
\$100-300	055.1941D FAILURE TO POST SIGN W/ REQUIRED INFORMATION
\$300-1000	055.1927B1A FAILURE TO MAKE FACILITY AVAILABLE FOR INSPECTION
\$200-1000	055.1941G FAILURE TO NOTIFY LAW ENFORCEMENT AUTHORITIES
\$100-1000	055.1941H PROHIBITED SHARING OF STORAGE FACILITY
\$300-1000	055.1941I-MR FAILURE TO MAINTAIN REQUIRED STORAGE RECORDS FOR REQ PERIOD

SCHEDULE OF FINES	
SCOPE AND RELATIONSHIP TO OTHER LAWS (LAC 55:I.1903 and 1905)	
\$300-1000	055.1931D-PR FAILURE TO PROVIDE STORAGE RECORDS FOR REVIEW
\$100-300	055.1941P-IR INCOMPLETE/INACCURATE IMPOUNDMENT RECORDS
\$50-200	055.1941P1C FAILURE TO DEVELOP ITEMIZED BILL/INVOICE
STORAGE FEES (LAC 55:I.1945)	
\$100-1000	055.1943C EXCESSIVE/IMPROPER STORAGE FEES
\$100-1000	055.1945B EXCESSIVE/IMPROPER GATE FEES
NOTIFICATION TO DEPT. PUBLIC SAFETY & CORRECTIONS (LAC 55:I.1935)	
\$100-1000	055.1933A1A FAILURE TO NOTIFY DEPARTMENT (3 DAYS, ORSV)
\$100-1000	055.1933A1B INCOMPLETE/IMPROPER FILING OF ORSV
\$200-1000	055.1935-LM FAILURE TO NOTIFY OWNER/LIEN/MORTGAGE HOLDER
\$200-1000	055.1935-RI FAILURE TO PROVIDE REQUIRED INFORMATION
\$200-1000	055.1935-CL FAILURE TO MAIL CERTIFIED LETTER
\$200-1000	055.1937C EXCESSIVE ADMINISTRATIVE FEES
\$100-1000	055.1939D VIOLATION OF PERMIT TO SELL REQUIREMENTS
LICENSING; STORAGE FACILITIES (LAC 55:I.1931)	
\$200-1000	055.1931A FAILURE TO LICENSE STORAGE FACILITY
\$200-1000	055.1931A4 EXPIRED STORAGE INSPECTION LICENSE
\$200-1000	055.1931D2 FAILURE TO DISPLAY STORAGE INSPECTION LICENSE
\$300-1000	055.1931A3 FAILURE TO NOTIFY LSP OF CHG IN NAME/OWNERSHIP/ADDRESS
LAW ENFORCEMENT ROTATION LISTS (LAC 55:I.1947)	
\$100-200	055.1947A4 FAILURE TO RESPOND WITHIN 45 MINUTES
\$25-1000	055.1947A2 FAILURE TO COMPLY W/LSP POLICIES & PROCEDURES

B. - D.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).

Jill Boudreaux
Undersecretary

0910#019

RULE

Department of Revenue Policy Services Division

Income: Withholding Tax (LAC 61:I.1515)

Under the authority of R.S. 47:114 and R.S. 47:1511, 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.1515 to require certain employers to file the annual reconciliation of state tax withheld, Form L-3, and the employee's withholding tax receipts (W-2) electronically either via the department's web site using the LaWage electronic filing application or other electronic means. Filings by magnetic media such as tapes, cartridges, and diskettes will no longer be allowed, which is consistent with the IRS and Social Security Administration's policies.

In 2001, R.S. 47:114(F) was amended to require employers who submit 250 or more withholding tax receipts (W-2) to file the annual reconciliation form, Form L-3, and Forms W-2, on magnetic media or other electronic means. Previously, filing on magnetic media was the only electronic means specified. The addition of the "other electronic means" language was made to reflect technology changes and new filing methods.

In 2006, Act 452 amended R.S. 47:114(F) to reduce the number of W-2 filings required for the electronic filing mandate. The reduction will be phased in 2008 to 2016 when employers who file 50 W-2s will be required to file their annual reconciliation of state income tax withheld and their receipts, Forms W-2, electronically.

LAC 61:I.1515 was adopted in 2002 to provide for magnetic media labeling requirements. These amendments will provide for the electronic filing mandate phase-in and provide the acceptable electronic filing methods.

Title 61

REVENUE AND TAXATION

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

Chapter 15. Income: Withholding Tax

§1515. Withholding Tax Annual Reconciliation And Employee Withholding Statements—Electronic Filing Requirements

A. Employers are required to file an annual reconciliation of state income tax withheld, Form L-3, with copies of the employee withholding statements, Form W-2s.

1. The reconciliation and employee withholding statements must be filed on or before the first business day following February 27 for the preceding calendar year.

2. If a business terminates during the year, the reconciliation and employee withholding statements must be filed within 30 days after the last month in which the wages were paid.

3. If the due date falls on a weekend or holiday, the report is due the next business day and becomes delinquent the next day.

B. The following employers are required to file the annual reconciliation, Form L-3, and the employee withholding statements, Form W-2s, electronically:

1. Employers that file 250 or more employee withholding statements due on or after January 1, 2008.

2. Employers that file 200 or more employee withholding statements due on or after January 1, 2010.

3. Employers that file 150 or more employee withholding statements due on or after January 1, 2012.

4. Employers that file 100 or more employee withholding statements due on or after January 1, 2014.

5. Employers that file 50 or more employee withholding statements due on or after January 1, 2016.

C. Electronic Filing Options—The annual reconciliation, Form L-3, and the employee withholding statements, Form W-2, may be filed electronically as follows:

1. Electronic filing using the LaWage electronic filing application via the LDR website, www.revenue.louisiana.gov.

2. Submission on CD or DVD

a. Records must be submitted using a record layout that is consistent with the Internal Revenue Code requirements.

b. CDs and DVDs must be labeled with the following information:

- i. File name;
- ii. Employer's Louisiana account number;
- iii. Employer's name;
- iv. Employer's mailing address;
- v. Tax year; and
- vi. The CD or DVD number and total number of CDs or DVDs for multi-volume submissions (example: 1 of 3, etc.).

3. Submissions by magnetic media including tapes and tape cartridges are no longer allowed.

D. Separate submissions must be made for each employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:114.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 28:1489 (June 2002), amended LR 35:2204 (October 2009).

Cynthia Bridges
Secretary

0910#033

RULE

Department of Social Services Office of Community Services

Chafee Foster Care Independence Program and
Young Adult Programs
(LAC 67:V.Chapter 39)

In accordance with the provision of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services (DSS), Office of Community Services (OCS), has adopted the Rule, LAC 67:V, Subpart 5, Foster Care, Chapter 39, §3901, Chafee Foster Care Independence Program and §3903, Young Adult Program.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 5. Foster Care

Chapter 39. Chafee Foster Care Independence Program and Young Adult Program

§3901. Chafee Foster Care Independence Program

A. The Department of Social Services, Office of Community Services (OCS) will provide a Chafee Foster Care Independence Program (CFCIP) to assist youth in making preparations for living independently, including, but not limited to résumé writing, budgeting, banking and other financial skills, and conflict management skills. The CFCIP provides opportunities for youth to interact with other youth from similar backgrounds, and to receive supportive services until 21 years of age, with the exception of educational assistance via the Chafee Educational and Training Voucher (ETV), which is available until 23 years of age.

B. The OCS will provide CFCIP services based upon the availability of funds, up to the maximum allowable amount funded by the federal Chafee Act, in compliance with the requirements of the program, and, the varying identified needs of each youth.

C. Eligibility for the CFCIP is limited to youth who meet the requirements of the program and is based on the availability of federal funding. Participants should be either: OCS foster youth from 13 years of age to 21 years of age or youth who were adopted after 16 years of age to 21 years of age; Office of Juvenile Justice youth from 13 years of age to 21 years of age; youth in a court ordered guardianship after 16 years of age; and/or, Native American youth from 13 years of age to 21 years of age who are in state or tribal custody. Youth in a secure placement (detention, jail, etc.) are not eligible for services provided by Chafee funds.

D. The allowable services and activities must be purposefully planned by the foster care worker and the youth to meet specific needs that have been identified and addressed in the youth's transitional living plan. The allowable services may include: training delivered by Chafee Independent Living Providers contracted with OCS to prepare youth for living independently; an assessment and survey of independent living skills to identify which skills are needed; a written individualized independent living skills plan, based on the assessment and an individualized transitional living plan; a monetary payment/stipend upon completing the CFCIP coursework and questionnaire; assistance with obtaining independent living arrangement and/or housing; and, assistance with educational expenses, which could include educational and training voucher services, with need being determined by contracted providers.

AUTHORITY NOTE: Promulgated in accordance with 42. USC. 677 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 35:2205 (October 2009).

§3903. Young Adult Program

A. The OCS will provide a Young Adult Program (YAP), based on the availability of funds, to assist youth in transitioning to living independently and to help prevent homelessness for youth aging out of foster care. Participation in the YAP provides participants with benefits such as: educational funding assistance not otherwise provided by government grants, including the Chafee ETV; short term emergency mental health services; suitable clothing for educational or employment purposes; supportive assistance for the youth's educational requirements, such as, school supplies, monthly board assistance, a Medicaid card, transportation assistance, and the ability to remain in the YAP to 21 years of age.

B. Eligibility for the YAP is limited to foster care youth and former foster care youth who meet the requirements of the program upon reaching 18 years of age. Requirements include the following.

1. The young adult must be/have been in foster care upon reaching 18 years of age, and, be in need of continued assistance to complete an educational or vocational program, or, to obtain employment.

2. The young adult must be:

- a. enrolled in a high school to obtain a high school diploma;
- b. enrolled in GED classes and also working part-time;

c. enrolled in and attending a Louisiana public technical or community college; or

d. accepted into and attending an approved Louisiana public college or university.

3. The young adult must apply for and provide documentation of application for the ETV, Pell grants, Go grants or other similar governmental grants prior to approval for YAP educational benefits.

4. The young adult may remain in the YAP for a maximum of three months in order to obtain employment or have a source of income and be searching for a place to live independently.

5. The young adult must live in a foster family home or in a college dormitory, apartment or in their own apartment, if receiving their own board rate.

6. Youth in a secure placement (detention, jail, etc.) are not eligible for services provided by Chafee funds.

C. Participants must meet the requirements of the program, and, have individual identified needs as outlined in the program guidelines. The maximum allowable amount for

a youth participating in the YAP will vary according to the specific needs of the youth and the guidelines for services funded by the federal Chafee Act.

D. Participation is voluntary and by contract with the OCS. The contract shall state the actions expected of the youth and the services that the OCS will provide. The YAP participant may cancel his/her contract with the OCS at any time. The OCS may cancel the YAP participant contract at any time the youth is in non-compliance with the terms of the agreement.

AUTHORITY NOTE: Promulgated in accordance with DSS Statutes RS 36:471 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 35:2205 (October 2009).

Kristy H. Nichols
Secretary

0910#040

Notices of Intent

NOTICE OF INTENT

Department of Civil Service Civil Service Commission

Civil Service Rules, Chapters 1, 6, 24

The State Civil Service Commission will hold a public hearing on Wednesday, November 4, 2009 to consider the following Civil Service Rule changes related to compensating employees in classified state jobs. The hearing will begin at 9:00 a.m. and will be held in the Claiborne Building, 1201 North Third Street, Baton Rouge, Louisiana. The Commission will consider action on these proposed Rule changes in accordance with Article X, Section 10 of the Constitution of the State of Louisiana.

Summary Explanation

We are proposing to repeal the current Chapter 6 in its entirety to be replaced with a new Chapter 6 effective July 1, 2010.

The proposed Rules provide for a clearer path of communication between human resources, management, and employees concerning compensation for recruiting and retaining employees. The wording of the rules has been streamlined for easier understanding. The structure has been re-aligned to make it easier to locate and utilize optional rules, as well as eliminate some duplication amongst rules. Some additional flexibility has been extended to appointing authorities, while some previous flexibilities have been tempered in order to control competition among state agencies and employment costs. Also a pay for performance rule is included that will replace the current merit rule.

The current Chapter 6 slated for abolishment is presented in its entirety first, followed by proposed new Chapter 6, amendments to Definitions (Chapter 1), rule 17.6 proposed for repeal, and current and amended rule 24.2(g). Explanations of the changes proposed are provided.

Chapter 6. Pay Plan

Repeal Chapter 6 in its entirety and replace with a new Chapter 6.

6.1 Philosophy

The pay rates for the State's classified workforce will be established in accordance with a system that generally considers such factors as availability of applicants, the quality of the applicant pool, turnover rates, federal law, market competition, pay practices of market competitors, the evaluation system ranking, employee performance and level of funding available. The State will not be a market leader, but, for the most part, will follow the market as the value of jobs change.

6.2 Preparation of Pay Plan

(a) The Director, after consultation with appointing authorities and the state fiscal officer and after conducting such research as he may deem appropriate, shall cause to be prepared for submission to the Commission, a uniform pay plan, or amendments thereto, for the classified service. The Director may propose different rates of pay in different

localities and areas of the state depending upon availability of applicants and other factors impacting compensation.

(b) The Director shall make a recommendation to the Commission concerning a pay structure adjustment at least annually.

6.3 Adoption of Pay Plan

(a) Any Pay Plan, or amendments thereto, proposed by the Director shall be submitted to the Commission for its consideration at a public hearing called for this purpose.

(b) The Civil Service Commission, upon adoption of a Pay Plan, shall specify the manner in which the Pay Plan is to be implemented.

(c) A Pay Plan may include but not necessarily be limited to an adjustment to the pay structure, an increase of limited duration, a general increase and/or new, revised or abolished jobs.

(d) A Pay Plan or amendment thereto, when adopted by the Commission after public hearing shall become effective only after approval in its entirety by the Governor.

6.3.1 Other Compensation

An appointing authority desiring to provide compensation not specifically covered either by Chapter 6 of these Rules or by the classification and pay plan shall obtain approval from the Commission of a plan for providing such compensation, and shall obtain certification in accordance with Rule 6.13(a) prior to providing such compensation. The alteration of any such plan shall not be made without the prior approval of the Commission.

6.4 Rates of Pay in the Pay Plan Plus Base Supplement

(a) The pay range for each job shall consist of a range minimum and maximum.

(b) Subject to the provisions of Rules 6.11, 6.15, and 6.16 each employee shall be paid at a rate within the range for the grade to which his position is allocated, or at a rate within the base supplement approved for his position in accordance with the provisions of Rule 6.16(f).

6.5. Hiring Rate

Pay upon employment shall be at the minimum of the range established for the grade of the job to which the position is allocated except:

(a) The pay of a probational, job, or provisional appointee shall not be reduced when the employee has served longer than 6 months, is earning more than the minimum for the job he occupies, and is then probationally appointed to a position in the same job, or a different job with the same maximum rate of pay, in the same department without a break in service.

(b) Special Entrance Rates.

When economic or employment conditions cause substantial recruitment or retention difficulties, the Director may authorize the appointment of qualified applicants at a special entrance rate or may authorize the use of a special retention rate within the range, or within the range plus base supplement authorized for the position, for the job in a limited geographical area or for positions in a job where employment conditions are unusual.

1. The department or departments to which the special rate is made applicable having employees in the same job in the affected area or locale where the special rate will be used, shall increase the pay rate of all such employees to the special rate. All new hires shall be paid at the special entrance rate or special retention rate. An appointing authority may adjust the salaries of employees working in the positions to which the special entrance rate applies to any salary up to but not to exceed the amount of the percent difference between the special rate and the current hiring rate.

2. When special entrance rates or special retention rates are adjusted downward, the individual pay rates of employees occupying positions affected by the authorized rates shall not be changed.

3. Special entrance rates and special retention rates must be approved by the Commission at its next scheduled meeting after action was taken by the Director.

(c) Reentering the Classified Service.

The pay of an employee reentering the classified service, other than one being restored to duty following military service, may be fixed at any rate in the range, or within the range plus base supplement authorized for the position in which he is being employed, that does not exceed the highest salary he previously earned while serving with permanent status in a classified position other than detail to special duty. If the range for the job has been adjusted and the range minimum is higher than his former salary, he will enter at range minimum. If the former salary is higher than the range maximum or range maximum plus authorized base supplement, his pay rate shall be set no higher than the range maximum, or range maximum plus base supplement if authorized for the position in which he is being employed. The appointing authority may at any time grant, to the extent permitted by other provisions of these Rules, any increase for which an employee having reentered the classified service possesses eligibility under this subsection. This Rule shall not apply to a former employee who was dismissed or resigned to avoid dismissal.

(d) Restricted Appointments

When an appointing authority makes a restricted appointment, he may set the pay of the employee at any rate in the range.

(e) Return From Military.

Subject to Rule 23.15, when an employee returns from military service and is restored to duty in his former, equivalent or lower position, his pay shall be fixed at the rate earned prior to leaving the classified service. If the job or equivalent job had been upgraded or any pay adjustments granted, he shall be granted a pay rate reflecting the impact of these adjustments, as though he had been in that job at the time of the adjustments.

(f) The Director, with the approval of the Commission, may establish special hire rates for workers employed by any State agency which administers federal funds for use in this state, either directly or indirectly or as a grant- in-aid or to be matched or otherwise, provided such State agency is required to by rule or regulation of, or contract with, a participating federal authority to pay such special rate, except that an appointing authority must comply with the minimum wage rate as prescribed and required by Federal

rules, statutes, regulations and judicial decisions, when such minimum rate is in excess of that provided for in these rules.

(g) Extraordinary Qualifications/Credentials

Subject to provisions of Rule 6.29, if an applicant who is eligible for appointment under provisions of Chapters 22 and 23 of the Rules possesses extraordinary or superior qualifications/credentials above and beyond the minimum qualifications/credentials, the appointing authority may, at his own discretion, pay the employee at a rate above the minimum provided that:

1. such superior qualifications/credentials are verified and documented as job related,

2. the rate does not exceed the third quartile of the range for the affected job,

3. the rate is implemented in accordance with written policies and procedures established by the department,

4. the appointment is probational, provisional or a job appointment.

The employee may be paid upon hiring or at any time within one year of the hire date. If paid after the hiring date, the pay change must be prospective. The salaries of all current probational and permanent employees who occupy positions in the same job title and who possess the same or equivalent qualifications/credentials may be adjusted up to but not to exceed the amount of the percent difference between the special hiring rate and the regular hiring rate provided that the qualifications/credentials are also verified and documented as job related and that the rate is implemented in accordance with written policies and procedures established by the department; such policies shall be posted in a manner which assures their availability to all employees. Such adjustments shall only be made on the same date that the higher pay rate is given to the newly hired employee.

If an employee with permanent status resigns and is then rehired into either the same position or into the same job title or a lower level job in his career progression group at the same agency, the employee shall not be eligible for an increase under this rule unless there has been a break in State service of at least 60 days.

(h) Reentering the Classified Service Without a Break In Service

When an appointing authority requires an employee to resign a permanent position in order to accept a probational appointment, and the employee accepts such an appointment without a break in service, and the appointment would have been considered a promotion according to Rule 6.7 the employee shall retain eligibility for the promotional increase for a period not to exceed 1 year. The appointing authority may grant any increase for which the employee would have been eligible under Rule 6.7. This Rule shall not apply to an employee who was dismissed or resigned to avoid dismissal.

6.5.1 Pay Upon Appointment From a Department Preferred Reemployment List

Subject to Rule 6.14, the pay of a person appointed from a department preferred reemployment list may be fixed no higher than his rate of pay at the time of the layoff or displacement action, which entitled him to placement on the preferred list from which he is appointed, or at his current rate if such rate is higher based on other provisions of these

Rules. In no case shall the rate of pay be higher than the range maximum for the class to which appointed, or the highest rate within the base supplement authorized for the position to which appointed.

6.6 Market Grade Adjustment

(a) When the pay range for the grade to which a job is currently assigned is either not sufficient to compete with prevailing market conditions, or is found to exceed prevailing market rates, the Director may, in accordance with Rules 6.1 and 3.1(n), authorize the assignment of the job to a grade with a more appropriate pay range. The individual pay rate of employees occupying jobs which are affected shall be set in accordance with Rule 6.8.1.

(b) Repealed, as of December 4, 1989.

6.7 Rate of Pay Upon Promotion

(a) Subject to the provisions of subsections (e) and (f) of this rule, when an employee is promoted to a position in a higher grade, his pay shall increase by at least 7 percent.

(b) Subject to the provisions of subsections (e) and (f) of this rule, when an employee is given a one grade promotion his pay shall increase by 7 percent. When an employee is given a two grade promotion his pay may be increased in an amount not to exceed 10.5 percent. When an employee is given a three or more grade promotion his pay may be increased in an amount not to exceed 14 percent. An employee shall not be paid below the minimum of the higher range.

(c) Eligibilities gained but not received at the time of promotion may be given prospectively at any time within three years from the effective date of the promotion.

(d) When an employee has been detailed with pay to a higher job and is promoted to that same job or a job at the same pay level or a higher pay level directly from the detail, his pay eligibility on promotion shall not be less than he received on detail.

(e) Subject to the provisions of subsection (f) of this rule, when an employee is promoted from a job assigned to one pay schedule to a job with a higher range maximum in another pay schedule, his pay shall be adjusted as follows:

1. If the maximum of the job to which he is being promoted is less than 14% above his current maximum, his pay shall be increased by 7%.

2. If the maximum of the job to which he is being promoted is at least 14% but less than 21% above his current maximum, his pay shall be increased at least by 7% but not to exceed 10.5%.

3. If the maximum of the job to which he is being promoted is equal to or greater than 21% above his current maximum, his pay shall be increased by at least 7% but not to exceed 14%.

(f) When an employee, whose rate of pay falls within the base supplement for his current position, promotes to a position which has no base supplement, his salary for purposes of pay calculation upon promotion shall be the range maximum of his current position for which the base supplement is authorized.

6.8 Pay Upon Reallocation

When the Director changes the allocation of a position from one job to another by reallocation,

(a) If the job to which the position is allocated is in a higher grade in the same schedule or is in a grade with a

higher maximum in another schedule, the affected employee's pay shall be set in accordance with Rule 6.7.

(b) Subject to the provisions of subsection (d) of this rule, if the job to which the position is allocated is in a lower grade in the same schedule or is in a grade with a lower maximum in another schedule, the affected employee's pay will not change, but shall be subject to provisions of Rule 6.15.

(c) Subject to the provisions of subsection (d) of this rule, if the job to which the position is allocated is in the same grade in the same schedule or is in a grade with the same maximum in another schedule, the employee's pay shall not change.

(d) If the position is reallocated in such a way that the current base supplement rate of pay authorized for the position is lost or reduced, the affected employee's pay shall be set no higher than his current salary and at the higher of the following:

1. the range maximum (this is a red circle rate) of the position from which he is being reallocated, or

2. within the range maximum plus the base supplement (this is not a red circle rate) authorized for the position to which he is being reallocated.

6.8.1 Pay Upon Job Correction or Grade Assignment

When the Director assigns a job to a different grade or changes the allocation of a position from one job to another by job correction,

(a) If the job to which the position is job corrected is in a higher grade in the same pay schedule or is in a grade with a higher range maximum in another pay schedule, or if the job is assigned to a higher grade in the same pay schedule or to a grade with a higher range maximum in another schedule, the affected employee's pay shall not change. An employee shall not be paid below the minimum of the higher range.

(b) Subject to the provisions of subsection (d) of this rule, if the job to which the position is job corrected is in a lower grade in the same pay schedule or is in a grade with a lower range maximum in another pay schedule, or if the job is assigned to a lower grade in the same pay schedule or to a grade with a lower range maximum in another schedule, the affected employee's pay shall not change, but shall be subject to provisions of Rule 6.15.

(c) Subject to the provisions of subsection (d) of this rule, if the job to which the position is job corrected is in the same grade in the same pay schedule or is in a grade with the same range maximum in another pay schedule, or if the job is assigned to the same grade in the same pay schedule or to a grade with the same range maximum in another schedule, the affected employee's pay shall not change.

(d) If the position is job corrected or if a job has a pay range change in such a way that the current base supplement rate of pay authorized for the position is lost or reduced, the affected employee's pay shall be set no higher than his current salary and at the higher of the following:

1. the range maximum (this is a red circle rate) of the position from which he is being changed, or

2. within the range maximum plus the base supplement (this is not a red circle rate) authorized for the position to which he is to be changed.

6.9 Pay Upon Transfer or Reassignment

(a) Subject to the provisions of Subsection (f) of this Rule, when a permanent or probationary employee is transferred without promotion or demotion, his pay shall not be reduced without his permission.

(b) When a permanent employee is transferred with promotion following certification from a promotional or probational eligible list, or following noncompetitive promotion, Rule 6.7 shall apply.

(c) When a permanent or probationary employee is transferred with demotion, Rule 6.10 shall apply.

(d) Subject to the provisions of Subsection (f) of this Rule, when an employee is reassigned to another position, his rate of pay shall not be reduced without his permission.

(e) When an employee is transferred, the department releasing the employee shall be liable for payment for any holidays and/or regular days off intervening between the last day actually worked in the department releasing the employee and the first day to be worked in the department acquiring the employee.

(f) Notwithstanding the provisions of Subsections (a) and (d) of this Rule, if an employee is transferred without promotion, demotion, or change in duty station or is reassigned from a position with an authorized base supplement to a position for which a lower or no base supplement is authorized, the affected employee's current base supplement pay shall be reduced to the range maximum or to a rate within the new position's base supplement no higher than his current salary.

6.10 Rate of Pay Upon Demotion

Subject to the provisions of Civil Service Rule 6.15 and 5.6.1(e) and (f), when an employee is demoted for any reason under any circumstances, his pay shall be reduced as follows:

(a) If the demotion is to a job within the same schedule or to a job in another schedule with a lower maximum his pay shall be reduced by a minimum of 7% and may be set at a lower rate in the range provided that it is no less than the minimum.

(b) Repealed, effective September 9, 2003.

(c) Repealed, effective September 9, 2003.

(d) Subject to the provisions of Rule 6.29, an appointing authority may grant exceptions to this rule for voluntary demotions. Exceptions shall not be granted by the appointing authority in an arbitrary or fraudulent manner designed to increase an employee's rate of pay. An appointing authority may, as part of a formal written policy, waive a pay increase on promotion for an employee who has been demoted without a decrease in pay within a six-month period.

6.11 Rate of Pay on Detail to Special Duty

When an employee is detailed to special duty, his pay shall not be reduced; if the position is allocated to a job which is assigned to a higher grade, his pay shall be increased to the rate he could receive upon promotion to such position, provided:

(a) Any such temporary increase granted him shall not affect his eligibility for pay increases which he would have acquired in his regular position had he not been detailed.

(b) At the conclusion of the detail, his pay shall revert to his authorized rate of pay in his regular position.

6.12 Compensation for Part-Time Services

(a) When part-time service in any position is authorized or rendered, the actual compensation to be paid shall be the appropriate hourly rate.

(b) When part-time service is rendered, it shall be the duty of the appointing authority to certify to the Director, on each notice of appointment or change in status of the employee, the percent of full-time hours to be worked.

(c) An employee paid on a monthly or semi-monthly basis, who is employed for only part of a pay period shall be paid for the proportionate calendar days worked.

6.12.1 Compensation for Holidays

Employees shall be eligible for compensation on holidays observed except:

(a) When the employee's regular work schedule averages less than 20 hours a week;

(b) When the employee is on restricted appointment;

(c) When the employee is on leave without pay immediately preceding and following the holiday period;

(d) When the employee is on an intermittent work schedule.

6.13 Certification and Payment

(a) No employee shall receive any compensation except as authorized by or pursuant to the provisions of Article X, the Civil Service Rules, the Uniform Classification and Pay Plans, and the policies and procedures issued by the Director.

(b) If payments to an employee are found to have been made in violation of the provisions of Article X, the Civil Service Rules, the Uniform Classification and Pay Plans, or the policies and procedures issued by the Director, the Director may take any corrective action he deems appropriate or may direct the appointing authority to take such corrective action. Corrective actions may include, but are not limited to, the rescinding of any actions and associated compensation, or restitution to the employee.

6.14 Merit Increases

(a) When a new employee has been continuously employed, without a break in service of one or more working days for a period of six months, he becomes eligible for and may be granted a merit increase provided that the appointing authority has determined his performance merits such an award.

(b) At the end of each subsequent 12 month period of such continuous employment, he may be granted an additional merit increase if the appointing authority has determined that his performance merits such an award. This date of eligibility shall be known as an anniversary date and shall not change through such continuous employment within the classified service.

(c) The amount of each merit increase shall be 4 percent of the employee's individual pay rate.

(d) The appointing authority may, at any time within 3 years from the date an employee gained eligibility, grant an employee all or any one of the merit increases for which he has attained eligibility provided the employee has not received an official overall "Poor" or "Needs Improvement" Performance Planning and Review rating for the applicable year(s). A part-time employee shall receive the same credit he would receive if he were employed on a full-time basis.

(e) All increases herein authorized are subject to the requirement that no employee's pay shall exceed the maximum rate of pay established for the job, or the highest rate within the base supplement authorized for the position occupied.

(f) An employee's eligibility for the increases authorized in Subsection (a) and (b) shall not be interrupted by time served in the military service if he is reemployed under the provisions of Rule 23.16.

(g) A former employee who is reemployed following a break in service of one or more working days, except those appointed from a department preferred reemployment list and except those who are restored to duty, under the provisions of Rule 23.16, upon return from military service, shall be considered a "new" employee within the meaning of this rule.

(h) Any adjustment or increase which an employee receives under the provisions of other rules, unless otherwise indicated, shall not affect such employee's eligibility to receive increases authorized under this rule.

(i) An employee who has a current official overall Performance Planning and Review rating of "Poor" or "Needs Improvement" shall not be eligible for any increase under the provisions of this rule.

(j) A former employee who is reemployed following certification from a department preferred reemployment list within a year of the layoff date shall retain the anniversary dates and merit increase eligibilities earned under subsections (a), (b) and (d) for which he has not been granted an increase. If reemployed from a preferred list after one year, he shall be considered a new employee with regard to the establishment of his anniversary date and merit increase eligibility.

(k) An employee on detail to a position in a higher grade may be eligible for a merit increase in the higher job calculated on his individual pay rate in the higher job.

6.15 Red Circle Rates

Rates that fall within the range or within the base supplement authorized for a position become the employee's authorized individual pay rate. Excluding those that fall within the base supplement authorized for a position, individual pay rates that fall above the maximum established for the grade become red circle rates; or, under the conditions outlined below in subsection (d) of this rule, individual pay rates that fall above the base supplement authorized for a position become red circle rates. Such red circle rates remain in effect until the range or range plus authorized base supplement for a position catches up with the rate; however, eligibility for a red circle rate is lost upon separation from state service, or demotion except as provided in part (f) of this rule. Individuals whose salary rates are red circled shall not be eligible for any other pay adjustments provided for in the rules. Red circle rates are assigned under the conditions as outlined below:

(a) When the job to which a position is allocated is assigned to a lower grade.

(b) Except as provided in Rule 6.8(d), when a position is reallocated to a job assigned to a lower pay grade.

(c) When an adjustment (this does not include base supplement) to the pay structure has the effect of lowering the range minimum and maximum for the grade to which a job is assigned.

(d) When positions are declared to be in the classified service and the employee's current rate of pay falls above the maximum of the range for the grade of the job into which the position(s) are allocated, or above the range plus base supplement authorized for the position allocated. A red circle rate given as a result of an acquisition of a position under Civil Service Rule 24.2 shall be treated in the following manner:

1. After two years, should the red circle rate of pay exceed the maximum rate of pay of the job to which the position is allocated by over twenty-eight percent, the red circle rate shall be reduced to a figure not more than twenty eight percent above the aforementioned maximum or to the maximum of the base supplement, whichever is higher.

2. A red circle rate reduced under (d) 1 above may not be reinstated under subsection (g) below.

(e) When the employee's pay exceeds the maximum of an approved market grade.

(f) When an employee is subject to a demotion in a layoff, including a layoff as provided for in Rule 17.9(c), and the layoff was not absolutely required because of budgetary cuts, except that then pay upon demotion in such a layoff for an employee whose current pay rate within the base supplement exceeds the range or the range plus authorized base supplement for the position to which he is to demote shall be set no higher than his current salary and at the higher of the following:

1. the range maximum (this is a red circle rate) of the position from which he is to demote, or

2. within the range maximum plus the base supplement (this is not a red circle rate) authorized for the position to which he is to demote.

(g) An appointing authority may request authority from the Commission to reinstate red circle rates (except those specified in subsection (d) above) awarded for two years which have expired when the employee's pay continues to be lower than the previously authorized red circle rate. Any approval granted shall be prospective from the date of Commission action. Eligibility for reinstatement is lost upon separation from state service or demotion.

(h) Red circle rates in effect on June 8, 1994, the effective date of the amendment to this rule providing for a continuing red circle rate, shall be extended in accordance with the provisions of this rule.

6.16 Special Pay Provisions

Under conditions described below, the Commission may authorize special pay considerations, beyond those already prescribed in these rules.

(a) Premium Pay

In order to remain competitive with the pay practices of market competitors, the Commission may authorize special pay for positions in a job where employment conditions are unusual. Additional pay may be authorized for an employee who performs extraordinary duty that is not an integral part of his regularly assigned duties. Such additional pay shall not be considered as part of the employee's base pay.

(b) Repealed, effective January 1, 2000.

(c) Individual Pay Adjustment.

When an appointing authority requests and can present adequate justification with documentation before the Commission in public hearing, the Commission may grant special adjustments in pay for individual employees. Such

adjustments shall be granted only within the pay range for the grade to which the employee's position is allocated, or at a rate within the base supplement approved for his position in accordance with the provisions of Rule 6.16(f).

(d) An appointing authority may, after presenting justifiable reasons in writing to the Commission, and with the Commission's approval, pay an incentive award at any time that the justifications have been shown.

(e) The special pay rates authorized by this Rule shall not be effective until after approval by the Commission at a public hearing.

(f) Rate of Pay Upon Approval of Base Supplement.

When market and employment conditions require additional pay above the range maximum in order to maintain competent and experienced staff, the Commission, upon request from the appointing authority, may authorize that employees occupying positions in selected job titles, geographic areas, organizations or other limiting factors deemed appropriate by the Commission, receive a base supplement. Any Commission-approved base supplement must also be approved by the Governor before it can become effective. Authority for such pay may be adjusted or rescinded by the Commission, with the approval of the Governor, should market and employment conditions change. When authorized, this base supplement shall be treated as a part of base pay and must be reported as such.

(1) Upon reaching the range maximum, the salary of an employee whose position has been authorized base supplement may receive additional pay based on other provisions of these rules up to the highest rate within the base supplement and in accordance with any special provisions and conditions specified by the Commission.

(2) An employee who occupies a position at the time its base supplement authority is rescinded or adjusted downward by the Commission shall have his salary set in accordance with the provisions and conditions specified by the Commission.

(3) An employee who occupies a position at the time its base supplement authority is moved upward shall have his salary remain the same, unless he retains eligibility for other adjustments authorized under other provisions of the Rules and unless the salary is set in accordance with any special provisions and conditions specified by the Commission.

(g) Pay for Employees at Range Maximum

Subject to the provisions of Rule 6.29, in order to reward those employees who have achieved at least 12 years of continuous State service and have reached the maximum of their pay range or the maximum plus maximum base supplement, have continued to exhibit satisfactory performance for a period of at least three years after reaching the maximum or maximum plus maximum base supplement, and who have been at the same maximum or maximum plus maximum base supplement pay rate for a period of three years, an appointing authority may, at his own discretion, grant a lump sum payment of up to 4% of the employee's base salary. Employees may not receive such an increase more frequently than every three years. Employees who are red circled shall not be eligible for a lump sum payment. Eligibilities gained but not received at the time of initial eligibility may be given prospectively at any time within three years of the initial eligibility.

(h) Payment for Attainment of Advanced Degree

An appointing authority may approve a base pay increase of up to 10% for a permanent employee who attains a job related Master's Degree, Ph.D., or their equivalent from an accredited college or university while employed at the Department, provided that a Department policy has been approved by the Civil Service Commission and the employee was not previously rewarded for attainment of the degree under another rule.

6.16.1 Rewards and Recognition

Subject to the provisions of Rule 6.29, an appointing authority may, at his discretion, implement a program of rewards and recognition for individual employees or for employee groups for significant achievement. Such rewards may be either monetary or non-monetary. If monetary, such rewards shall not exceed a total of 10% of the employees base salary within a fiscal year. Monetary rewards shall not be a part of the employee's base pay, but rather shall be a lump sum reward. Such reward and recognition programs shall be implemented in accordance with written policies and procedures established by each department. Such policies must receive advance approval from the Civil Service Commission and shall be posted in a manner that assures their availability to all employees. Such policies shall also include the public posting of all reward recipients.

6.16.2 Optional Pay Adjustments

Subject to the provisions of Rule 6.29, an appointing authority may, at his own discretion, grant individual pay adjustments to permanent employees to provide for the retention of an employee whose loss would be detrimental to the State service or to adjust pay differentials between comparable employees or to compensate employees for performing additional duties or to recruit employees into positions for which recruiting is difficult. Such increases shall not exceed 10% in a July 1 to June 30 period for an individual employee and shall not duplicate payment received pursuant to other pay rules. Such increases may be made as either a lump sum payment or a permanent addition to the employee's base salary. Such optional pay adjustments shall be implemented in accordance with written policies and procedures established by each department. Such policies must receive advance approval from the Civil Service Commission and shall be posted in a manner that assures their availability to all employees. Such policies shall also include a public posting of all recipients.

6.16.3 Exceptional Performance and Gainsharing

This rule establishes an incentive program designed to encourage increased efficiency and better performance in governmental operations. Subject to the provisions of Rule 6.29, and after obtaining a reward of monies from the incentive fund as established in the Louisiana Government Performance and Accountability Act, an appointing authority may implement an exceptional performance or gainsharing incentive reward program which provides for supplemental compensation to identify classified employees or classified employee groups responsible for efficiencies or exceptional performance. Where the agency is not covered by the Louisiana Government Performance and Accountability Act, the appointing authority shall obtain certification of efficiencies or exceptional performance as required by the Director of the Department of Civil Service. Employees must have been employed by the agency, program, or

activity during the period when the efficiencies or the exceptional performance occurred and at the time the reward is distributed. Monetary rewards shall not be part of the classified employee's base pay, but rather shall be a lump sum reward not to exceed 20% of their annual base salary. Such reward shall not be considered in the determination of retirement benefits. Each appointing authority's supplemental compensation plan must be approved by the Civil Service Commission prior to distribution of the monies. The plans shall be posted in a manner that assures their availability to all employees. Such public posting shall identify the reward recipients and the amount received by each recipient.

6.17 Pay on Entering the Classified Service Under the Provisions of Rule 24.2

An employee who enters the classified service under the provisions of Rule 24.2 because his position has been declared to be in the classified service shall have his pay established as follows:

(a) If the employee's rate of pay falls within the range, or within the range plus the authorized base supplement for the position allocated, his rate of pay shall remain the same.

(b) If the employee's current rate of pay is below the range minimum, it shall be brought to the range minimum or interim minimum if such is in effect at the time.

(c) If the employee's current rate of pay is above the range maximum or above the range maximum plus the base supplement authorized for the position allocated, Rule 6.15 shall apply.

6.28 Compensation for On-Call Duty/Shift Work

Subject to the provisions of Rule 6.29,

(a) The Director may authorize compensation for on-call/shift work through policy directives which establish guidelines for compensation for employees performing these types of work. These guidelines will establish the maximum authorized amounts which may be utilized. The Commission may authorize amounts at levels higher than established by the Director.

(b) On-call compensation is for hours worked in excess of regularly scheduled hours of duty, when the worker is available for call back to his/her duty station, work-ready, within a specified period of time, at the direction of his/her appointing authority. On-call compensation is in addition to the employee's regular pay and is not to be included in terminal leave payments allowed under other Sections of the Rules. On-call compensation shall not be granted to an employee for his/her regularly scheduled hours of duty. Further, when an employee is called back he/she shall be considered in duty status and eligible for overtime compensation, according to Chapter 21 of these Rules

(c) Shift differential is an additional pay allowance for employees who work non-standard hours.

6.29 Corrective Pay Actions

(a) The discretion granted by this Chapter to an appointing authority is subject to revocation by the Director when he determines that such discretion has been abused.

(b) An employee's pay is subject to reduction when, after hearing before the Commission or its designee, it is determined that the employee has benefited from increased pay as a result of either a violation of these Rules, or an abuse of the discretion granted in these Rules.

6.30 In order to avoid excessive administrative costs, an appointing authority may adjust an employee's salary to the monthly range maximum or highest rate within the base supplement authorized for a position when any personnel transaction results in a salary increase which is within \$20 of that monthly range maximum or highest rate within the base supplement.

Proposed For Adoption

Chapter 6. Pay Plan

6.1 Pay Plan

(a) The pay plan consists of a pay band for each job and may include a band extension.

(b) The Director shall make a recommendation concerning the pay plan to the Commission at least annually.

(c) Following public hearing, the Commission may adopt or amend the pay plan.

(d) A pay plan adopted by the Commission shall have the effect of law and become effective only after the governor approves it.

(e) The Commission shall specify how appointing authorities are to implement a pay plan.

6.2 General Application of Pay Rules

(a) An appointing authority may only compensate an employee as authorized by or under Article X or these rules or, if not specifically authorized by these rules, with the Commission's approval.

(b) An appointing authority may only compensate an employee within the pay band for his or her job or the band extension for his or her position, except as allowed by Rules 6.8 and 6.9 or with the Commission's approval.

(c) Pay increases, decreases and leave payment shall be calculated on base pay.

(d) Employees may not be compensated under more than one rule for the same reason.

6.3 General Hiring Rates

(a) On the hiring date, an appointing authority shall pay

1. a probationary or job appointee: the pay band minimum unless another rule applies.

2. a probationary or job appointee who, without a break in service, is probationally appointed to the same or an equivalent job in the same department and is earning more than the pay band minimum: the employee's current pay.

3. an employee who returns from military service to a former, an equivalent, or a lower job: the employee's former pay plus any pay adjustments he or she would have received during his or her absence.

4. an appointee from a department preferred reemployment list: no more than the employee's pay on the effective date of the layoff action or the employee's current pay.

5. a restricted appointee: an amount within the pay band or band extension.

(b) On the hiring date or prospectively within one year after the hiring date, an appointing authority may pay a permanent employee who resigns to accept a probationary appointment that otherwise would be a promotion promotional pay under Rule 6.7. An employee who was dismissed or resigned to avoid dismissal while serving with permanent status is not eligible for this pay rate.

(c) On the hiring date, an appointing authority may pay a former employee who returns to classified service other than

from military service: any amount within the pay band that does not exceed the highest pay earned while serving with permanent status other than on detail. A former employee who was dismissed or resigned to avoid dismissal while serving with permanent status is not eligible for this pay rate.

6.4 Special Hiring Rates for Jobs or Positions

(a) The Director may authorize special hiring rates within the pay band or band extension for jobs or for positions within jobs when

1. recruitment or retention problems or unusual employment conditions exist or
2. federal rule or regulation or a contract with a federal funding agency requires a special pay rate.

(b) The Director shall report to the Commission any rates authorized under this rule.

(c) Requests for an amount greater than that authorized by the Director may be granted by the Commission.

(d) When an organization unit implements a special hiring rate, the appointing authority shall pay employees in positions to which the rate applies and all new hires no less than the special hiring rate. The pay of current employees who are paid above the special hiring rate may be adjusted up to 15% under Rule 6.14(d).

6.5 Special Hiring Rates for Individuals

(a) On the hiring date or prospectively within one year after the hiring date, an appointing authority may pay an employee who takes a probationary or job appointment and who possesses job-related qualifications or credentials that exceed the minimum requirements for the job an amount up to the third quartile of the pay band. For recruiting needs that exceed the third quartile of the band, the appointing authority may request a higher pay rate from the Director. The Director shall report to the Commission any rates authorized above the third quartile under this rule.

(b) An appointing authority may only use this rule in accordance with a publicly posted policy.

(c) The pay of current employees with the same or substantially similar qualifications, who occupy the same job and are paid below the new hire's rate, may be adjusted to the new rate or adjusted up to 15% under Rule 6.14(d).

(d) An appointing authority who uses this rule shall verify the qualifications and/or credentials and document their job-relatedness.

(e) A former employee who is appointed to the same or lower job in the same job family at the same agency must have had a 60 calendar-day break in service to be eligible for this special hiring rate.

6.6 Premium Pay

The Commission may authorize premium pay for positions in a job where employment conditions are unusual or for an employee who performs extraordinary duty that is not an integral part of his regularly assigned duties. Such additional pay shall not be considered as part of the employee's base pay.

6.7 Pay on Promotion, Detail, or Reallocation to a Higher Job

(a) Except as provided in Rule 6.9(a), in accordance with Rule 6.2(b), an appointing authority shall increase the pay of

an employee who is promoted, detailed, or reallocated to a higher job by

1. 7% when the new pay band maximum is at least 7% higher than the current pay band maximum

2. 7% up to 10½% when the new pay band maximum is at least 14% but higher than the current pay band maximum or

3. 7% up to 14% when the new pay band maximum is 21% or more higher than the current pay band maximum.

(b) An appointing authority shall not reduce the pay of an employee who is promoted directly from detail to the same, an equivalent, or a higher job.

(c) When an employee's pay falls within a band extension, pay under this rule shall be calculated on the pay band maximum.

(d) An employee on detail to a higher job shall not have his pay reduced as a result of his regular position being assigned to a different pay band.

6.8 Pay on Job Correction, Pay Band Change, or Movement of Position to the Classified Service

An appointing authority shall not change the pay of an employee whose allocation is job-corrected, job is assigned to a different pay band, or position is declared to be in the classified service in accordance with Ch. 24 other than to increase the employee's pay to the new pay band minimum. An employee's pay that is above the new pay band maximum or band extension, shall be red circled under Rule 6.18.

6.9 Pay on Movement to a Job with a Lower Maximum

(a) An appointing authority shall decrease the pay of an employee who voluntarily demotes by at least 7%. An appointing authority may waive this decrease for voluntary demotions as long as the employee's pay does not exceed the new pay band maximum or band extension. When an appointing authority waives this decrease, the employee shall not be eligible for any increase in pay as a result of a promotion or reallocation for a period of two years, unless the promotion or reallocation is to a job with a pay band maximum that is higher than that of the job from which the employee was demoted.

(b) An appointing authority shall decrease the pay of an employee who is disciplinarily demoted by at least 7%.

(c) When an employee who is paid within a band extension transfers to an equivalent job in a position that has a lower or no band extension, the appointing authority shall reduce the employee's pay to the pay band maximum.

(d) An appointing authority shall not change the pay of an employee who is reassigned or reallocated to an equivalent or lower job. An employee's pay that is above the new pay band maximum or band extension shall be red circled.

(e) An appointing authority may decrease the pay of an employee who is relocated during a layoff process by at least 7%. An employee who accepts a relocation offer during a layoff process may have his pay red-circled if the reduction results in pay that is still outside of the band.

6.10 Pay on Detail to Equivalent or Lower Job

An appointing authority shall not reduce the pay of an employee who is detailed to an equivalent or lower job.

6.11 Pay on Return from Detail

An appointing authority shall pay an employee who returns from detail the amount authorized for his or her regular position.

6.12 Pay for Part-Time Services

(a) An appointing authority shall pay an employee who works part-time at the appropriate hourly rate.

6.13 Performance Adjustment; Anniversary Dates; Department Rating Dates

(a) Performance adjustments may be granted to employees at the discretion of an appointing authority; performance adjustments are not mandatory.

(b) Only employees who receive an overall performance rating of meets expectations or better may be eligible for a performance adjustment.

(c) An appointing authority shall establish a written policy that defines how employees may become eligible for performance adjustments. Such policies shall:

1. state the business case for the policy structure and design;
2. be reported to the Department of State Civil Service annually on July 30th;
3. be reported to the Department of State Civil Service within 30 days of the effective date of any changes; and
4. be posted in a manner available to all employees with an additional general notice given to all employees.

(d) The amount of the performance adjustment shall be determined by the appointing authority within the following parameters:

1. Meets Expectations – up to 3%
2. Exceeds Expectations – up to 4%
3. Outstanding – up to 6%

Any employee with an "Unrated" rating shall be treated as "Meets Expectations" under the agency's policy.

(e) An appointing authority may grant a new employee's first performance adjustment after six months of continuous classified service. This first eligibility date becomes the employee's anniversary date. Thereafter, an appointing authority may grant an employee a performance adjustment annually. When an appointing authority chooses not to award a performance adjustment to an employee on his or her anniversary date, the appointing authority may award the increase at any time within the following twelve month period.

(f) An employee shall retain his or her anniversary date and performance adjustment eligibility when he or she:

1. Is appointed from a department preferred reemployment list within one year of the date of the layoff; or
2. Is returned from military service.

Any former employee who returns to classified service following a break in service shall be considered a new employee.

(g) An appointing authority may grant an employee on detail a performance adjustment calculated on his or her pay on detail.

(h) An appointing authority may grant a lump sum performance adjustment to an employee who:

1. has achieved at least 10 years of continuous classified service;

2. has reached the maximum of his or her pay band or band extension; and

3. has been at the same pay rate for a period of two years.

Employees may not receive such an adjustment more frequently than once every other year. Employees who are red circled shall not be eligible for a lump sum payment.

6.14 Flexible Pay Options

(a) An appointing authority may only grant increases under this rule in accordance with a publicly posted, Commission-approved policy. An appointing authority who grants an increase under this rule shall verify the reason for the increase and publicly post the names of the recipients, the amount of the increase, and the reason for the increase. An appointing authority shall report to the Director in the manner the Director prescribes any increases granted under this rule.

(b) Achievement Pay

An appointing authority may grant an employee a pay increase of up to 10% as a base pay increase or one-time lump sum for achieving, while employed, a job-related certification, licensure, credential, degree or additional training. Employees at the maximum of the pay band may only receive a lump sum.

(c) Proficiency Pay

1. Additional Duties:

An appointing authority may grant an employee a base pay increase or lump sum payment of up to 7% for performance of additional duties. Employees at the maximum of the pay band may only receive a lump sum. An employee may not receive more than 15% within three consecutive years.

2. Rewards & Recognition:

An appointing authority may implement a rewards and recognition program for employees to reward significant accomplishments or innovations. Awards may be monetary or non-monetary. Monetary awards may be granted as a lump sum payment up to 10% of annual base pay to employees. An employee may not receive more than 10% in one year.

3. Matching a Job Offer:

An appointing authority may grant an employee up to 15% base pay or lump sum to match a verified, non-State job offer. An appointing authority may ask the Commission to authorize an increase greater than 15%.

4. Gainsharing & Exceptional Performance:

Pursuant to R.S. 39:87.5 and R.S. 39:87.6, an appointing authority may implement, in accordance with the Louisiana Government Performance and Accountability Act, an exceptional performance or gainsharing incentive reward program which provides for supplemental compensation to identified classified employees or classified employee groups responsible for efficiencies or exceptional performance. Employees must have been employed by the agency, program, or activity during the period when the efficiencies or the exceptional performance occurred and at the time the reward is distributed. Monetary rewards shall be a lump sum reward. Where the agency is not covered by the Louisiana Government Performance and Accountability Act,

the appointing authority shall obtain certification of efficiencies or exceptional performance as required by the Director of the Department of Civil Service.

(d) Incentive Pay

An appointing authority may grant an employee other payments (either base pay or lump sum) under an incentive pay policy approved by the Commission.

(e) Compression Pay

An appointing authority may grant an employee a pay increase of up to 15% of base pay to reduce pay compression, realign pay between comparable employees, or alleviate supervisor/subordinate pay inversions caused by job and pay plan changes.

6.15 Individual Pay Adjustment

When an appointing authority requests and can present adequate justification and documentation before the Commission in public hearing, the Commission may grant a special adjustment in pay (base pay or lump sum) to an individual that cannot be effected through other rules in this chapter. Such adjustments to base pay shall not exceed the pay band maximum or pay band extension of the job in which the individual is employed.

6.16 Perquisites

An appointing authority may request Commission approval of a policy to reimburse an employee for job related expenses such as housing, supplies, parking, etc.

6.17 Compensation for On-Call Duty and Shift Work

The Director may authorize on-call and shift differential pay and shall specify how appointing authorities are to implement these rates.

6.18 Red Circle Rates

(a) An employee whose pay exceeds the pay band maximum because his position was reallocated or job corrected to a lower job, his job was assigned a lower pay band, his position was declared to be in the classified service in accordance with Ch. 24, or he was demoted in lieu of layoff shall keep his current salary, which becomes an authorized red circle rate.

(b) An employee whose pay exceeds the pay band maximum because he was relocated to a lower position as a result of a layoff may be allowed to keep his current salary

in accordance with Rule 17.16, which becomes an authorized red circle rate.

(c) A red circle rate remains in effect until it falls within the pay band or band extension or until the employee separates from the position for which he was authorized the red circle rate.

(d) An employee with a red circle rate is not eligible for any base pay increase.

6.19 Holiday Compensation for Transferring Employees

When an employee is transferred, the department releasing the employee shall be liable for payment for any holidays and/or regular days off intervening between the last day actually worked in the department releasing the employee and the first day to be worked in the department acquiring the employee.

6.20 Employees not Eligible for Holiday Compensation

The following are not eligible for holiday compensation:

1. restricted appointees;
2. employees with intermittent work schedules or whose regular work schedule averages fewer than 20 hours per week; and
3. employees on leave without pay immediately before and after the holiday period.

6.21 Administrative Adjustments

To reduce administrative costs, when an employee's monthly pay is within \$20 of the pay band maximum or band extension (\$0.12 hourly), an appointing authority may adjust the employee's pay to the applicable maximum.

6.22 Corrective Pay Actions

When an employee receives unauthorized compensation, the Director may order the employee's pay corrected to an authorized amount and/or may revoke the appointing authority's discretionary pay authority. Before acting under this rule, the Director shall give the appointing authority and the employee notice of the proposed action and an opportunity to respond.

Explanation for Chapter 6

There is not a clear one-to-one correlation between the Rules contained in the old and new chapters, but the chart below illustrates the differences and contains explanations of any significant changes under Comments.

Summary of All Proposed Changes to Chapter 6			
Current Rule	Proposed Rule	Significant Changes	Explanation
6.1 Philosophy	Repealed		
6.2 Preparation of Pay Plan	6.1 Pay Plan	None	Combined into 1 Rule
6.3 Adoption of Pay Plan			
6.3.1 Other Compensation	6.2 Employee Compensation in General; Base Pay	None	Perquisites will now be covered under 6.16 with a Commission approved policy
6.4 Rates of Pay in the Pay Plan Plus Base Supplement		Base supplement will be referred to as "band extension"	
6.5 Hiring Rate	6.3 General Hiring Rates	Move SERs and Extraordinary Quals under a separate Rule	
Under 6.5 the following Rule number designations have changed:			
	6.5 (a) Job Appointment	6.3 (a) 1	
	6.5 (c) Reentering Classified Service	6.3 (c)	
	6.5 (d) Restricted Appointments	6.3 (a) 5	
	6.5 (e) Return from Military Duty	6.3 (a) 3	
	6.5 (f)	6.4 (a) 2	
	6.5 (h) Permanent employee accepts a Probational appointment which would have been a promotion	6.3 (b)	
	6.5.1	6.3 (a) 4 Hired from DPRL	

Summary of All Proposed Changes to Chapter 6			
Current Rule	Proposed Rule	Significant Changes	Explanation
6.5 (b) SERs	6.4 (a) Special Hiring Rates for Classes	DSCS will establish a set hiring for all agencies for jobs or job series	Eliminate agency competition and use market data to improve State hiring rates
6.5 (g)	6.5 Special Hiring Rates for Individuals	Above the 3 rd Quartile with Director approval	Increase flexibility in hiring extraordinary candidates into State service
6.6 Market Grade Adjustment	Repealed		
6.7 Rate of Pay Upon Promotion 6.8 Pay Upon Reallocation 6.11 Rate of Pay on Detail to Special Duty	6.7 Pay on Promotion, Detail, or Reallocation to a Higher Job	Must be at least 7% difference in maximums for promotion or demotion; otherwise considered a lateral	Close loop hole for promotions between pay schedules Put all increases in one Rule
6.8.1 Pay Upon Job Correction	6.8 Pay on Job Correction, Pay Range Change, or Movement of Position to the Classified Service	Unclassified positions which become classified will maintain the same rate of pay	
6.9 Pay Upon Transfer or Reassignment	6.9 (d) Pay on Reassignment or Reallocation to Equal or Lower Class	None	
6.10 Rate of Pay Upon Demotion	6.9 Pay on Movement to a Job with a Lower Maximum	Appointing Authority may waive 7% reduction BUT the employee may not receive promotion/reallocation pay for 2 years or until they promote to a job with a higher maximum than they demoted from	Eliminate agency or job hopping to increase base pay by accepting a voluntary demotion and then receiving pay increases for moving back to original job title
6.11 Rate of Pay on Detail	6.10 Pay on Detail to Equivalent or Lower Job and 6.11 Pay on Return from Detail	None	
6.12 Compensation for Part-Time Service	6.12 Pay for Part-Time Services	None	
6.13 Certification and Payment	6.2 Base Pay, 6.22 Corrective Actions		
6.14 Merit Increases	6.13 Performance Adjustments	Employees will be eligible for a variable Performance Adjustment which is tied directly to their PPR Rating and at the discretion of the appointing authority	Movement to Pay for Performance system
6.15 Red Circle Rates	6.18 Red Circle Rates	None	
6.16 Special Pay Provisions	6.14 Flexible Pay Options	Reorganized into separate pay categories	
Under 6.16 the following Rule number designations have changed:			
	6.16 (a) Premium Pay	6.6 Premium Pay	
	6.16 (c) Individual Pay Adjustment	6.15 Individual Pay Adjustment	
	6.16 (d) Incentive Awards	6.14 (d) Incentive Pay	
	6.16 (e) Effective date of the Commission Meeting	Repealed	
	6.16 (f) Base Supplement	Covered under 6.2 (b) Base Pay (Band Extension)	
	6.16 (g) Pay for Employees at Range Maximum	6.13 (h) Performance Adjustments (Lump-sum after 2 yrs at max and 10 years continuous service)	
	6.16 (h) Attainment of Advanced Degree	6.14 (b) Achievement Pay	
	6.16.1 Rewards and Recognition	6.14 (c) 2	
	6.16. 2 Optional Pay for Additional Duties	6.14 (c) 1 (cap of 7% at agencies discretion)	
	6.16.2 Optional Pay to match a verified job offer	6.14 (c) 3 (up to 15%)	
	6.16.2 Optional Pay for Compression	6.14 (e) Compression Pay	
	6.16.3 Exceptional Performance and Gainsharing	6.14 (c) 4 No % increase cap on employee salary	
6.17 Pay on Entering Classified Service by acquisition	6.8 Pay on Job Correction, Pay Range Change, or <u>Movement of Position to the Classified Service</u>		
6.28 On-Call/ Shift Diff	6.17 Compensation for On-Call Duty and Shift Work	None	
6.29 Corrective Pay Actions	6.22 Corrective Pay Actions	None	
6.30 Admin Costs	6.21 Administrative Adjustments	Change to add within \$.12/hour of range maximum	Employee pay should be calculated from the hourly rate for all pay actions

Chapter 1. Definitions

As a result of the repeal of Chapter 6 of the Civil Service Rules and the enactment of a new Chapter 6, the following changes are needed to Chapter 1 of the Rules.

Adopt the following New definitions

1.5.01.1 'Band Extension' means an expansion of the pay band maximum needed when market and employment conditions require such expansion to retain competent and experienced staff.

Explanation: This new rule replaces the old term, base supplement. It is a more accurate depiction of the concept.

1.5.03 'Base Pay' means the employee's hourly rate (including rate within a pay band extension) and any supplemental pay authorized by the Article. Base pay shall not include any overtime, per diem, shift differential, payment in kind, premium pay, one-time lump sum payments, or any other allowance for expenses authorized and incurred as an incident to employment. For purposes of these rules, "pay" means base pay.

Explanation: This new rule defines base pay. There was confusion in the past about what constituted base pay, and this rule clarifies it.

1.5.2.001 'Career Progression Group' means two or more job titles that have been banded into a defined group, typically within the same job family or series. Movement is based on consideration of performance, competency, skill, duty assignments, and experience.

Explanation: This is a clarification of an existing concept.

1.15.1.01 'Equivalent job' means one with the same pay band maximum or a maximum with a percent difference in pay of less than 7% than the comparison job.

Explanation: Under our new rules, we will consider jobs in differing pay schedules whose maximums are within a 7% plus or minus percentage difference as equivalent pay bands for promotion and demotion purposes.

1.15.2.1.01 'Higher job' means one with a pay band maximum with a percent difference of at least 7% higher than the comparison job.

Explanation: Under our new rules, we will consider jobs in differing pay schedules with higher maximums that have more than a 7% percentage difference as a promotion for pay purposes.

1.17.1.1 'Job or Job Title' means the descriptive name for the total collection of tasks, duties, and responsibilities assigned to one or more individuals whose positions have the same nature of work performed at the same level.

Explanation: This rule replaces 1.6, Class.

1.18.1.01 'Job Family' means a series of jobs having the same nature of work (e.g., engineering) but requiring different levels of skill, effort, responsibility or working conditions (e.g., entry level vs. senior level).

Explanation: Currently a job series or "family" is not defined. This rule provides the term for a group of highly related jobs or job titles.

1.19.1.1 'Lower job' means one with a pay band maximum with a percent difference of at least 7% lower than the comparison job.

Explanation: Under our new rules, we will consider jobs in differing pay schedules with lower maximums that have more than a 7% percentage difference as a demotion for pay purposes.

1.20.4 'On-call pay' means a nominal amount of compensation provided in return for an employee being available to report to work outside of his or her regular work schedule at the appointing authority's discretion.

Explanation: This is a clarification of an existing concept.

1.23.1 'Pay Band' means the minimum and maximum pay approved for a job, excluding any band extension.

Explanation: This rule replaces 1.24.001, Pay Plan.

1.24.004 'Performance Adjustment' means pay granted to an employee that is linked to individual, group, and/or organizational performance.

Explanation: This rule replaces 1.20.002, Merit Increase.

1.24.02.1 'Perquisites' means any tangible privilege or gain beyond salary and entitlements provided to administrators, faculty or other employees, including but not limited to housing allowances, car allowances, spousal travel, insurance, and club memberships.

Explanation: This is a clarification of an existing concept.

Amend the following definitions

Current Rule:

1.2 'Allocation' means the determination of the job to which a position is deemed to pertain.

Proposed Amended Rule:

1.2 'Allocation' means the determination of the job title for a position.

Explanation: This amendment is a simplification of the language.

Current Rule:

1.8 'Classified Service' is defined as that body of employees performing personal services to and for the State or any of its instrumentalities, except those rendering such services who are specifically exempt from the Classified Service by the Article and these Rules.

Proposed Amended Rule:

1.8 'Classified service' means all persons holding positions in state service except those exempted by or under Section 2 of the Article.

Explanation: This amendment is a simplification of the language.

1.10 'Continuous Classified Service' means continuous employment in a classified position. Such service includes any authorized leave of absence; a separation by layoff of not more than one year when reemployment is from a department preferred reemployment list; separation without a break in service of one or more working days; or separation for active military service in the armed forces of the United States where reemployment is in accordance with the provisions of Civil Service Rule 23.15.

Explanation: The previous definition defined "Continuous State Service" and that has been changed to "Continuous Classified Service."

Current Rule:

1.11 'Demotion' means a change of a permanent or probationary employee from a position in one job to a position in another job which is assigned to a pay grade with a lower maximum.

Proposed Amended Rule:

1.11 'Demotion' means a change of an employee from a position in one job title to a different position allocated to a lower job.

Explanation: This amendment is a simplification of the language.

Current Rule:

1.19.1 'Layoff Avoidance Measures' means actions taken by an appointing authority and approved by the Director and/or the Commission to help prevent a layoff. These include: not granting merit increases, granting reduced merit increases, reductions in work hours, furloughs and retirement incentives. Another measure, one not needing Civil Service approval, is the required use of leave during agency closures as stated in Rule 17.10.

Proposed Amended Rule:

1.19.1 'Layoff Avoidance Measures' means actions taken by an appointing authority and approved by the Director and/or the Commission to help prevent a layoff. These include: reductions in work hours, furloughs and retirement incentives. Another measure, one not needing Civil Service approval, is the required use of leave during agency closures as stated in Rule 17.10.

Explanation: This amendment removes references to merit increases, which will no longer be a part of layoff avoidance. Flexibility exists in the new performance adjustment rule to address budget issues.

Current Rule:

1.24 'Pay Plan' means a schedule of pay rates or ranges and a list showing the assignment of each job in the job evaluation plan to one of the rates or ranges and includes rules of administration.

Proposed Amended Rule:

1.24 'Pay plan' is the schedule of pay bands assigned to each classification in the classified service.

Explanation: This amendment is a simplification of the language.

Current Rule:

1.25 'Position' means any office and any employment in the Classified Service. 'Position' for job evaluation and pay purposes means a collection of duties and responsibilities assigned to an individual employee. Multiple positions may constitute a job.

Proposed Amended Rule:

1.25 'Position' means a set of duties requiring the services of one employee.

Explanation: This amendment is a simplification of the language.

Current Rule:

1.27 'Promotion' means a change of a permanent employee from a position in one job to a position in another job which is assigned to a pay grade with a higher maximum.

Proposed Amended Rule:

1.27 'Promotion' means a change to a different position allocated to a higher job.

Explanation: This amendment is a simplification of the language.

Current Rule:

1.33 'Reassignment' means the change within the same department of a probationary or permanent employee from a position in one job to another position in a different job, both jobs of which have the same maximum rate of pay.

Proposed Amended Rule:

1.33 'Reassignment' means a change within the same department from a position in one job to a different position in an equivalent job.

Explanation: This amendment is a simplification of the language.

Current Rule:

1.33.01 'Red Circle Rate' means an individual pay rate, excluding those that fall within the base supplement authorized for a position, that is above the maximum of a pay range for a grade; or, only under conditions as specified in Rule 6.15(d), an individual pay rate that is above the base supplement authorized for a position.

Proposed Amended Rule:

1.33.01 'Red Circle Rate' is an authorized pay rate that exceeds the maximum of the band or band extension.

Explanation: This amendment is a simplification of the language.

Repeal the Following Definitions

1.1.1 'Acceptable Rating' means a performance appraisal rating of either "Achieves Results Expected", "Exceeds Results Expected" or "Outstanding". (REPEAL)

Explanation: This terminology is no longer used.

1.5.02 'Base Supplement' means additional pay above the range maximum, when authorized by the Commission and approved by the Governor under limiting factors (e.g., by job titles, geographic areas, organizations, etc.) it deems appropriate when market and employment conditions require such supplement in order to maintain competent and experienced staff, which is treated as a part of base pay. (REPEAL)

Explanation: Replace with 1.2.1, Band Extension.

1.6 'Class', for the purpose of these Rules, means the same as 'Job'. (See Rule 1.17.1.1) (REPEAL)

Explanation: Replace with 1.17.1.1, Job or Job Title.

1.6.1 'Classification Plan' means the hierarchical structure of jobs, arranged in pay grades according to job evaluation results. (REPEAL)

Explanation: This terminology is no longer used.

1.14.2 'Efficiency Rating' means the official overall rating assigned to an employee in accordance with Chapter 10 of these rules. (REPEAL)

Explanation: Replaced previously with 1.24.01, 'Performance Appraisal Rating' - the overall rating of an employee, made in accordance with the performance appraisal system established by these Rules.

1.15.2.2 'Hiring Rate' means the beginning rate at which persons are hired into a job. (REPEAL)

Explanation: This terminology is no longer used; part of Ch.19 that dealt with movement from the wage grade to the general schedule.

1.15.2.3 'Individual Pay Rate' means the rate of pay assigned to a given individual. Individual pay rates may vary on the same job as a function of base supplement, of service in grade, performance or some other basis for establishing variation. (REPEAL)

Explanation: This terminology is no longer used; part of Ch.19 that dealt with movement from the wage grade to the general schedule.

1.20.002 'Merit Increase' means an adjustment to individual pay rate based on performance, or some other individual equity basis. (REPEAL)

Explanation: Replaced with 1.24.004, Performance Adjustment.

1.20.04 'Minimum' means the interim minimum of a pay range, as stipulated in Chapter 19 until such minimum no longer exists. (REPEAL)

Explanation: This terminology is no longer used; part of Ch.19 that dealt with movement from the wage grade to the general schedule.

1.24.001 'Pay Range' means the range of pay rates from minimum to maximum set for a pay grade. (REPEAL)

Explanation: Replaced with 1.23.1, Pay Band.

1.41.1 'Unacceptable Rating' means a performance appraisal rating of either "Needs Improvement" or "Unsatisfactory".

Explanation: This terminology is no longer used.

REPEAL of Related Rule in Another Chapter

Rule 17.6 Current:

Merit Increases

When an appointing authority determines that it is necessary not to grant or to reduce merit increases in order to avoid or reduce layoffs, his request is subject to the following:

(a) The request shall include the reasons for this action, the names and jobs of those employees to be excluded, if any, and reasons for their exclusion, the proposed effective dates and periods of time involved, the organizational unit, and the geographic area(s) affected.

(b) The duration of this measure shall not exceed one period of 12 consecutive months.

(c) Employees whose merit increases are affected by this measure shall retain their eligibility for such increases for a three-year period. Such eligibility shall be lost if during that period the employee receives an official rating of "poor" or "needs improvement."

Explanation: This rule is no longer necessary. Merit increases will not be included at all in layoff avoidance measures, due to the flexibility of the new performance adjustment rule.

Amendment to Related Rule in another Chapter

Rule 24.2(g) Current:

An employee who enters the State classified service in accordance with this Rule shall have his/her eligibility for merit increases under Rule 6.14 and leave earning determined based on the original date of appointment with his/her current or former employer and, upon appointment in the State classified service, shall not be treated as a new employee under the provisions of Rule 6.14. However, the Director may approve existing annual eligibility dates for all employees of an entity acquired under this rule, that already had a well established merit pay policy.

Rule 24.2(g) Proposed:

An employee who enters the State classified service in accordance with this Rule shall have his/her eligibility for performance adjustments and leave earning determined based on the original date of appointment with his/her current or former employer and/or upon appointment in the State classified service. However, the Director may approve existing annual eligibility dates for all employees of an entity acquired under this rule that already had a well established merit pay policy.

Explanation: This change is made to reflect the new terminology of "performance adjustment" instead of merit

increase, and to clarify the flexibility in setting eligibility dates during an acquisition.

Shannon S. Templet
Director

0910#064

NOTICE OF INTENT

Department of Culture, Recreation and Tourism Office of Tourism

Welcome Centers (LAC 25:V:501, 503, 505 and 507)

The Louisiana Department of Culture, Recreation and Tourism, Office of Tourism, in accordance with R.S. 51:1255 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby provides notice of its intent to promulgate LAC 25:V:501-507 to provide for the reserved exclusive use of Welcome Centers by the public to the extent and in order to ensure that such use does not conflict with the primary mission of Welcome Centers and in order to offset the costs associated with providing this service to the public.

Title 25

CULTURAL RESOURCES

Part V. Office of Tourism

Chapter 5. Welcome Centers

§501. Welcome Centers

A. The Louisiana Office of Tourism operates a system of Welcome Centers whose primary mission is to provide a safe, friendly environment to welcome visitors, provide visitors information about tourist attractions and resources, and to encourage visitors to spend more time in the state.

B. Welcome Center facilities are available for reserved exclusive use by the public to the extent such use does not conflict with the primary mission of the Welcome Center and such use is consistent with these rules as well as all other laws, regulations, and policies applicable to such use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:

§503. Reservations

A. Requests to reserve a room or an area within a Welcome Center may be submitted for approval to the Supervisor of that Welcome Center.

B. Requests to reserve a Welcome Center facility for exclusive use must:

1. Be in writing on the form provided by the Louisiana Office of Tourism. The request form will include the Louisiana Office of Tourism's Usage Policies, the terms of which will be incorporated into the final written agreement for use.

2. Provide the name, age, and contact information of the individual responsible for all obligations related to the use. That person shall serve as the liaison for all communications and shall be responsible for ensuring compliance with all terms of use and payment, if the request is approved.

3. Describe the nature of the event, dates and hours of the event including time required for set-up and take-down,

the number of anticipated attendees, the space requested, any special requirements or requests.

C. Approval of the Request

1. A request for reserved exclusive use is considered approved only when the individual receives the written agreement which has been signed and approved in accordance with the policies and procedures of the Louisiana Office of Tourism. The written, signed agreement will specify all terms of the use, the effective date of the approval, all costs and fees, arrangement requirements, and the specific space authorized for use.

2. A request for reserved exclusive use is subject to availability and will only be approved if the proposed use will not, in the opinion of the Office of Tourism, negatively impact the buildings, patios, facilities, furnishings, exhibits, or grounds within or associated with the Welcome Center, and will not materially interfere with the fulfillment of the Welcome Center's primary mission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:

§505. Standard Fees

A. Standard fees for reserved exclusive use of the Capitol Park Welcome Center facilities shall be assessed as follows.

Space	Capacity	Full Day Rate (3 hours or more)	Half Day Rate (Less than 3 hours)	Evening Rate (after 4:30 pm)
Entire Building and Patio	350 seated; 600 reception	\$700	\$500	\$550/hour
Entire Building	175 seated; 400 reception	\$600	\$400	\$250/hour
Margaret Taylor Theater (includes audio/visual capabilities)	115 seated (lecture) 80 seated (classroom) 200 reception	\$425	\$275	\$150/hour
Fishbowl	75 seated (lecture)	\$175	\$125	\$100/hour
Patio	200 seated; 300 reception	\$200	\$150	\$100/hour

B. Additional Fees

1. Additional charges may be assessed based the nature of the requested function and/or additional requirements as agreed upon. Any additional charges will be included in the written agreement.

2. Additional charges will be assessed for damages incurred and clean-up. These charges are in addition to all other fees and charges and are payable upon notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:

§507. Discounts, Fee Waivers

A. No fees shall be assessed for reserved exclusive use of Welcome Center facilities by agencies of the Office of the Lieutenant Governor, the Department of Culture, Recreation and Tourism, or any entity hosting a program in cooperation with the agencies of the Office of the Lieutenant Governor or the Department of Culture, Recreation and Tourism.

B. The Assistant Secretary of the Office of Tourism or his designee may grant other state agencies a \$25 discount off of the standard fees.

C. From time to time, as the Assistant Secretary of the Office of Tourism or his designee deems necessary or appropriate, variations in occupancy requirements, fees, and discounts may be allowed to encourage use of the Welcome Center facilities.

D. No fees will be charged to the general public whether they enter as tour group participants or individuals during regular operating hours at any Louisiana Welcome Center. However, adult and school age groups should advise the Welcome Center Supervisor if a Welcome Center visit is planned, to ensure adequate preparation and attention as well as a quality experience and a proper visitor count.

E. At this time, only the Capitol Park Welcome Center in Baton Rouge has an established fee schedule for reserved exclusive use of its facilities. All other Welcome Center facilities may be reserved for exclusive use by the public at the cost, if any, incurred by the Louisiana Office of Tourism to accommodate said use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1255.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of Tourism, LR 36:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule 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 will not affect the authority and rights of person regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior and personal responsibility of children.

Is the family or local government able to perform the function as contained in this proposed Rule? No, the family or local government is not able to perform the functions of this Rule. The Rule pertains to reserved exclusive use of a state-owned building.

All interested persons are welcome to submit comments on the proposed Rule. Persons commenting should reference this proposed Rule by CPWC 001. Comments must be submitted by one of the following means: by mail to Welcome Centers Section, Louisiana Office of Tourism, P.O. Box 94291, Baton Rouge, LA, 70802I; facsimile to 225-342-1051; or email to welcomecenters@crt.state.la.us. The deadline for comments is 4:00 PM, Friday, October 30, 2009.

James "Jim" Hutchison
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Welcome Centers**

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

The agency estimates that there will be minimal to no implementation costs or savings to state or local governmental units. To the extent that costs are incurred, it is reasonably anticipated by the agency that those costs will be offset by the revenue generated under the proposed rule.

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

The agency anticipates generating approximately \$25,000 in FY 09-10 and \$35,000 in FY 10-11. There is potentially a minor increase in tax revenue collections of state and local governmental units anticipated by the agency, due to increased economic activity at the Welcome Centers.

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

The estimated cost to the individual user is proportionate to the value the user receives from the use of the Welcome Center facilities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The agency estimates the effect of the proposed rule on competition and employment to be minimal, because the fees have been set at a level to ensure fair competition among similar meeting venues in the area.

James "Jim" Hutchinson
Assistant Secretary
0910#006

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
State Military Department**

**National Guard Death and Disability Benefits
(LAC 41:III.101)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and Louisiana Revised Statutes 29:11, The State Military Department hereby gives notice of its intent to promulgate National Guard Death and Disability Benefits as provided by R.S. 22:941(A)(5) as enacted by Act 260 of the 2007 Regular Session of the Legislature. The National Guard Death and Disability Benefit Statute requires the payment of \$250,000 to the beneficiary of a Guardsman who died while on state or federal active duty while in the course of the business of the military forces of this state. Additionally, the statute requires the payment of \$100,000 for permanent total disability due to injuries suffered while the Guardsman was on state or federal active duty while in the course of the business of the military forces of this State. This Regulation became effective August 21, 2009, by Emergency Rule.

**Title 41
MILITARY FORCES OF THE STATE
Part III. Benefits**

Chapter 1. National Guard Death and Disability Benefits

§101. General Provisions

A. Purpose

1. To establish an effective and efficient mechanism for fulfilling the provisions of R.S. 22:941(A)(5), which became effective on July 6, 2007.

2. To govern the submission, evaluation and determination of claims submitted pursuant to R.S. 22:941(A)(5).

B. Application

1. The rules will apply to all claims arising from R.S. 22:941(A)(5).

C. Definitions

DoD—United States Department of Defense.

LANG—Louisiana National Guard.

Guardsmen or Guardsman—an officer or enlisted member of the Louisiana National Guard.

Period of Activation—

a. that period when the Governor of the State of Louisiana orders a Guardsman to State Active Duty pursuant to Title 29, Section 7 of the Louisiana Revised Statutes; and

b. that period when the President of the United States orders a Guardsman to Federal Active Duty pursuant to Title 10, Section 12301, 12302, 12303 of the U.S. Code.

Course of Business—the performance of the business of the military forces of the State of Louisiana or the United States.

DD Form 93—record of emergency data executed by every member of LANG pursuant to DoD policies and regulations.

Disabled or Disability—permanent total disability.

Beneficiary—unless otherwise designated by the deceased Guardsman as set forth in this regulation, the person designated by the Guardsmen on DD Form 93 who receives the death gratuity from DoD pursuant to Title 10 U.S. Code, Subtitle A, Part II, Chapter 75, Subchapter II, Section 1475, et seq.

Permanent Total Disability—a 100 percent permanent total or unemployability disability rating as determined by the U.S. Veterans Administration (VA) for federal active duty or in accordance with the worker's compensation law of this state for state active duty.

Qualifying Claim—those claims meeting the criteria of claims request documentation, and the meaning ascribed to course of business.

D. Claims for Benefits

1. All claims for death benefits under R.S. 22:941(A)(5) shall be submitted to the Louisiana National Guard, ATTN: J-1, Casualty Branch, Building 496, 3rd Street, Camp Beauregard, LA 71360. A claim form may be obtained from this agency.

2. All claims for Disability Benefits under R.S. 22:941(A)(5) shall be submitted to Louisiana Dept. of Veterans

Affairs, P.O. Box 94095, 1885 Wooddale Blvd. Baton Rouge, LA 70804-9095. A claim form may be obtained from this agency.

3. All death benefit claim requests must include the following documentation:

a. the guardsman's signed LANG death beneficiary designation form or, in absence thereof, a signed DD Form 93;

b. DD Form 1300 (death certificate) or death certificate from the state of Louisiana;

c. a copy of the guardsman's state or federal orders or copy of DD Form 214;

d. death benefit claim form signed by claimant and certified by the Adjutant General or his designee.

Figure D Application for Death Benefits

INTERIM APPLICATION FOR LOUISIANA NATIONAL GUARD DEATH BENEFITS UNDER LOUISIANA REVISED STATUTE 22:941
(Please Print)

1. Today's date:			2. Date of Death:		
DECEASED GUARDSMAN INFORMATION					
3. Last Name of Deceased Soldier:		First:	Middle:	4. Marital status (circle one) Single / Mar / Div / Sep / Wid	
5. (Any Former name): <input type="checkbox"/> Yes <input type="checkbox"/> No	6. Birth date: / /	7. Age:	8. Gender: <input type="checkbox"/> M <input type="checkbox"/> F		
9. Unit:		10. Social Security no.:		11. Please attach a copy of <input type="checkbox"/> DD Form 1300 (Death Certificate) <input type="checkbox"/> DD Form 93 (Record of Emergency Data)	
12. Duty Status of Soldier (Attach copy of State or Federal Orders or DD Form 214) <input type="checkbox"/> Attached				13. Status	
INFORMATION CONCERNING APPLICANT					
Please read the instructions below before answering					
14. Name and relationship of claimant:		15. Birth date: / /	16. Address (if different):		17. Social Security Number
Benefits payable under this provision will be paid in accordance with Department of Defense Death Gratuity policies applicable at the time of death of the Guardsman.					
CERTIFICATION OF APPLICANT AND CERTIFYING OFFICIAL					
Applicant signature				18. Home phone no.:	
				19. Work phone no.:	
Applicant certifies that the above information is true to the best of his/her knowledge. Applicant understands that willful or intentional misrepresentation relative hereto is punishable by a fine or imprisonment.					

<p>For internal use only: Certifying Official hereby represents that he/she has made inquiry into this application and found the application and accompanying documents to be to be in order and recommends payment of benefits.</p>	<hr/> <p style="text-align: center;">Last Name, First Name, Rank Date</p>
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4. All claims for disability benefits must include the following:

a. a copy of the guardsman's state or federal orders or copy of DD Form 214;

b. a rating decision by the U.S. Department of Veterans Affairs or in accordance with the worker's compensation law of this state;

c. disability benefit claim form signed by claimant and certified by the Secretary of the Louisiana Department of Veterans Affairs or his designee.

E. Death and Disability Benefit Payment Eligibility

1. Benefits under R.S. 22:941(A)(5) will be paid to the beneficiary of guardsmen who die while on state active duty or federal active duty. Benefits will also be paid in the event of death while a guardsman is ordered to active duty by the governor pursuant to R.S. 29:7 and in a federal pay status pursuant to 32 U.S.C 502(f)(1).

2. Benefits under R.S. 22:941(A)(5) will be paid to Guardsmen who are disabled due to injuries suffered while on state active duty or federal active duty. Benefits will also be paid in the event of disability due to injuries suffered while a guardsman is ordered to active duty by the governor pursuant to R.S. 29:7 and in a federal pay status pursuant to 32 U.S.C 502(f)(1).

3. Benefits under this part will not be paid to guardsmen who die or become disabled while in any training status pursuant to Title 29 of the Louisiana Revised Statutes or Title 32 of the U.S. Code.

4. Members of the Active Guard Reserve (AGR) program, federal technicians and state employees are not eligible for benefits under R.S. 22:941(A)(5) unless otherwise qualified as set forth in Paragraph E.1 or E.2 of this regulation.

5. Guardsmen who die or become disabled while on State Active Duty or Federal Active Duty, but are not in the course of business at the time of their death or injury may not be eligible for benefits under R.S. 22:941(A)(5). If an investigation determines that the Guardsman was not in the line of duty as defined by Army Regulation 600-8-4 at the time of his death or injury, that Guardsman may be determined to be ineligible for this benefit.

6. Guardsmen who are declared 100 percent disabled by the U.S. Veterans Administration for injuries suffered during a Period of Activation are eligible for the disability benefit under R.S. 22:941(A)(5). Eligibility for Guardsmen who become disabled due to injuries suffered while on state active duty will be determined in accordance with the worker's compensation law of this state.

F. Determination of Eligibility and Payment of Benefits

1. Death benefit eligibility and certification will be determined by The Adjutant General or his designee.

2. Disability benefit eligibility and certification will be determined by the Secretary of the Louisiana Department of Veterans Affairs or his designee.

3. Payment to eligible recipients of qualified claims will be made by the Louisiana Office of Risk Management after certification of eligibility and request for payment is made as set forth herein above.

G. Beneficiary Designation by Guardsmen

1. All members of LANG shall complete and execute a "Death Benefit Beneficiary Designation Form" which will contain the name of the beneficiary of the guardsman's death benefit under R.S. 22:941(A)(5) to whom this benefit will be paid in a lump sum.

2. The designation form will be signed by the guardsman before a witness in the grade of E-7 or above.

3. The designation form will be kept in the personnel files of the LANG in the regular course of business.

Figure G Sample Beneficiary Designation Form

Louisiana National Guard
Death Benefit Beneficiary Designation Form
For Benefits Payable Under La. R.S. 22: 941(A)(5)

(Please Print)

INSTRUCTIONS TO SOLDIER / AIRMAN: The State of Louisiana provides a special benefit to your designated beneficiary in the event of your death while mobilized by the Governor of Louisiana on State Active Duty or while mobilized by the President of the United States on Federal Active Duty. The benefit is in the amount of \$250,000.00 and is payable by the State in a lump sum to the person you designate below. Only one beneficiary may be designated. Consider this designation carefully.

INSTRUCTIONS TO UNIT: This form shall be reviewed annually with the Soldier or Airman. This form and all updates are forwarded to J-1 Casualty Branch for review, approval and placement in personnel records.

GUARDSMAN'S INFORMATION		
1. GUARDSMAN'S NAME (LAST, FIRST, MIDDLE INITIAL)	2. SOCIAL SECURITY NUMBER	
3. UNIT		
BENEFICIARY DESIGNATION		
I hereby designate the following person as my beneficiary for death benefits paid by the State of Louisiana pursuant to La. R.S. 22: 941(A)(5) in the amount of \$250,000.00 payable in a lump sum to this person:		
4. BENEFICIARY NAME: (LAST, FIRST, MIDDLE INITIAL)		
5. STREET ADDRESS:		
6. CITY:	7. STATE:	8. ZIP CODE:
9. MAILING ADDRESS (IF DIFFERENT):		
10. CITY:	11. STATE:	12. ZIP CODE:
13. HOME PHONE NUMBER:	14. OTHER PHONE NUMBER	15. EMAIL ADDRESS
SIGNATURE		
16. Signature of Guardsman		Date
WITNESS (E-7 OR ABOVE)		
17. Signature of Witness	Rank	Date

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 36:

Family Impact Statement

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

Public Comments

Written comments may be address to Dirk Thibodeaux, Executive Counsel, Louisiana Military Department, 5445 Point Clair Road, Box 28, Carville, LA 70721, until 4:30 p.m. on November 10, 2009.

Bennett C. Landreneau
Adjutant General

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: National Guard Death and Disability Benefits

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

The proposed rule change will have no direct impact on state or local government expenditures and merely provides for the administration of the National Guard Death and Disability Benefit. The proposed regulation governs the submission, evaluation, and determination of claims submitted pursuant to La. R.S. 22:941 (A)(5), which became effective July 6, 2007.

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

Revenue collections of state and local governments will not be affected by the proposed regulation.

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

This is a procedural regulation that will not have a direct financial impact on affected persons or nongovernmental groups. The proposed rule merely provides for the administration of the National Guard Death and Disability Benefit as per La. R.S. 22:941(A)(5).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This is a procedural regulation that will not have a direct impact on competition or employment.

Dirk Thibodeaux
Executive Counsel
0910#027

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Dentistry

Editor's Note: This Notice of Intent was inadvertently published a month early in the September 2009 issue of the *Louisiana Register*. It is being republished this month to correct this error.

General Provisions (LAC 46:XXXIII.116, 312, 313, 314, 701, and 1713)

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.116, 312, 313, 314, 701, and 1713. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§116. Reconsideration of Adverse Sanctions

A. - H. ...

I. A licensee may request a reconsideration of adverse sanctions a maximum of three times for the same disciplinary matter. Any applications beyond this limit will be considered at the discretion of the board.

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 24:1113 (June 1998), amended LR 26:1612 (August 2000), repromulgated LR 27:1890 (November 2001), amended LR 27:1893 (November 2001), LR 36:

Chapter 3. Dentists

§312. Mobile Dental Clinics

Repealed.

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 24:1497 (August 1998), repealed LR 36:

§313. Portable and Mobile Dentistry

A. Definitions

Mobile Dental Clinic or *Mobile Dental Unit*—any self-contained facility in which dentistry will be practiced which may be moved, towed, or transported from one location to another using fixed dental equipment and plumbing.

Mobile Operator—a dentist licensed in Louisiana who has registered a mobile dental clinic or mobile dental unit with the dental board pursuant to these rules and who provides dental services in a mobile dental clinic or mobile dental unit either directly and/or through Louisiana licensed dentist associates.

Mobile Operator Permit—an authorization given to a Louisiana licensed dentist for the physical use of a mobile dental clinic or mobile dental unit in which to provide dental services. The mobile permit is required of the owner of the operation and does not apply to any dentist employed or contracted with the owner of the operation.

Operator—a licensed Louisiana dentist that has a current mobile or portable operator permit.

Operation—the activity conducted by mobile or portable operators.

Portable Dental Clinic—the use of portable dental delivery equipment which is set-up on site to provide dental services at locations other than a mobile dental clinic or mobile dental unit and other than a dental office and uses non-fixed dental equipment and plumbing.

Portable Operator—a dentist licensed in Louisiana providing dental services at a location other than a Mobile Dental Clinic or Mobile Dental Unit and other than a fixed dental office either directly and/or through Louisiana licensed dentist associates.

Portable Operator Permit—an authorization given to a Louisiana licensed dentist to provide dental services at

locations other than a mobile dental clinic or mobile dental unit and other than a dental office. The portable operator permit is required of the owner of the operation and does not apply to any dentist employed or contracted with the owner of the operation.

B. Exemptions

1. Exempt from the requirements of these regulations for portable or mobile dentistry and for the use of a mobile dental clinic, mobile dental unit, or portable dental clinic are all federal, state, or local governmental agencies.

2. Dentists licensed to practice in Louisiana who have not registered with the Board to operate a mobile dental facility or a portable dental operation may provide dental services through the use of dental instruments, materials, and equipment taken out of a dental office without registering if the service is provided as emergency treatment for their patients of record.

3. The services are limited to dental sealants, screenings, cleanings, radiographs, and fluoride treatments provided that such services are performed at no charge to the patient, the patient's parent or guardian, or any third-party payor.

C. Application and Criteria for Permit

1. To own Mobile or Portable Operations a dentist must be licensed in Louisiana, in good standing with the dental board, and must have a mobile operator permit, a portable operator permit, or both.

2. A dentist licensed in Louisiana desiring to obtain a mobile operator permit from the dental board in order to provide dental services in a mobile dental clinic or mobile dental unit, shall apply to the dental board for a mobile operator permit on an application form to be provided by the dental board and by providing evidence of compliance with the requirements of this section and paying all appropriate fees.

3. A dentist licensed in Louisiana desiring to obtain a portable operator permit to provide dental services at locations other than his office, shall apply to the dental board for a portable operator permit on an application form to be provided by the dental board and by providing evidence of compliance with the requirements of this section and paying all appropriate fees.

4. Any Louisiana licensed dentist with an existing portable or mobile dental practice shall be entitled to continue operating their portable or mobile dental practice under the prior existing dental board regulations until the necessary permits are granted so long as all application and supporting documentation are submitted for the new permits within 60 days of this rule taking effect.

5. All mobile or portable operations must conform to all existing and applicable dental practice act rules and regulations, federal, state, and local laws, regulations, and ordinances including those relative to radiographic equipment, flammability, construction, sanitation, zoning, OSHA regulations, and applicable Federal Centers for Disease Control Guidelines and Prevention, Louisiana Department of Health and Hospital regulations including those for medical waste transportation, and the applicant possesses any applicable parish and city licenses or permits to operate the unit.

6. Each mobile dental clinic or mobile dental unit shall:

- a. have ready access to a ramp or lift if necessary;
- b. have a properly functioning sterilization system;
- c. have ready access to an adequate supply of potable water;
- d. have ready access to toilet facilities if necessary;
- e. have a covered galvanized, stainless steel, or other non-corrosive container for deposit of refuse and waste materials;
- f. have an emergency kit available at all times;
- g. have portable oxygen available at all times;
- h. have sharps containers and red biohazard bags available on site;
- i. have properly functioning radiograph equipment producing fully developed x-rays of diagnostic quality;
- j. have suction equipment to achieve a minimum level of 3 cubic feet per minute.

7. Each portable dental clinic shall:

- a. have ready access to an adequate supply of potable water;
- b. have ready access to toilet facilities if necessary;
- c. have a covered galvanized, stainless steel, or other non-corrosive container for deposit of refuse and waste materials;
- d. have an emergency kit available at all times;
- e. have portable oxygen available at all times;
- f. have sharps containers and red biohazard bags available on site-;
- g. have a properly functioning sterilization system;
- h. have properly functioning radiograph equipment producing fully developed x-rays of diagnostic quality;
- i. have suction equipment to achieve a minimum level of 3 cubic feet per minute.

8. The mobile dental clinic, mobile dental unit, or portable dental clinic shall be inspected in a timely fashion by a dental board member or a staff evaluator prior to receiving approval to operate.

9. During operations the mobile dental clinic, mobile dental unit, or portable dental clinic shall prominently display all applicable licenses and permits in compliance with section 104 of these rules. These documents may be kept in a notebook labeled "licenses and permits." Copies of licenses and permits are acceptable.

10. Transferability. Neither the Mobile or Portable permits are transferable.

11. Renewal. Mobile or portable permits expires at the same time as the operator's dental license but shall be renewed at the time the operator renews his or her dental license by completing the renewal form and paying all applicable fees.

D. Record Keeping. The operator or operation shall maintain an official business or mailing and actual, physical address of record which shall not be a post office box except where mail is deliverable to a post office box only and a 24 hour emergency telephone number which shall be filed with the board. The dental board shall be notified within 30 days of any change in the address of record. All written or printed, or electronic documents available from or issued by the operator or operation shall contain the official address of record of the operator or operation. When not in transit, all dental and official records, printed or electronic shall be maintained or available at the official office address of

record, in conformity with all record-keeping requirements and provide at no cost within 24 hours via electronic means or 72 hours by other means upon receipt of a HIPAA compliant request with a satisfactory release.

E. Practice Standards

1. All operators and dentists providing care in mobile dental clinics, mobile dental units, or portable dental clinics shall maintain and uphold the prevailing standard of dental care.

2. Anesthesia in all operations shall be limited to local anesthetics only.

3. An operator or operation must have communication facilities immediately available which will enable the operator thereof to contact necessary parties in the event of a medical or dental emergency including 911 capabilities.

4. An operator or operation which accepts a patient and provides preventative treatment, including prophylaxis, radiographs, and fluoride shall make appropriate referrals for follow-up treatment when indicated in the dentist's professional judgment and is subject to the prevailing standard of dental care.

5. An operator or operation must ensure that all dental services are provided in a clean, sanitary place, and in compliance with applicable Federal Centers for Disease Control and Prevention Guidelines, the Dental Practice Act and regulations, federal, state, and local laws, regulations, and ordinances including those relative to radiographic equipment, flammability, construction, sanitation, zoning, Louisiana Department of Health and Hospital regulations including those for medical waste transportation, and the applicant possesses any applicable parish and city licenses or permits to operate the unit.

6. An operator shall identify and advise the dental board within 30 days of any personnel change relative to all licensed dentists and dental hygienists, associated with the provision of dental services by providing their full names, addresses, telephone numbers, and license numbers.

7. At all times the mobile or portable dental activities shall be under the supervision of the dentist with the operator permit or any dentist working in that practice subject to direct and general supervision stipulations found in §701. Any dentist or dental hygienist rendering services shall be licensed and in good standing with the dental board.

8. The operator or operation must certify and provide the dental board a copy of a written agreement for emergency follow-up care for patients treated at said locations and the agreement is to include identification of and arrangements for treatment in a dental facility which is permanently established within 25 miles of the treatment site. When the operator has demonstrated no emergency facility is available within the area, the board may grant a distance waiver of this rule to promote and foster access to dental care.

9. When radiographs are to be made by the operator or operation, a lead apron which includes a thyroid collar shall be utilized and adequate protection for the x-ray technician shall be utilized.

10. There shall be a designated room with a minimum of 100 square feet where portable dentistry will occur and other children will not be present either during or immediately after dental procedures. Also prior to providing

treatment a surgical preprocedural rinse shall be administered to the patient.

F. Cessation of Operations

1. Upon cessation of the operation, the Operator shall notify the dental board within 30 days of the last day of operation in writing of the final disposition of patient records and charts.

2. If the operation is sold, a new registration application must be filed with the board.

3. Upon choosing to discontinue practice or services, the operator or operation shall notify within 30 days all patients where and how they may obtain their dental records.

4. The operator or operation shall make reasonable arrangements with the active patients of the operation for the transfer of the patients' records, including radiographs or diagnostic quality copies thereof, to the succeeding practitioner or, at the written request of the patient, to the patient.

5. As used in this section "active patient" applies and refers to a person whom the operation has examined, treated, cared for, or otherwise consulted with during the two-year period prior to discontinuation of practice, or moving.

G. Consent Forms for Minors. No services may be performed on minors without a signed consent form from the parent or guardian, which includes the following:

1. A statement that if the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider.

2. A statement that a parent or guardian may attend all dental visits and the form provides a telephone number and address where the parent or guardian can contact the operator's office if they wish to be at the school, facility or site when the minor is being treated. If the parent or guardian contacts the operator's office requesting to be present at the dental visit when their child is being treated, then the operator shall notify the parent or guardian when dental care is to be rendered so the parent or guardian can be present.

3. A telephone number for emergency services.

4. The telephone number of the parent or guardian. If the parent or guardian fails to include a contact phone number, then no dental services can be provided to that minor.

5. The consent form shall be provided in duplicate in order for the parent or guardian to be provided a copy.

6. Before treatment begins, there must be a documented personal or telephone contact by the dentist, hygienist, or trained dental assistant to review the patient's medical history and provide a description of all proposed treatments and the potential negative consequences of each procedure.

7. Confirmation that the patient, parent or legal guardian further understands treatment through such mobile dental or portable dental providers may affect future Medicaid and insurance benefits for the patient for one year.

H. Information for Patients

1. When appropriate, during or at the conclusion of each patient's visit to the operation, the patient shall be provided with an information sheet and a mailed copy to the patient's home. If the patient has provided consent to an institutional facility to access the patient's dental health

records, the institution shall also be provided with a copy of the information sheet. An institutional facility includes, but is not limited to, a long-term care facility or school.

2. The information sheet as required herein shall include the following:

a. 24 hour toll free as well as an in-state telephone number and address where the parent, guardian, or patient can contact the Operator's office for questions or emergency dental care;

b. the name of the dentist who provided services;

c. a description of the treatment rendered;

d. referral information if necessary.

I. Standards for Equipment

1. The equipment and supplies shall be of a type and condition that allows the dentist providing dental services to meet the prevailing standard of dental care.

2. The equipment and supplies shall be subject to inspection by any dental board member, staff member or agent of the dental board.

J. Inspection of Mobile and Portable Operations.

1. inspections of mobile dental clinics, mobile dental units, or a portable operator location of service may be conducted by any dental board member, staff member, or agent of the dental board.

2. The operator shall provide notice to the board no later than 24 hours before providing dental services at a school. Said notice shall disclose the date, time, identity of all dental health care providers and the location. If the location is a school, the operator shall have an agreement with said school to allow board inspectors on campus in order to conduct unannounced inspections.

3. The dental board shall be provided with a list of all sites, including addresses where the operator shall conduct mobile or portable activities, at the time the permit is applied for and it shall be updated as necessary every thirty (30) days.

K. Disposal of Infectious Waste. An operator or operation must handle and dispose of all waste in accordance with §1001 of the board's rules. The transporting of any biohazardous wastes shall be done in compliance with the Louisiana Department of Health and Hospital regulations for the handling and transportation of medical waste.

L. Non Resident Management and Administration Rules

1.a. Any operator or operation that contracts with or engages any company or entity ("administrative company") to provide management or administrative services shall not enter into a relationship which causes the dentist or his business entity to be in violation of R.S. 37:776 (A)(9) which provides as follows:

i. Division of fees or other remuneration or consideration with any person not licensed to practice dentistry in Louisiana or an agreement to divide and share fees received for dental services with any non-dentists in return for referral of patients to the licensed dentists, whether or not the patient or legal representative is aware of the arrangement. However, this Paragraph shall not forbid dentists licensed in Louisiana from practicing in a partnership or professional corporation and sharing professional fees or forbid a dentist licensed in Louisiana

from employing another dentist licensed in Louisiana. In addition, no dentist licensed in Louisiana shall share professional fees with a dentist whose license is either suspended or revoked during said period of suspension or revocation.

b. and R.S. 37:776 (A)(10) which provides as follows:

i. Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry or to possess an ownership interest of any kind in a dental practice, but the person practiced upon shall not be an accomplice, employer, procurer, inducer, aider, or abettor within the meaning of this provision.

2. The operator must provide to the board proof that the administrative company is authorized to conduct business in the state and has a valid certificate of good standing issued by the Louisiana Secretary of State.

3. An administrative company shall not be permitted to perform any duties or services that are exclusively a Louisiana licensed dentist's responsibility under the Louisiana Dental Practices Act, including the following:

a. own a mobile or portable dental practice;

b. provide dental care;

c. determine what dental services should or should not be offered to a patient;

d. establish infection control procedures and standards;

e. determine patient charges and collection policies;

f. determine when a patient should or should not be referred and where the patient shall be referred;

g. establish HIPAA standards;

h. select and employ associated dentists and dental staff.

M. Miscellaneous Provisions

1. All dental health care providers of mobile or portable dentistry shall wear in a conspicuous place on their person a name tag identifying them and their position (D.D.S., R.D.H., EDDA, or D.A.).

2. All mobile or portable dentistry providers shall have written protocols for each of the following areas which shall be kept at the operator's office and with all applicable licenses and permits.

a. Sterilization procedures, including where dedicated and observable sterilization areas are located.

b. Transportation of all waste materials, instruments and equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8), and Act 429 of the Regular Legislative Session of 2009

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 36:

§314. Provision of Dental Services at Locations Other than Dental Office

Repealed.

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 23:1525 (November 1997), amended LR 25:513 (March 1999), LR 27:1891 (November 2001), repealed LR 35:

Chapter 7. Dental Hygienists

§701. Authorized Duties

A. - F.7. ...

8. Dental hygienists may perform light enhanced teeth whitening procedures such as Zoom® under general supervision.

G. - G.1. ...

2. No duly licensed and registered dentist shall supervise more than two dental hygienists under general supervision at any one time except in public institutions, federally qualified health care centers, or clinics operated by the Department of Health and Hospitals or a school supervised by a Louisiana licensed dentist. However, a Louisiana licensed dentist may supervise no more than five dental hygienists under general supervision at any one time in any of the aforementioned institutions.

3. No duly licensed and registered dentist shall supervise a dental hygienist for more than five consecutive business days or for more than 20 total days in any calendar year. However, a public institution, federally qualified health care center, clinic operated by the Department of Health and Hospitals, or school supervised by a Louisiana licensed dentist is not subject to this restriction.

4. - 6. ...

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 15:965 (November 1989), LR 19:206 (February 1993), LR 22:22 (January 1996), LR 22:1217 (December 1996), LR 24:1116 (June 1998), LR 27:1892 (November 2001), LR 32:2056 (November 2006), LR 36:

§1713. Board Approved Regional or National Independent Third Party Clinical Examinations

A. The board shall accept passing scores from board approved testing agencies which administer reliable, accurate, and valid examinations and in which the board has the option of representation on both the board of directors and the examination review committee or equivalent committees and allow for the board's input into the examination development and administration.

B.1. The clinical examination shall be substantially equivalent to the clinical licensure examination most recently administered by the board and include procedures performed on human subjects as part of the assessment of restorative and periodontal clinical competencies and shall have included evaluations in at least four of the following subject matter areas:

- a. periodontics, clinical abilities testing;
- b. endodontics, clinical abilities testing;
- c. amalgam preparation and restoration;
- d. anterior composite preparation and restoration;
- e. posterior ceramic or composite preparation and restoration;
- f. cast gold, clinical abilities testing;
- g. prosthetics, written or clinical abilities testing;
- h. oral diagnosis, written or clinical abilities testing;
- or
- i. oral surgery, written or clinical abilities testing.

2. In addition to the foregoing requirements, the examination shall include:

- a. anonymity between candidates and examination raters;
- b. standardization and calibration of raters; and
- c. a mechanism for post examination analysis.

3. The board shall accept scores upon such examination for a period of three years following the date of such examinations. Each applicant shall arrange for and ensure the submission to the board office the applicant's scores.

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 36:

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 changes to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 60 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

C. Barry Ogden
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: General Provisions

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

There will be a one-time cost of \$500 in Fiscal Year 2009-2010 for publication of the proposed rules in the *Louisiana Register*. The Louisiana State Board of Dentistry reports that they can conduct the inspections of mobile clinics required by the proposed rules from within the Board's \$25,000 annual amount budgeted for inspections of fixed and mobile dental clinics. 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)

The implementation of these rule changes will neither increase nor decrease revenues for the Louisiana State Board of Dentistry.

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

Operators of mobile or portable dental clinics will be required to purchase additional equipment if they currently do not possess such equipment as now required by the new regulation. This cost cannot be estimated at this time. However, at present only 6 licensees possess mobile permits. Dental hygienists may be able to command a higher salary from their

employers by being allowed to utilize certain tooth whitening procedures under general supervision. Their employing dentists may see a slight increase in their earnings since their hygienists will be allowed to whiten teeth while the employing dentist is not physically on the premises.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

C. Barry Ogden
Executive Director
0910#025

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Wholesale Drug Distributors

Enforcement Action (LAC 46:XCI.901)

The Louisiana Board of Wholesale Drug Distributors proposes to add LAC 46:XCI.901 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq. of the Louisiana Board of Wholesale Drug Distributors Practice Act. This proposed Rule addition will support the board's ability to license entities and regulate the wholesale distribution of legend drugs and devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The proposed amendments to the Rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 9. Proceedings for Enforcement Action

§901. Proceedings

A. The board, through its Compliance officer, may investigate, mediate, or initiate enforcement action or legal proceedings on behalf of the board with respect to charges initiated or information received by the board alleging that a non-licensee committed or engaged in any of the acts or offenses listed in La. R.S. 37:3474.2.

B. Enforcement action is instituted by the board, acting through its Compliance officer, filing charges against any non-licensee who commits or engages in any of the acts or offenses listed in La. R.S. 37:3474.2.

C. Within twenty days of the board's filing of charges, the board shall mail a copy of said charges to the last known address of the non-licensee so charged.

D. All charges shall be heard by the board within twelve months after the date on which filed. This twelve-month period may be extended for good cause shown.

E. The date, time and place for said hearing shall be fixed by the board and a copy of the charges, together with a notice of the date, time and place of the hearing, shall be personally served on or mailed to the last known address of the charged party, at least thirty days before the date fixed for hearing. At any hearing, the charged party shall have the right to appear in person, or by counsel, or both, to cross-examine witnesses in his defense, and to produce evidence and witnesses in his defense. If the charged party fails or

refuses to appear at the hearing, the board may proceed to hear and determine the validity of the charges.

F. If, after such hearing, a majority of the board participating in the proceeding vote in favor of sustaining the charges, the board may take enforcement action against the charged party.

G. A charged party aggrieved by any enforcement action taken by the board may appeal therefrom, pursuant to the provisions of the Administrative Procedure Act.

H. All enforcement actions taken shall be published in the official journal of the board and may be released to other boards, agencies, or professional organizations relating to wholesale drug distribution, or to the news media.

I. The board, through its Compliance officer, may make informal disposition by consent order, agreement, settlement, or default of any enforcement proceeding pending before it. Each such informal disposition shall have no force of effect until ratified by the board. Consent orders are considered enforcement actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 36:

Family Impact Statement

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

Public Comments

Interested parties may submit written comments to John Liggio, Executive Director, Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, Louisiana 70816. Comments will be accepted through the close of business on November 18, 2009. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on November 25, 2009, at 2:00 p.m. at the office of the Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, Louisiana

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Enforcement Action

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

Estimated implementation costs or savings to state or local government units include those associated with publishing the rule estimated at \$400 (fiscal year 2010). Licensees will be informed of this rule via the Board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

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

The estimated effect of the proposed rule on revenue collections of state or local governmental could be an increase of enforceable fines and application fees collected of an indeterminable amount.

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

Wholesale drug distributors (non-licensees) would pay disciplinary fines and application fees based on the proposed rule. Wholesale drug distributors (non-licensees) found in

violation would pay fines up to \$1,000 per violation and be required to make application with payment of the application fee of \$200 per application. The Board has no way to estimate the amount of potential disciplinary fines and application fees due to these proposed rules because these enforcement actions are new and the Board has no history in which to estimate them.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule addition.

John Liggio
Executive Director
0910#018

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Wholesale Drug Distributors**

General Provisions (LAC 46:XCI.105)

The Louisiana Board of Wholesale Drug Distributors proposes to amend LAC 46:XCI.105 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq. of the Louisiana Board of Wholesale Drug Distributors Practice Act. These proposed Rule amendments will support the board's ability to license entities and regulate the wholesale distribution of legend drugs and devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The proposed amendments to the Rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 1. General Provisions

§105. Wholesale Drug Distribution—Exemptions

A. Wholesale drug distribution does not include:

1. - 6. ...
7. the distribution of drug samples by manufacturers' representatives or distributors' representatives;
8. the sale, purchase, or trade of blood and blood components intended for transfusion; or
9. the sale of legend drugs by retail pharmacies to licensed practitioners for office use where the annual dollar volume of legend drugs sold to licensed practitioners does not exceed five percent of the dollar volume of that retail pharmacy's annual legend drug sales.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 35:1537 (August 2009), amended LR 36:

Family Impact Statement

The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested parties may submit written comments to John Liggio, Executive Director, Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton

Rouge, LA 70816. Comments will be accepted through the close of business on November 18, 2009. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on November 25, 2009, at 11:00 a.m. at the office of the Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, Louisiana.

John Liggio
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: General Provisions**

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

Estimated implementation costs or savings to state or local government units include those associated with publishing the rule amendment estimated at \$400 (fiscal year 2010). Licensees will be informed of this rule change via the Board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

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

There will be no effect on revenue collections of state or local governmental units as there will not be any increase in fees resulting from the rule change.

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. The rule change involves functions already implemented by the Board.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

John Liggio
Executive Director
0910#016

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Wholesale Drug Distributors**

Wholesale Drug or Device Distributors
(LAC 46:XCI.301 and 311)

The Louisiana Board of Wholesale Drug Distributors proposes to amend LAC 46:XCI.301 and 311 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq. of the Louisiana Board of Wholesale Drug Distributors Practice Act. These proposed Rule amendments will support the board's ability to license entities and regulate the wholesale distribution of legend drugs and devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The proposed amendments to the Rule are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 3. Wholesale Drug or Device Distributors

§301. Licensing, Renewal and Reinstatement Requirements

A. – F. ...

G. An initial application for a new license is valid for 180 days after receipt by the board and must be completed within this time frame.

1. If the application is not completed, the application becomes void and any application fee(s) paid is forfeited by the applicant and is non-refundable.

2. After the 180 days have expired, a new application for a license will be required to be submitted by the applicant to include payment of another license application fee.

H. Requests for voluntary cancellation of a license made by a licensee must be made in writing and must include information such as, but not limited to, the date the request is effective and the reason for the voluntary cancellation of the license.

1. If the request for voluntary cancellation is made before the license has expired, the original unexpired license certificate must be returned to the board and no refund of any portion of the license fee(s) paid will be made by the board.

I. If a licensed in-state wholesale drug or device distributor has an additional off-site storage facility, the off-site storage facility may operate under the current wholesale drug or device distribution license held by the licensee as long as the off-site storage facility is in compliance with §309A.1 of these regulations and has temperature monitoring and an alarm system and the off-site storage facility does not physically receive or distribute legend drugs or devices from its location.

J. A license shall not be issued by the board for any wholesale drug or device distributor to operate from or out of a dwelling, building, or property zoned as residential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:396 (March 2006), LR 34:875 (May 2008), LR 35:1538 (August 2009), LR 36:

§311. Drug or Device Distribution Recordkeeping

A. - E. ...

F. Wholesale drug or device distributors physically located and conducting operations in Louisiana:

1. shall not purchase or receive drugs or devices from other than wholesale drug distributors licensed by the board to ship or sell in or into Louisiana; and

2. shall notify the board of any wholesalers not licensed by this Board shipping in or into Louisiana or selling or offering to sell in or into Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:383 (April 1992), amended LR 29:1480 (August 2003), LR 32:399 (March 2006), LR 34:875 (May 2008), LR 36:

Family Impact Statement

The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972

Public Comments

Interested parties may submit written comments to John Liggio, Executive Director, Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, Louisiana 70816. Comments will be accepted through the close of business on November 18, 2009. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on November 25, 2009, at 1:00 p.m. at the office of the Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, Louisiana.

John Liggio
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Wholesale Drug or Device Distributors

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

Estimated implementation costs or savings to state or local government units include those associated with publishing the rule amendment estimated at \$400 (FY 2010). Licensees will be informed of this rule change via the Board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

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

Revenue collections of state or local governmental units could increase to the extent that the rule change (311) results in an increase of enforceable fines collected of an indeterminable amount

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

Wholesale drug distributors could pay disciplinary fines based on the proposed rule change (311).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

John Liggio
Executive Director
0910#017

Robert E. House
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
Office of Aging and Adult Services
and
Office for Citizens with Developmental Disabilities**

Direct Service Worker Registry
Medication Administration and Noncomplex Tasks
(LAC 48:I.9201, and 9241-9269)

The Department of Health and Hospitals, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities proposes to amend LAC 48:I.9201 and to adopt LAC 48:I.9241-9269 as authorized by R.S. 37:1021-1025 and R.S. 37:1031-1034. 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). A direct service worker is an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person being cared for.

Act 451 of the 2005 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals, in conjunction with the Louisiana State Board of Nursing, to promulgate rules governing the authority, training, registration and termination of direct service workers and to provide for related matters. Act 552 of the 2008 Regular Session of the Louisiana Legislature amended the statues relative to direct service workers to include those workers employed as part of an authorized departmental self-directed program and to expand the time period for completion of required training. In compliance with the directives of Act 451 and the amendments of Act 552, the Department of Health and Hospitals, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities proposes to adopt provisions governing medication administration and the performance of noncomplex nursing tasks by direct service workers.

**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**

Board—the Louisiana State Board of Nursing.

Daily Monitoring—the monitoring of activities pursued on a daily basis by a family member, direct service worker (DSW) and/or other health care provider for 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—the licensed provider agency or, in the case of an authorized departmental self-directed program, the entity or individual (as specified by the program) that is employing the direct service worker.

Funding—the state agency that funds, with state and/or federal resources, approved services provided by the direct service worker.

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.

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.

Plan of Care—a plan that describes the assistance or services to be provided to a person receiving state or federally funded home and community-based services as defined herein.

1. The plan also describes who shall provide the assistance and the frequency and/or duration of the services that will be provided.

Person-Specific Training—knowledge, skills and abilities which focus on a person’s strengths, age, disabilities, health care needs and related factors that are required in order to meet the unique needs of the individual. In the context of the person-specific training, the registered nurse (RN) teaches the direct service worker to properly and safely perform the tasks to be authorized by the RN, and the direct service worker demonstrates that he or she can perform the tasks according to exact directions.

Stable and Predictable—a situation in which a person’s clinical and behavioral status is determined 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 regularly scheduled presence of a registered nurse or licensed practical nurse.

State and Federally Funded Home and Community-Based Services—services which are funded by a state agency within the executive branch of the State of Louisiana and that are provided by a direct service worker within an independent living environment. 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. assisted living residences;
6. adult day health care centers;
7. day habilitation centers; or
8. sheltered workshops.

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1, R.S. 37:1021-1025 and R.S. 37:1031-1034.

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 and the Office of Aging and Adult Services, LR 36:

Subchapter D. Medication Administration and Noncomplex Tasks

§9241. General Provisions

A. In addition to the general training, competency, and provider requirements which govern direct service workers, these additional provisions must be adhered to in correlation with medication administration and the performance of noncomplex tasks. Only direct service workers who meet these additional requirements or who are authorized in other provisions of state law and regulations shall be authorized to perform medication administration and noncomplex tasks.

B. All direct service workers must maintain current registration and be in good standing on the Direct Service Worker Registry. Any direct service worker who is not in good standing on the DSW Registry shall not perform any of the authorized procedures specified in this Subchapter D.

1. For purposes of these provisions, “in good standing” shall mean that the direct service worker is registered and meets all of the specified requirements of the DSW Registry including, but not limited to, the requirements pertaining to abuse, neglect and exploitation of children, adults with disabilities or the elderly.

C. A registered nurse must authorize and monitor medication administration and noncomplex tasks performed by direct service workers. In order for the RN to authorize these tasks, the direct service worker shall:

1. be employed by an agency licensed by the HSS or employed as part of an authorized departmental self-directed program; and
2. attend to an individual who is receiving state or federally funded home and community-based services and:
 - a. 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;
 - b. has an approved current plan of care; and
 - c. receives periodic assessment by an RN based on the person’s health status and as specified within the plan of care. In no case shall the periodic assessment by an RN be performed less than annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9243. Training

A. Person-Specific Training. Direct service workers shall receive at least six hours of person-specific training from an RN who has assessed the health status of the person receiving care in the place where the services are to be performed and has determined that the direct service worker can perform the tasks in a safe, appropriate manner.

1. 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.

2. 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 and/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. An RN shall provide 16 hours of medication administration training that will include the following.

1. Medication Administration Core Curriculum, which includes:

- a. the legal aspects of administering medication;
- b. the 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. the 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; and
- k. skills proficiency.

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;
- 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;
 - i. counting pulse;
 - ii. counting respirations;
 - iii. taking blood pressure; and
 - iv. taking oral, rectal, or auxiliary temperature.

C. Training Assessment. The RN conducting the training shall assess the proficiency of the direct service worker.

1. Proficiency in the core curriculum shall be assessed by written and/or verbal examination.

2. Skill and documentation areas shall be assessed by physical, verbal and/or written demonstration.

3. The medication administration training, or any parts thereof, 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.

D. Training Instructor Qualifications. Training for direct service workers who are authorized to perform medication administration and noncomplex tasks shall be provided by a registered nurse. The RN shall not provide any training, assessment or authorization unless he/she has the knowledge, abilities and training to do so.

1. The RN shall receive orientation from the licensed agency that, at a minimum, shall include the policies and procedures of the licensed agency.

2. The RN shall complete all training mandated by the department prior to performing any of the RN functions outlined in these provisions.

E. Training Implementation. Any unlicensed person performing the procedures authorized by this Subchapter shall complete the training required by this Section no later than 36 months after promulgation of this Rule.

F. Documentation of Training. Any organization providing or responsible for the training and competency evaluation must report the names of all individuals who have satisfactorily completed the training to the DSW Registry. Within 15 days after a direct service worker has successfully completed the training and competency evaluation, the employer or other training organization shall notify the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9245. Annual Competency Evaluation

A. The direct service worker shall undergo an annual competency evaluation performed by an RN to determine whether he/she is competent to perform the authorized person-specific tasks appropriately.

1. The competency evaluation shall be completed in the home of the person receiving assistance or services.

B. The RN shall observe the direct service worker performing the procedures and shall use professional judgment in assessing whether or not the tasks are being performed correctly and safely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9247. Services

A. Direct service workers who meet the requirements and are authorized may perform the following tasks for a person who is in stable condition only when the tasks may be performed according to exact directions and when 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; and
- vi. the route;

b. under no conditions shall a direct service worker administer medications not in compliance with these provisions.

2. provision of routine hydration, nutrition or medication by way of an established gastro-tube; and

3. other non-complex tasks as identified by the registered nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9249. Written Disclaimer

A. Prior to providing services or any of the authorized procedures, the direct service worker shall provide a written disclaimer to the person receiving assistance or his/her legal guardian.

B. The written disclaimer shall include:

1. the length and scope of the direct service worker's training;

2. information regarding how to report care deficiencies, including applicable contact information; and

3. the signatures of both the direct service worker and the person receiving assistance or services or his/her legal guardian.

C. The original of the completed disclaimer shall be maintained in the permanent files of the provider agency employing the direct service worker. One copy shall be given to the recipient and one copy shall be provided to the direct service worker.

D. Failure to execute the disclaimer in accordance with these provisions shall serve as cause to terminate authorization of the direct service worker to provide services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§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 and 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 and the RN when the prescribed procedures, medications or dosages change so additional person-specific training can be conducted by the RN; and
4. notifying the employer, the RN and the person receiving assistance or services if he or she no longer maintains current registration in good standing on the Direct Service Worker Registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§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 annual competency evaluations, the direct service worker performs the authorized 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 non-complex tasks if the health status of the person receiving services is not stable and predictable;
3. assuring that the direct service worker to whom the RN has provided the medication administration training demonstrates a sufficient level of competency in the subject matter;
4. assisting in the development of the plan of care for the person receiving assistance or services;
 - a. The plan of care specifies:
 - i. the procedures that the direct service worker is authorized to perform;
 - ii. how the procedures are to be performed and the frequency; and
 - iii. under what circumstances the direct service worker is to seek assistance from the licensed agency employing the direct service worker, the RN, the person's primary care physician and/or the emergency response system or an emergency room.
5. assisting the person's planning team to determine the periodicity needed for RN assessments of the health status of the person receiving assistance or services;
6. completing, at least annually, 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. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§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 has received the required training and annual competency evaluation;
 6. assuring that the direct service worker maintains current registration in good standing 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 HSS 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 HSS 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 that the person requiring assistance can self-direct his/her care or logs indicating daily monitoring of care by a family member 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 is currently registered and in good standing 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;
 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 mastery to be able to administer medications 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;

8. the original written disclaimer signed by the direct service worker and the person receiving assistance;

9. a copy of the notice given to the person receiving assistance which includes, but is not limited to contact information for:

- a. the Health Standards Section;
- b. the appropriate protective service agency;
- c. the licensed agency employing the direct service worker; and
- d. the funding agency; and

10. 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.

C. In the case of a direct service worker employed as part of a departmentally approved self-directed program, the responsibilities of the employer may be assigned to a fiscal agent, a support coordinator, a recipient or recipient's legal guardian as provided in the rules governing the self-directed program. The rules shall clearly specify which entity is accountable for each responsibility as outlined in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Officer of Aging and Adult Services, LR 36:

§9257. Recipient Responsibilities

A. The responsibilities of the recipient receiving assistance or his/her guardian include, but are not limited to:

1. notifying the employer of the direct service worker if the recipient's health status changes;
2. notifying the employer of the direct service worker of concerns regarding the authorized procedures being performed by the direct service worker, and if not satisfied with the response by the employer, notifying the Health Standards Section; and
3. cooperating with the Health Standards Section by answering questions and providing information when HSS staff monitors these provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9259. 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. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9261. 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 no longer maintains current registration in good standing with the DSW Registry.
4. The direct service worker failed to execute the written disclaimer.
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. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9263. 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 is found to be questionable by the Health Standards Section, a referral shall be made to the board for review and consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9265. Program Oversight and Monitoring

A. Oversight and enforcement of the provisions of this Subchapter shall be the responsibility of the Health Standards Section, including investigations of complaints related to provisions of assistance and services covered by this Subchapter.

B. The provisions of this Subchapter shall be reviewed by the Health Standards Section during:

1. licensing reviews conducted for the licensed provider agency;

2. reviews conducted as a result of complaints; and

3. other reviews as deemed necessary by HSS.

C. During the onsite survey, the Health Standards Section shall:

1. review a random sample of direct service worker files;

2. conduct site visits to verify the status of the person receiving assistance or services to include, but not be limited to:

a. verification of training necessary for the care and services assigned to the direct service worker, which includes:

i. all training required by licensing and registry regulations;

ii. at least six hours of person-specific training; and

iii. medication administration training of at least 16 hours as required by these provisions, if the direct service worker administered medications;

b. verification of additional training, as applicable, for direct services workers rendering services to a person whose condition or needs have changed; and

c. verification of the annual competency evaluation conducted by a registered nurse; and

3. review the development and implementation of agency policy and procedures which include, but are not limited to:

a. how the registered nurse is notified of a change in the status of the person for whom the direct service worker performs authorized procedures;

b. criteria to determine the stability of the health status of the person receiving assistance or services;

c. criteria for the periodic assessment based on needs of the person receiving assistance or services;

d. documentation required for initial registered nurse approval and annual re-evaluation of the competency of the direct service worker;

e. maintenance of service records and other information in each person's case record;

f. the plan of care;

g. required information for the person receiving assistance or services to be provided including, but not limited to:

i. complaint hotline number for HSS; and

ii. the signed written disclaimer statement; and

h. termination of direct service workers for rendering unauthorized procedures to an individual.

D. Monitoring. During the 36 month training implementation period required by §9243, the department and the board shall meet quarterly to review data collected by the department that is relevant to the administration of health care tasks authorized by this Subchapter.

1. The department and the board shall use the data to evaluate the efficiency of the medication administration and noncomplex tasks program and shall make joint recommendations to the secretary of the department and the executive director of the board for any needed revisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025 and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

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 assuring that direct service workers have the training necessary to provide adequate health care services to individuals who are elderly or have disabilities and require assistance with daily activities.

Public Comments

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 24, 2009 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Direct Service Worker Registry—Medication Administration and Noncomplex Tasks

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 09-10 since existing staff will be absorbing these reviews into their current workload. It is anticipated that \$2,378 (\$2,378 SGF) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections.

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

This rule proposes to 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.

Jerry Phillips
Medicaid Director
0910#063

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Office for Citizens with Developmental Disabilities

Home and Community Based Services Waivers—New
Opportunities Waiver Resource Allocation Model
(LAC 50:XXI.13704)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities proposes to adopt LAC 50:XXI.13704 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a home and community-based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6).

In recognition of escalating program expenditures, Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing for the New Opportunities Waiver. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the New Opportunities Waiver to implement uniform needs-based assessments to determine the level of support needs for NOW recipients and to establish a resource allocation model based on the uniform needs-based assessments (*Louisiana Register*, Volume 35, Number 1). This proposed Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

**Part XXI. Home and Community Based Services
Waivers**

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13704. Resource Allocation Model

A. Effective February 1, 2009, uniform needs-based assessments and a resource allocation model will be implemented in the service planning process for the Medicaid recipients participating in the New Opportunities Waiver.

1. The uniform needs-based assessments shall be utilized to determine the level of support needs of individuals with developmental disabilities.

2. The purpose of the resource allocation model is to assign service units based on the findings of the assessments.

3. Within the resource allocation model, there is a determination of an acuity level for individual and family support (IFS) services.

a. The recipient or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the amount of assigned IFS service units. If the recipient disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

4. Implementation of the resource allocation model will be phased-in for the allocation of new waiver opportunities and renewal of existing waiver opportunities beginning July 1, 2009.

B. The following needs-based assessment instruments shall be utilized to determine the level of support needs of NOW recipients:

1. the Supports Intensity Scale (SIS); and
2. Louisiana Plus (LA Plus).

C. The Supports Intensity Scale is a standardized assessment tool designed to evaluate the practical support requirements of individuals with developmental disabilities in 85 daily living, medical and behavioral areas.

1. SIS measures support needs in the areas of:
 - a. home living;
 - b. community living;
 - c. lifelong learning;
 - d. employment;
 - e. health and safety;
 - f. social activities; and
 - g. protection and advocacy.
2. SIS then ranks each activity according to frequency, amount and type of support. A supports intensity level is determined based on a compilation of scores in general supports, medical supports and behavior supports.

D. Louisiana (LA) Plus is a locally developed assessment tool designed to identify support needs and related information not addressed by SIS. LA Plus serves as a complement to SIS in the support planning process. LA Plus is used to evaluate the individual's support needs based on information and data obtained from four areas of the person's life.

1. Support needs scale measurements including:
 - a. material supports;
 - b. vision related supports;
 - c. hearing related supports;
 - d. supports for communicating needs;
 - e. positive behavior supports;
 - f. physicians supports;
 - g. professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and
 - h. stress and risk factors.
2. Living arrangements and program participation including:
 - a. people living in the home;
 - b. natural supports in the home;
 - c. living environments; and

- d. supports and service providers.
- 3. Medical and diagnostic information findings including:
 - a. diagnoses;
 - b. medications and dosages; and
 - c. need for relief from pain or illness.
- 4. Personal satisfaction reports including:
 - a. agency supports provided at home;
 - b. work or day programs;
 - c. living environment;
 - d. family relationships; and
 - e. social relationships.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing and the Office for Citizens with Developmental Disabilities, LR 35:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by ensuring that NOW participants receive accurate identification and evaluation of their support needs in order to remain safely in their homes and communities.

Public Comments

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 24, 2009 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—New Opportunities Waiver Resource Allocation Model

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 programmatic savings to the state of approximately \$2,350,673 for FY 09-10, \$2,353,228 for FY 10-11 and \$1,375,238 for FY 11-12. It is anticipated that \$574

(\$287 SGF and \$287 FED) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$9,409,434 for FY 09-10, \$9,418,796 for FY 10-11 and \$5,504,393 for FY 11-12. It is anticipated that \$287 will be expended in FY 09-10 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

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

This proposed rule, which continues the provisions of the February 1, 2009 Emergency Rule, amends the provisions of the New Opportunities Waiver (NOW) to implement uniform needs-based assessments to determine the level of supports needs for NOW recipients and to establish a resource allocation model based on the uniform needs-based assessments (approximately 6,493 recipients). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$11,760,681 for FY 09-10, \$11,772,024 for FY 10-11 and \$6,879,631 for FY 11-12.

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.

Jerry Phillips
Medicaid Director
0910#062

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facility Minimum Licensing Standards Emergency Preparedness—Electronic Reporting Requirements (LAC 48:I.9729)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.9729 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2009.2.–2009.11. 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 emergency preparedness requirements for nursing facilities to allow a licensed nursing facility to inactivate its license for a period of time due to a declared disaster or other emergency situation (*Louisiana Register*, Volume 35, Number 2). The department promulgated an Emergency Rule to amend the February 20, 2009 Rule to establish provisions requiring all nursing facilities licensed in Louisiana to file electronic reports of their operational status during declared disasters or other emergency situations (*Louisiana Register*, Volume 35, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 5, 2009 Emergency Rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Facilities

Subchapter B. Organization and General Services

§9729. Emergency Preparedness

A. - B.3. ...

4. Effective immediately, upon declaration by the secretary and notification to the Louisiana Nursing Home Association and Gulf States Association of Homes and Services for the Aging, all nursing facilities licensed in Louisiana shall file an electronic report with the HSS emergency preparedness webpage/operating system, or a successor operation system, during a declared disaster or other public health emergency.

a. The electronic report will enable the department to monitor the status of nursing facilities during and immediately following an emergency event.

b. The electronic report shall be filed twice daily at 7:30 a.m. and 2:30 p.m. throughout the duration of the disaster or emergency event.

c. The electronic report shall include, but is not limited to the following:

- i. status of operation (open, limited or closed);
- ii. availability of beds;
- iii. resources that have been requested by the nursing facility from the local or state Office of Emergency Preparedness;
- iv. generator status;
- v. evacuation status;
- vi. shelter in place status; and
- vii. other information requested by the department.

NOTE: The electronic report is not to be used to request resources or to report emergency events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2 – 2009.11.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:49 (January 1998), amended LR 32:2261 (December 2006), amended LR 34:1917 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 35:248 (February 2009), amended LR 36:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by assuring the health and safety of nursing facility residents in the event of declared disasters or other emergencies.

Public Comments

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 24, 2009 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facility Minimum Licensing Standards—Emergency Preparedness—Electronic Reporting Requirements

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 09-10. It is anticipated that \$328 (\$328 SGF) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections.

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

This rule proposes to amend the minimum licensing standards for nursing facilities to establish provisions requiring all nursing facilities licensed in Louisiana to file electronic reports of their operational status during declared disasters or other emergency situations. It is anticipated that implementation of this proposed rule will not have economic cost or economic benefits for these entities in FY 09-10, FY 10-11 and FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0910#061

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Water Supplies—Fluoridation
(LAC 48:V.1101, 1303-1315 and LAC 51:XII.317)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health, pursuant to the authority granted under R.S. 40:5.11(G), proposes to amend the Louisiana Administrative Code (LAC), Title 48 (Public Health—General), Part V (Preventive Health Services), Subpart 5 (Fluoridation) regulations. In addition, the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(6) and R.S. 40:5 proposes to amend LAC, Title 51 (Public Health—Sanitary Code), Part XII (Water Supplies).

The proposed Title 48 fluoridation Rule changes are designed to implement Act 761 of the 2008 Regular Session. This legislation enacted a mandate that public water systems with over 5,000 service connections are required to fluoridate its water supply unless when the natural fluoride level is outside the optimal fluoride level/range; allows certain exemptions to the fluoride requirement to apply; establishes an optimal fluoride level/range; and updates system requirements, monitoring and compliance guidelines, record keeping and reporting, and fund allocation.

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. A Section that had been reserved in Part XII is proposed to be used to make reference to the need for compliance with LAC 48:V.Subpart 5 when a water system fluoridates its water supply.

All fluoride-associated appendices to LAC 48:V.Subpart 5 published in Volume 2 of Title 48 of the April 1987 LAC are hereby repealed in their entirety.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 5. Fluoridation

Chapter 11. General Provisions

§1101. Definitions

A. Words not defined in this Subpart shall have their common usage and meaning as stated in the *Merriam-Webster's Collegiate Dictionary-Tenth Edition* and other similarly accepted reference texts.

B. Unless otherwise specifically provided herein, the following words and terms are defined as follows.

Caries—tooth decay, also commonly known as cavities.

Community Water Fluoridation—the adjustment of fluoride deficient water in community water supplies to the optimal fluoride level/range for a specified geographic area.

Community Water Supply—a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Fluoride Deficient Water—any water supply system which provides potable water having a natural fluoride content below the optimal fluoride level/range for a specified geographic area.

Fluoride Source Material—the approved fluoride-containing product which is to be used to adjust the potable water supply to the optimal fluoride level/range.

Ground Water—subsurface water occupying the saturation zone from which wells and springs are fed. In a strict sense the term applies only to water below the water table.

Monitoring—the analysis and recording of the fluoride ion content of water in a community water supply on a regular basis.

Optimal Fluoride Level/Range—that level of fluoride which has been deemed to be most beneficial to health as set forth by the Centers for Disease Control and Prevention (CDC) for community water supplies. For community water supplies in the state of Louisiana, the optimal fluoride level is 0.8 mg/L; however, the acceptable range is from 0.7 to 1.2 mg/L.

Permit—a written document issued by the state health officer through the Office of Public Health which authorizes construction and operation of a new potable water supply or a modification of any existing supply.

Person—any natural person, individual, partnership, corporation, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

Potable Water—water having bacteriological, physical, radiological, and chemical qualities that make it safe and suitable for human drinking, cooking and washing uses.

Potable Water Supply—a source of potable water, and the appurtenances that make it available for use.

Public Water Supply—public water system.

Public Water System—a system for the provision to the public of water for potable water purposes through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:

a. any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and

b. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

Sample Points—locations in a community water supply's distribution system where water samples are taken for fluoride analysis. These sample points of finished water shall be taken at the consumer's taps throughout the distribution system where the water will be representative of the whole community water system.

Service Connection—the pipe from the water main and/or water meter, potable water supply system or other source of potable water supply to the building or structure served.

Source Water—any water well, spring, cistern, infiltration gallery, stream, reservoir, pond, or lake from which, by any means, water is taken either temporarily or continuously for potable use.

Sub-Optimal Fluoride Level—any adjusted fluoride level that is below the optimal fluoride level/range for a specific geographic area.

Surface Water—derived from water sources on the surface of the earth such as streams, ponds, lakes, or reservoirs.

Surveillance—the necessary steps to assure that the fluoride content in water over a period of time is in compliance with the optimal fluoride level/range in a community water supply for a specific geographic area.

Water Supplier—a person who owns or operates a water supply system including, but not limited to, a person who owns or operates a public water system.

Water Supply System—the system of pipes or other constructed conveyances, structures and facilities through which water is obtained, treated to make it potable (if necessary) and then distributed (with or without charge) for human drinking, cooking, washing or other use.

Water Well (Well)—an artificial excavation that derives water from the interstices of the rocks or soil which it penetrates.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, Section 901; 45 CFR Parts 16, 74, and 96; 42 USC 2476; and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:

Chapter 13. Statewide Fluoridation Program

§1303. Background and Purpose

A. The fluoridation of community water supplies is the most effective mechanism for preventing dental caries. It is the only means whereby people of all ages in an area can be reached from birth and at a low cost. This has added significance for the many people who are dentally indigent.

B. The benefits of community fluoridation in maintaining dental health are substantial:

1. Persons drinking water which contains fluoride within the optimal fluoride level/range have teeth which are more caries resistant.

2. The caries rate among children drinking water which contains fluoride within the optimal fluoride level/range can be as much as two-thirds less than among children drinking fluoride deficient water.

3. By the time that children reach their teens, about six times as many residing in communities which have their community water supply meet the optimal fluoride level/range are completely free of caries as their counterparts in fluoride deficient areas.

4. When the optimal fluoride level/range in a community water system is maintained, extractions of permanent teeth caused by premature loss of primary teeth can be prevented. In addition, crooked and overlapping permanent teeth caused by premature loss of primary teeth can be prevented.

5. Adults consuming water which contains fluoride within the optimal fluoride level/range throughout life can expect fewer tooth extractions due to caries and are less likely to become edentulous (lose all their natural teeth) in later years.

C. Community fluoridation of drinking water produces economies in children's dental care in terms of both cost and treatment time. The cost benefit ratio has been estimated to be 1:38. Children receiving the benefits of fluoridation in their drinking water require fewer dental treatment services

and the treatment that is required is less complex and, therefore, less costly and less time consuming to provide. The costs of children's dental care in fluoridated areas can be less than one-half the cost in fluoride deficient areas.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 16, 76 and 96; P.L. 97-35, Section 901; 42 USC 2476, and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:

§1305. Requirements for Fluoridation of a Public Water System

A. LAC 51:XII.105 of the Louisiana State Sanitary Code requires approval by the state health officer or his/her duly authorized representative for certain types of changes made in the treatment of water offered the public. The addition of the fluoride ion to water is covered by that regulation.

B. For any public water system desiring to fluoridate its water, a formal request shall be made to the state health officer for approval to install the necessary fluoridation equipment.

C. In accord with R.S. 40:5.11(B), each community water supply having at least 5,000 service connections and natural fluoride levels that are outside the optimal fluoride level/range as defined in §1101.B of this Subpart shall acquire, install, operate, and maintain a fluoridation system in order to maintain the optimal fluoride level/range in the water being produced and distributed.

NOTE: EXEMPTIONS: Any community water supply to which Subsection C of this Section applies shall be exempt from the requirements of Subsection C of this Section when either of the following is applicable:

1. The Department of Health and Hospitals (DHH) is unable to identify a source of sufficient funds available to the community water supply to cover the capital costs, any associated costs to cover the installation, and the funds necessary to cover the cost of purchasing sufficient fluoride source material required to properly fluoridate the system for a period of six months from the date of initial installation and operation; or,

2. A community water supply has never used fluoridation to adjust fluoride levels in its water and its finished water contains fluoride in amounts outside of the optimal fluoride level/range as defined in §1101.B of this Subpart, and a local election on such exemption has been called and held in accordance with R.S. 40:5.11(B), and a majority of the registered voters who cast a vote in said election approve such exemption.

D. Any community water system with less than 5,000 service connections that submits a formal request per Subsection B of this Section must enclose with that request a copy of the ordinance or resolution directing the fluoridation of the water system duly passed by the appropriate governing body.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR, Parts 16, 74, and 96; P.L. 97-35; 42 USC 2476; and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:

§1307. System Requirements

A. Detailed plans and specifications for which a fluoridation permit is requested shall be submitted in duplicate, to the Department of Health and Hospitals – Office of Public Health’s (DHH-OPH) District engineer and the DHH-OPH’s fluoridation engineer by the responsible person of the water supply system. Such plans and specifications shall be submitted prior to construction.

B. The following provides minimum requirements as well as additional information to assist in the application for a fluoridation permit and in the preparation of plans and specifications. The review and approval of plans and specifications submitted for the issuance of a permit, shall be made in accordance with the “Recommended Standards for Water Works, 2003 Edition” (aka the “Ten State Standards”) plus any additional requirements as set forth in this Subpart. Additional fluoride-related documents which may be used by a community water system as guidance/information purposes may be found in the CDC’s Morbidity and Mortality Weekly Report (MMWR) titled “Engineering and Administrative Recommendations for Water Fluoridation, 1995”, as amended, and in the American Water Works Association (AWWA) “Water Fluoridation Principles and Practices M4, Fifth Edition”, as amended.

1. Three general types of fluoride compounds are approved for fluoridation of water supplies; namely, sodium fluoride, sodium fluorosilicate and fluorosilicic acid. Each has certain advantages and disadvantages, and the type chosen will depend on the characteristics of the water to be treated and the capacity of the supply.

2. The fluoride source material to be used must conform to NSF International/American National Standards Institute (NSF/ANSI) Standard 60-2009 and the applicable AWWA specification, as follows:

- a. for sodium fluoride, AWWA Standard B701-99,
- b. for sodium fluorosilicate, AWWA Standard B702-99, or
- c. for fluorosilicic acid, AWWA Standard B703-00.

3. The fluoridation system shall only operate when a flow of water is detected. If the water supply system serves less than two hundred service connections, a secondary flow-based control device shall be provided as back-up protection.

4. A means of measuring the total amount of water treated daily and the amount of chemical injected within the same time period must be provided. These measurements must be accurate to within 5.0 percent.

5. Fluorosilicic acid shall be stored in the original containers or containers provided for the specific purpose, apart from the other chemicals used in the water treatment process. Bulk storage tanks shall be in secondary containment per LAC 33:IX.Chapter 9.

6. When bulk storage of fluorosilicic acid is provided, a day tank shall be provided. The day tank shall hold no more than a 30 hour supply, as calculated at maximum feed rate. The day tank should be scale mounted, preferably under shelter. If scales are not used, level indication can be used for the calculation of the amount of chemical used provided it is accurate within five percent. Filling of day tanks shall not be automated.

7. A diaphragm-type anti-siphon device shall be installed in the fluoride feed line when a metering pump is

used and shall be located at the fluoride injection point. A second diaphragm-type anti-siphon device should be installed immediately downstream of the metering pump’s discharge head. These anti-siphon devices shall have a diaphragm that is spring-loaded in the closed position.

8. The following safety equipment shall be required for operators handling the following fluoride compounds:

a. fluorosilicic acid: gauntlet neoprene gloves, a minimum of 12 inches long with cuffs; full face shield and splash-proof safety goggles; and a heavy-duty, acid-proof neoprene apron.

b. sodium fluoride or sodium fluorosilicate: the same safety equipment required under Subparagraph 8.a. of this Subsection for fluorosilicic acid with the exception that the full face shield shall be replaced by a National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA) approved, N-series respirator.

c. for dry chemical systems, an eye wash station should be available and easily accessible, and

d. for acid systems, an eye wash station shall be available along with a safety shower and both shall be easily accessible and connected to an approved potable water supply.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR, Parts 16, 74 and 96; P.L. 97-35, Section 901; 42 USC 2476; and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 36:

§1309. Monitoring and Compliance—Optimum Fluoride Levels

A. If a water supply system has a single fluoridation system which treats all the water distributed to system consumers, the supplier shall collect a daily water sample for fluoride analysis either in the distribution system or at the entry point. If a water supply system does not fluoridate all its water and/or has more than one fluoridation system, the supplier shall collect a minimum of one water sample daily in the distribution system and shall rotate the sample site daily in order to obtain representative results of the level of fluoride in the water provided throughout the distribution system. If the water supply system is such that a single daily sample taken in different locations cannot provide a representative level, then multiple samples may be required. The number, location, and frequency of samples shall be in accordance with a monitoring plan developed by the water supply system and approved by the DHH-OPH.

1. If more than 20 percent of the daily fluoride samples collected in a month by a water supply system fall outside the optimal fluoride level/range, the system shall be out of compliance with the optimal fluoride level/range.

2. At least once a month, any water supplier with an operating fluoridation system shall divide one sample and have one portion analyzed for fluoride in a “DHH-OPH Approved Chemical Laboratory/ Drinking Water” lab (normally, on-site of the water treatment plant – see LAC 51:XII.Chapter 15) and the other portion analyzed for fluoride in a “DHH-OPH Certified Laboratory for Drinking Water Analyses – Chemistry”. (A list of such “DHH-OPH Certified Laboratory for Drinking Water Analyses –

Chemistry” may be found on the DHH-OPH website at the following url address: “http://www.dhh.louisiana.gov/offices/?ID=204”.)

3. Any water supply system with an operating fluoridation system shall sample the raw source water(s) annually and analyze for fluoride.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

§1311. Recordkeeping and Reporting

A. By the tenth day of each month following the month being reported, each water supplier fluoridating its potable water supply shall send operational reports to the DHH-OPH’s District Engineer and the DHH-OPH fluoridation engineer which shall include the following:

1. The fluoride source material used and the calculated fluoride dose in mg/L based on the latest annual raw source water(s) fluoride level.

2. Information on any interruptions in the fluoridation treatment which may have occurred during the month including the duration of the interruptions, an explanation of the cause(s), and what corrective actions were taken to insure that fluoridation treatment was resumed in a timely manner;

3. The results of the daily monitoring for fluoride in the water distribution system reported in terms of daily result, ranges, and the number of samples collected; and,

4. The results of monthly split sample(s) analyzed per §1309.A.2 of this Chapter.

B. If a fluoride overfeed exceeding 10.0 mg/L occurs, the water supply system shall notify the DHH-OPH by the end of the business day of the occurrence or, if the overfeed occurs on a weekend, state holiday, or other times of state office closure, the water supply system shall notify the DHH-OPH via e-mail communication to “safe.water@la.gov”.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

§1313. Funds Allocation

A. DHH-OPH shall prioritize water supply systems with 5,000 or more service connections that are not fluoridating to optimum fluoride levels for the receipt of funds as they become available. Priority will be based on cost effectiveness as well the level of funds available. The priority list will be periodically reviewed.

B. DHH-OPH shall also consider requests for funds from water supply systems with less than 5,000 service connections. Fund allocation will be based on cost effectiveness.

C. Within 90 days of written notification from DHH-OPH to the community water system of the availability of funds, the community water system shall submit an estimate of the cost to acquire and install the needed fluoridation equipment as well as an estimate of the cost of fluoride source material required to fluoridate the system for a period of six months from the date of initial installation and operation.

D. Upon acceptance of the submitted cost estimate by DHH-OPH, a written agreement between the State of Louisiana’s DHH-OPH and the governing body of the

community water system shall be executed for the commissioning, construction, and the first six months of fluoride source materials for the required fluoridation system. Transfer of funds shall be through reimbursement to the water supply system for paid invoices as they are submitted to the DHH-OPH.

E. All design, procurement, and construction shall be completed in a timely manner consistent with the reimbursement of funds by the DHH-OPH. Upon completion of construction and the receipt of the initial six months supply of fluoride source material, as well as the completion of appropriate operator training and certification, the water supply system shall promptly initiate water fluoridation and shall maintain the optimum fluoride level/range throughout its distribution system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

§1315. Requirement for Continued Operation

A. Any public water system with over 5,000 service connections that has initiated fluoridation prior to, on, or after July 6, 2008 shall not discontinue fluoridation without the approval of a majority of the registered voters who cast a vote in a local election called and held in accordance with R.S. 40:5.11(B).

B. Any public water system with fewer than 5,000 service connections that has initiated fluoridation as directed by ordinance or resolution of the appropriate governing body shall not discontinue fluoridation without the approval of that governing body.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

Title 51

PUBLIC HEALTH—SANITARY CODE

Part XII. Water Supplies

Chapter 3. Water Quality Standards

§317. Water Systems Which Fluoridate/Plan to Fluoridate

A. Public water systems which fluoridate their water supply (or which plan to fluoridate their water supply) shall comply with the applicable requirements of LAC 48:V.Subpart 5 (Fluoridation).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8), R.S. 40:5 (2)(3)(5)(6)(7)(17), and R.S. 40:5.11(G).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

Family Impact Statement

1. The effect on the stability of the family. No effect on the stability of the family is anticipated as a result of this proposed rulemaking.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. No effect on the authority and rights of parents regarding the education and supervision of their children is anticipated as a result of this proposed rulemaking.

3. The effect on the functioning of the family. No effect on the functioning of the family is anticipated as a result of this proposed rulemaking.

4. The effect on the family earnings and family budget. This rulemaking is not expected to have any effect on family

earnings; however, it is expected to have a positive effect on the family budget as it is anticipated that savings will be reaped by the family because the children will not have to see a dentist quite as often and when seen, the child should have less severe dental problems because of the preventive nature of fluoride in their drinking water.

5. The effect on the behavior and personal responsibility of children. This rulemaking is not expected to have any effect on the personal responsibility of children; however, it is anticipated that a child with a healthy set of teeth will not be ridiculed by their peers as much as one having unhealthy and possibly unattractive teeth or loss of teeth.

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 with the exception that registered voters in the family may be asked to vote in a local election on whether or not to have their public water system fluoridate. In most cases, the local government is the owner of the public water system serving the community; therefore, the local government's ability to perform the function as contained in the proposed rule is anticipated to be good as long as the local government is able to secure proper funding for the fluoridation program.

Public Comments

DHH-OPH will conduct a public hearing at 10 a.m. on Friday, November 27, 2009, in Room 371 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Sts. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Wednesday, December 2, 2009 at COB, 4:30 p.m., and should be addressed to H. Lynn Alessi, Fluoridation Engineer, Maternal and Child Health Program, Office of Public Health, P.O. Box 3214 Bin 4, Baton Rouge, LA 70821-3214, or faxed to (225) 342-2256. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street, Room 336-28, Baton Rouge, LA 70802.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Water Supplies—Fluoridation**

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

The proposed rule amends the Louisiana Administrative Code, Title 48, Part V, Subpart V and Title 51, Part XII to implement fluoridation changes required by Act 761 of the 2008 Regular Legislative Session.

The proposed rule will require local governmental units which own or operate a community water system having over

5,000 service connections and not having water which is naturally fluoridated to the optimal fluoride level/range to install a fluoridation system contingent on available funds identified by DHH to cover capital costs, installation costs, and the cost of purchasing sufficient fluoride source material to properly fluoridate the system for a period of six months from the date of installation and operation. DHH has identified 26 water systems throughout the state that would fall under this mandate. The total estimated cost to install a fluoridation system for these systems is \$15,789,788 based on information provided by the public water systems. For FY 09-10 through FY 10-11, DHH anticipates using federal grant funds of \$100,000 per year from the Preventive Health and Health Services Block Grant to cover fluoridation costs for approximately two of these public water systems. The only other state cost anticipated is \$1,600 (Federal) to publish the Notice of Intent and the final rule in the Louisiana Register in FY 09-10. This cost is routinely covered in the agency's budget.

Local government units will be required to continue to operate and maintain the fluoridation system after the initial six months. It is estimated that the cost of the fluoride source material will be \$12,000 semi-annually for a system serving 5,000 service connections. Larger systems can expect to pay more since more fluoride sourced material will be needed; however, the additional cost cannot be determined because it will be based on the number of service connections.

This rule also provides for an exemption from this mandate for community water supply systems with 5,000 service connections if sufficient funding is not available to cover the capital, installation, and initial fluoridation costs or if a local election has been called in accordance with R.S. 40:5.11(B) and a majority of the registered voters has approved for the system to be exempt. Any community water system with less than 5,000 service connections can be exempt if the appropriate governing body has passed an ordinance or resolution directing the exemption of a fluoridation system.

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

DHH will continue to seek to identify additional funding sources to implement this proposed rule; however, the amount of funding that may be appropriated for this purpose cannot be determined. Local governments which own or operate a community water system having over 5,000 service connections may find it necessary to increase the water meter billing rates in order to cover the cost of fluoride source material and monitoring (sampling) costs after the initial 6 months fluoridation period.

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

Consumer costs may increase through local water meter billing rates if local government units elect to pass on this cost. It is estimated that the annual increase in fees will be \$1.48 per person based on national averages. This cost will be offset by the benefits of fluoridation, which has resulted in 30% less cavities for those persons residing in communities that have their water supply meet the optimal fluoride level/range.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes have no effect on competition and employment.

M. Rony Francois, MD
Assistant Secretary
0910#035

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 28—Variable Contract Regulation (LAC 37:XIII.Chapter 77)

Editor's Note: This Notice of Intent is being repromulgated to correct a printing error. The original Notice of Intent may be viewed on pages 1976-1977 of the September 20, 2009 *Louisiana Register*.

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance hereby gives notice that the Department's Regulation 28, Variable Contract Regulation, will be amended as required to bring it into compliance with the National Association of Insurance Commissioner's (NAIC) uniformity standards. The amendments herein will remove the requirement of holding a life insurance producer license in order to obtain the producer license required for selling variable annuity products. The criteria used for the issuance, denial or any other regulatory action authorized under the Louisiana Insurance Code, with regard to the variable annuity license, shall remain the same as that criteria applicable to the life insurance producer license.

On Wednesday, October 28, 2009, beginning at 9 a.m., the Department of Insurance will hold a public hearing in the Plaza Hearing Room of the Poydras Building located at 1702 North Third Street, Baton Rouge, LA 70802. The purpose of the hearing is to allow for public commentary concerning the proposed amendment to Regulation 28 as set forth below.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 77. Regulation 28—Variable Contract Regulation

§7700. Authority

A. This regulation is adopted and promulgated by the Department of Insurance pursuant to the authority granted by R.S. 22: 781 and the Administrative Procedure Act, R.S. 49:950 et seq. This regulation replaces and repeals the regulation of similar purpose which took effect on January 1, 1969.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:67 (January 1998), amended LR 35:

§7701. Definition

Company—any insurer which possesses a certificate of authority to conduct life insurance business or annuity business in the state of Louisiana.

Contract on a Variable Basis or Variable Contract—any policy or contract which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in R.S. 22: 781.

Producer—any person, corporation, partnership, or other legal entity which, under the laws of this state, is licensed as an insurance producer.

Variable Contract Producer—a producer who shall sell or offer to sell any contract on a variable basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:67 (January 1998), amended LR 35:

§7703. Qualification of Insurance Companies to Issue Variable Contracts

A. No company shall deliver or issue for delivery variable contracts within this state unless the company is appropriately licensed for life insurance for the issuance of variable life insurance products or the annuity line for issuance of variable annuity contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:68 (January 1998), amended LR 35:

§7705. Separate Account or Separate Accounts

A. A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to R.S. 22:781.

1. - 5. ...

6. Rules under any provision of R.S. 22: 781 or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board, or other similar body. No officers or directors of such company nor any member of the committee, board, or separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:68 (January 1998), amended LR 35:

§7709. Contracts Providing for Variable Benefits

A. - B. ...

C.1. Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expenses and/or mortality results shall not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors shall also be stipulated in the contract.

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:69 (January 1998) ; amended LR 35:

§7715. Licensing of Agents and Other Persons

A.1. No producer shall be eligible to sell or offer for sale a contract on a variable basis unless, prior to making any solicitation or sale of such a contract, that producer presents evidence of satisfactorily passing one of the following written examinations upon securities and variable contracts and is afterwards duly licensed to sell variable annuities in this state:

a. - c. ...

d. the Securities and Exchange Commission test given pursuant to 15 U.S.C. 78o(b)(7) of the Securities Exchange Act of 1934.

2. Any producer who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract producer.

3. Any producer applying for a license as a variable contract producer shall do so by filing an application. All applications for a license shall be in writing on uniform forms prescribed by the Commissioner of Insurance.

4. Any producer who participates only in the sale or offering for sale of variable annuity contracts need not be licensed as a life producer also. All other licensing requirements continue to apply.

B. Any applicant for license as a variable contract producer shall present evidence that the applicant is currently registered with the Federal Securities and Exchange Commission as a broker-dealer or is currently associated with a broker-dealer and has met qualification requirements with respect to such association.

C. Except as modified by this regulation, refer to Title 22 Chapter 5 and the Insurance Regulations of this Department governing the licensing of life insurance producers.

D. Any person licensed in this state as a variable contract producer shall immediately report to the commissioner:

1. any suspension or revocation of the producer's variable contract license or life insurance license, if so licensed, in any other state or territory of the United States;

2. - 3. ...

E. The commissioner may reject any application or suspend, revoke, or refuse to renew any producer's variable contract license upon any ground that would bar such applicant or such producer from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an producer's life insurance license shall also govern any proceeding for suspension or revocation of an producer's variable contract license.

F. A variable contract license shall be renewed biannually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:69 (January 1998), amended LR 35:

Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. The proposed Rule should have no measurable impact on the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and supervision of their children. The proposed Rule should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on the functioning of the family. The proposed Rule should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed Rule on family earnings and budget. The proposed Rule should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. The proposed Rule should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or a local government unit to perform the function as contained in the Rule. The proposed rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in this Rule.

Public Comments

Persons interested in obtaining copies of Regulation 28 or in making comments relative to proposed Regulation 28 may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Written comments will be accepted through the close of business at 4:30 p.m. on October 28, 2009.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 28 Variable Contract Regulation

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

The Louisiana Department of Insurance (DOI) does not anticipate any implementation costs (savings) as a result of the proposed amended regulation. The amendment removes the requirements of holding a life insurance producer license for those producers who participate only in the sale or offering for sale of variable annuity contracts. Therefore, this amendment will divide the life insurance producer license and the variable annuity contract license into two producer licenses, each with their own biennial renewal. All other licensing requirements continue to apply. The amended Regulation 28 is required to bring it into compliance with the National Association of Insurance Commissioner's (NAIC) uniformity standards.

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

The proposed rule change will likely result in an increase in revenue to the Louisiana Department of Insurance (DOI); however the amount is indeterminable. The regulation separates the life insurance producer license and variable annuity contract license into two separate licenses each with a biennial renewal fee of \$50 as opposed to the current fee of \$50 for the combined license. The DOI is unable to estimate how many producers will renew under both licenses. There are currently 13,890 producers/producer agencies with this line of authority. To the extent all 13,890 renew under both licenses, the DOI will collect an additional \$694,500 in fees over a two-year period.

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

The proposed amended Regulation 28 will have a cost and/or economic benefits to directly affected persons or nongovernmental groups. Regulation 28 will impact producers who participate in the sale of variable annuity and life insurance products. These producers will be required to renew both licenses biennially at a cost of \$50 each. However, producers who participate only in the sale of variable annuity contracts will continue to renew one license, variable contract license, on

a biennial basis. However, the DOI is unable to determine of the current 13,890 producers/producer agencies, how many will renew under both licenses, which will cost an additional \$50.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of proposed Regulation 28 should have no significant impact upon competition and employment in the state.

Shirley D. Bowler
Deputy Commissioner
0909#10

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 82—Insure Louisiana Incentive Program
(LAC 37:XIII.Chapter 123)**

Editor's Note: This Notice of Intent is being repromulgated to correct a printing error. The original Notice of Intent may be viewed in the September 20, 2009 issue of the *Louisiana Register* on pages 1978-1984.

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 82 regarding the Insure Louisiana Incentive Program.

Regulation 82 is being amended to establish applicable, relevant and appropriate guidelines relative to risk-based capital, and the repayment of funds on a pro rata basis in accordance with the passage of Acts 2008, No. 390 of the Regular Session of the Louisiana Legislature.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 123. Regulation 82—Insure Louisiana
Incentive Program**

Editor's Note: Title 22 of the Louisiana Revised Statutes was amended and reenacted by Acts 2008, No. 415, §1, effective January 1, 2009. The citations in this Chapter have been renumbered from R.S. 22:3301 et seq. to R.S. 22:2361 et seq. When referring to Title 22 or R.S. 22:3301 et seq., please note the new statute numbers.

§12307. Definitions

A. ...

* * *

Earning Period—the timeframe, including any extension granted by the commissioner, in which the grantee can earn 20 percent or the pro-rata share of the grant award.

* * *

Reporting Period—the financial statement reporting date of March 31, June 30, September 30, and December 31 of each respective year in the Incentive Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2658 (December 2007), amended LR 35:

§12315. Qualifications for Applying for Grant Funds

A. Minimum Solvency Requirements. Grants shall be made only to property insurers who initially satisfy and thereafter maintain the following minimum solvency requirements:

1. - 2. ...

3. risk-based capital ratio of 500 percent at the initial grant award. The risk-based capital ratio must be at least 400 percent during the property insurer's participation in the Incentive Program; and

A.4. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2659 (December 2007), amended LR 35:

§12323. Property Insurance Requirements

A. - C. ...

D. Grantees shall also comply with the following.

1. - 2. ...

3. The grantee must comply with the requirements of both §12323.D.1 and 2 by the end of the second year and must continue to comply with all requirements in each of the succeeding years of the grant unless an extension has been granted by the commissioner under R.S. 22:2370.B or §12329.C of Regulation 82.

4. - 5.

E. The requirements of the grant that must be satisfied by the grantee are illustrated by the following example assuming a grant of \$2,000,000.

1. Example

a. The applicant is awarded a \$2,000,000 grant. Within 10 days of receipt of the grant of Incentive Program Funds, the applicant must match the grant with newly allocated capital funds of at least \$2,000,000 and provide written certification of compliance to the department. By the end of the second year after receipt of the grant, the grantee must write property insurance in Louisiana with net written premiums of at least \$8,000,000. At least \$2,000,000 of the \$8,000,000 of net written premiums must be written for policyholders whose property was formerly insured by the Louisiana Citizens Property Insurance Corporation and at least \$1,000,000 of that premium must be from policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone of 2005. By the end of the second year after receipt of the grant, the grantee must write at least \$4,000,000 of the net written premiums for policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone of 2005. By the end of the second year and for each of the succeeding years of the grant, the grantee must maintain net written premiums that comply with all of the requirements set forth above. Compliance with the requirements for the second year and for each succeeding year must be demonstrated on the grantee's annual reports.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301

pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2661 (December 2007), amended LR 35:

§12325. Funding Schedule

Editor's Note: This Section was formerly §12327.

A. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2662 (December 2007), repromulgated LR 35:

§12327. Reporting Requirements

Editor's Note: This section was formerly §12329.

A. ...

B. Grantee shall report annually by March 1 of each year on a form acceptable to the commissioner the following information:

1. the amount of premium written under the Incentive Program;

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2662 (December 2007), amended LR 35:

§12329. Compliance

Editor's Note: This section was formerly §12331.

A. - B. ...

C. If the commissioner determines that the grantee shows promise of future compliance, the commissioner may grant an extension of not more than one year to a grantee insurer who has failed to satisfy all requirements of the grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2662 (December 2007), amended LR 35:

§12331. Earned Capital

Editor's Note: This section was formerly §12325.

A. An insurer who has received a grant is entitled to earn the grant at the rate of 20 percent per earning period for the last 12 months of that earning period in which the insurer is in compliance with the requirements of R.S. 22:2361 et seq., and Regulation 82, so that the insurer can earn the entire grant after five years of full compliance with the requirements.

B. ...

C. Upon verification of the net written premium requirements during the preceding 12 months, the commissioner will issue written declaration that the grantee has earned 20 percent of the grant or a pro rata share thereof awarded to the grantee. No funds may be earned by the grantee until it receives official notification from the commissioner.

D. If the grantee does not meet the grant requirements during any year but shows promise of future compliance

based on good cause having been demonstrated, the commissioner may extend the period of time from five years in order for the grantee to earn the entire grant. The extension may be granted for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2661 (December 2007), amended LR 35:

§12333. Declaration of Default

A. The commissioner may declare an insurer in default of the requirements for a grant should he find any of the following exists.

1. The insurer fails at any time to meet the specific minimum requirements of §12315.A.1-4. The commissioner may take into consideration the effects of the Incentive Program, including efforts demonstrated by the grantee, when monitoring compliance with this criteria.

2. - 4. ...

B. If the commissioner determines that the grantee is in default, the commissioner shall notify the grantee in writing of such default. Any grantee declared in default by the commissioner shall have 30 days from the date of the declaration of default to request reconsideration by the commissioner. The written request for reconsideration shall set forth, in detail, each and every reason why the grantee is entitled to the relief requested, including any documents tendered in support thereof. The commissioner shall have 30 days from the mailing of the request for reconsideration to review it and render a decision. The commissioner's decision upon reconsideration is final. Unless modified on reconsideration, the default is effective from the date of the original declaration, and the grantee shall not be eligible to continue its participation in the Incentive Program unless the default is for failure to meet the requirements referenced in §12333.A.3.

C. The grantee in default is liable for and shall repay all grant funds that have not been earned by the grantee, plus legal interest from date of the commissioner's default declaration. In the event of default, a portion of the grant award for the current year may be earned on a pro rata basis to give credit for premiums written under the Incentive Program. Repayment on a pro rata basis shall be determined using a method prescribed by the commissioner. If a request for reconsideration is not timely made, repayment is due upon the expiration of 30 days from the declaration of default. If a request for reconsideration is timely made and denied, repayment is due within 10 days of the denial of the reconsideration request.

D.1. In determining the pro rata earnings, the commissioner shall divide the actual amount of written premiums by the amount required to be written under the Incentive Program, in each of the following categories:

a. policyholders whose property was formerly insured by the Louisiana Citizens Property Insurance Corporation;

b. policyholders under §12333.D.1 who are located in the parishes included in the Federal Gulf Opportunity Zone Act of 2005;

c. policyholders whose insured property is located in Louisiana in a parish included in the Federal Gulf Opportunity Zone Act of 2005; and

d. the total amount of net premiums written by the grantee under the Incentive Program.

2. Each category is weighted equally at 25 percent, and credit shall be given based on the percentage of premiums written per category. The resulting factor is then multiplied by 25 percent of the amount the grantee is entitled to earn per category for each year of compliance under the Incentive Program (earned capital). The factor shall not exceed 1.00 for additional writings in any category. The sum of all categories shall equal the pro rata amount earned by the grantee.

E. The requirements for earning on a pro rata basis are illustrated by the following example assuming a grant of \$5,000,000, presuming a maximum earned capital of \$1,000,000 (20 percent per year entitlement assuming full compliance), and the grantee is declared in default.

Example: [The required amounts of premium for each of the four categories are listed in the table below under "Requirement." Each requirement equates to 25% of the earned capital for the earning period or \$250,000. The "Actual" column represents the actual amount of writings by the grantee. The "Factor" column is the actual amount of writings divided by the requirement in each category. The "Earned" column represents the factor multiplied by \$250,000. Thus, under this example, the amount of money earned by the grantee on a pro rata basis is \$687,500.]

Category	Requirement	Weight	Actual	Factor	Earned
Total Net Written Premium	\$20,000,000	25%	\$15,000,000	.75	\$187,500
Gulf Opportunity Zone	\$10,000,000	25%	\$8,000,000	.80	\$200,000
Formerly Citizens	\$5,000,000	25%	\$1,000,000	.20	\$50,000
Citizens and Gulf Opportunity Zone	\$2,500,000	25%	\$2,500,000	1.00	\$250,000
Total:					\$687,500

F. The commissioner may institute legal action to recover all sums due by the grantee in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2662 (December 2007), amended LR 35:

§12339. Effective Date

A. This regulation shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:2361 et seq. (re-designated from R.S. 22:3301 pursuant to Acts 2008, No. 415, effective January 1, 2009), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:2663 (December 2007), amended LR 35:

Family Impact Statement

The proposed Regulation 82 LAC 37:XIII., Chapter 123 titled Insure Louisiana Incentive Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and

autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed regulation.

Public Comments

A public hearing on this proposed regulation will be held on October 26, 2009 at 9 a.m., in the Poydras Hearing Room of the Poydras Building, 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Carol Fowler-Guidry, Esq., Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., October 26, 2009. No preamble concerning the proposed regulation is available.

James J. Donelon
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 82—Insure
Louisiana Incentive Program**

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

The Louisiana Department of Insurance (DOI) does not anticipate any implementation costs (savings) as a result of the proposed rule to the Insure Louisiana Incentive Program.

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

There could be a financial impact upon the state as a result of these proposed changes. The proposed rule modifies the risk-based capital requirements, clarifies the language for earned capital, modifies grant repayment of funds on a pro rata basis and clarifies guidelines associated with default. During an insurer's participation in the program, this rule changes the risk-based capital ratio from 500 percent to 400 percent and, in accordance with Act 390 of the 2008 Regular Legislative Session, provides that program participants who default to repay grant funds on a pro rata basis as opposed to the repayment of the full grant amount. As a result of this rule, the state is less likely to receive repayment of the grant funds due to the risk-based capital ratio being lowered and to the extent participants do default, the state will receive less grant repayments than it would have otherwise received before the adoption of these rule changes.

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

The economic costs and/or benefits of the proposed rule will impact the 5 insurers who are currently participating in the Incentive Program. The change of the risk-based capital ratio from 500 percent to 400 percent, during an insurer's participation in the Incentive Program, will likely benefit the insurers when or if declaring default. Insurers that are defaulted will pay the grant funds on a pro rata basis rather than the entire grant fund.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

Implementation of proposed Regulation 82 should have no significant impact upon competition and employment in the state.

Shirley D. Bowler
Deputy Commissioner
0910#005

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Board of Private Security Examiners**

Training (LAC 46:LIX.409)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Board of Private Security Examiners hereby proposes to amend Section 409 under Chapter 4 to change the length of time an instructor license is valid, from two years to one year. An administrative processing fee is being assessed at a cost of \$10 to cover administrative costs or processing instructor renewal applications.

The proposed Rule would require a renewal application of instructors to be submitted and reviewed annually, rather than every two years as is current rule.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIX. Private Security Examiners

Chapter 4. Training

**§409. Instructor Requirements, Responsibilities and
Liability**

A. - C.2. ...

D. License Renewal

1. Instructor licenses issued by the board shall be valid for one year. Expiration date is based on the date the license is approved and issued.

D.2. - G.2. ...

H. An administrative fee of \$10 made payable to the board will be assessed on all fees that may be assessed by the board under this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:755 (December 1987), amended LR 18:194 (February 1992), LR 23:589 (May 1997), LR 26:1074 (May 2000), LR 31:1600 (July 2005), LR 36:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Wayne Rogillio, Executive Director, Louisiana State Board of Private Security Examiners, at 15703 Old Hammond Highway, Baton Rouge, LA 70816. Comments will be accepted through close of business November 10, 2009.

Wayne Rogillio
Executive Director

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

RULE TITLE: Training

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

There are no anticipated implementation costs or savings to state or local governmental units. The proposed rule changes shorten the length of validity of an instructor license from two years to one year and implements a \$10 administrative fee for instructor licenses.

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

The anticipated impact to the state is an increase of \$22,390 per year in total revenues. The state is estimated to collect an additional \$1,790 each year due to the \$10 administrative fee and \$20,600 because instructor licenses will have to be renewed every year, instead of every two years.

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

Currently, there are 16 instructors who pay \$100 each for a 2-year baton instructor license, 54 instructors who pay \$150 each for a 2-year firearm instructor license, and 109 instructors who pay \$100 each for a 2-year classroom license. The proposed rule retains the nominal cost of each license but requires all licensees to pay license fees annually rather than biennially, and adds a \$10 administrative fee to each license renewal application.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of the proposed rule.

Allison McLeary
Attorney
0910#067

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Individual Income Tax Filing Extensions (LAC 61:III.2501)

Under the authority of R.S. 47:1511, 1514, 103(D), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend Subparagraph A.2.b of LAC 61:III.2501 to strike the language "extension via the Department of Revenue's web site."

This language was originally included because the only electronic application for requesting an extension was via the LDR web site. Beginning this year, LDR will require software developers to provide the capability for taxpayers/tax preparers to request extensions electronically.

Title 61

REVENUE AND TAXATION

Part III. Department of Revenue—Administrative Provisions and Miscellaneous

Chapter 25. Returns

§2501. Individual Income Tax Filing Extensions

A. The secretary may grant a reasonable extension of time to file a state individual income tax return, not to exceed six months.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer may request a state filing extension by submitting:

a. a paper copy of an Application for Extension of Time to File Louisiana Individual Income Tax;

b. an electronic application; or

c. a paper copy of the IRS Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

B. Filing Extension Does Not Extend Time to Pay Tax

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, estimated taxes due should be paid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 103(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:1137 (June 2009), amended LR 36:

Family Impact Statement

The proposed amendment of LAC 61:III.2501 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. The implementation of this amended 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

Interested persons may submit data, views, or arguments, in writing to Leonore Heavey, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, November 24, 2009. A public hearing will be held on Wednesday, November 25, 2009, at 9:30 a.m. in the River Room Conference Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Individual Income Tax Filing Extensions**

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

The proposed rule change will have no impact on state and local government expenditures. This amended rule allows for electronic filing of state income tax extensions through venues other than the LDR website, such as tax preparation software packages.

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

The proposed rule will have no impact on the revenue collections of state or local governmental units. This rule merely provides for alternative venues through which taxpayers may file extensions electronically.

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

This rule expands the means by which extensions may be filed electronically so may also improve the taxpayer's ability to avoid assessments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
0910#034

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Community Services**

Foster Care (LAC 67:V.3501)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and to comply with Act 392 of the 2008 Regular Legislative Session, the Department of Social Services, Office of Community Services, proposes to amend the LAC 67: V., Subpart 5, Chapter 35, §3501, "Payables, Reimbursables, and Expenditures."

Act 392 of the 2008 Regular Legislative Session requires in part, that Children's Code Article 685, and R.S. 46:3 51.1(A) be amended and reenacted, and, that Children's

Code Article 682(B)(5) be enacted, relative to parental contributions for care and treatment of their child(ren) who is in state custody, and, provides for advising parents of their obligation to care for their children, and, related matters.

This proposed action is necessary to clarify current procedures for determining the amount of contribution required by a parent(s) whose child(ren) is in the care and custody of the state of Louisiana.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 5. Foster Care

Chapter 35. Payments, Reimbursables, and Expenditures

§3501. Procedures for Determining the Amount of Contribution Required by Parents Whose Children are in the Care and/or Custody of the State of Louisiana

A. At initial assessment when children enter the custody of the state, the gross income of the family shall be considered as a base from which to begin the assessment process. From this amount, parents are allowed a deduction of \$1,500 per dependent in the home. This includes the children who were residing in the home prior to removal. The resulting figure shall be the adjusted family income which shall be used to determine the amount of contribution. The amount of the assessment shall be 10 percent of the adjusted family income divided into 12 monthly payments. The amount would be the same for the family regardless of the number of children in care, i.e., families which have the same adjusted income but different numbers of children in care would be billed the same amount.

B. At reassessment, only changes in the composition or income of the family will be considered in the calculation. Dependent deductions of \$1,500 for family members in the home will continue to be allowed. The resulting figure is the adjusted family income. The amount shall be used to determine the amount of contribution. The yearly contribution shall be equal to 10 percent of the adjusted family income. The family will pay this one amount regardless of the number of children who are in care.

C. Parental contributions shall not be recommended if an existing child support order is in place or if good cause exists in a particular case. The exceptions for good cause shall be determined on a case by case basis by the case manager for reasons including, but not limited to short-term foster care placements; pending adoption proceedings; potential non-custodial parent placement; imminent termination of parental rights; or, when assessment is contrary to the case plan goals. These exceptions shall be documented in the case plan or court report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 17:1225 (December 1991), amended LR 36:

Family Impact Statement

1. The effect on the stability of the family. This proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding education and supervision of their children. This

proposed Rule will have no effect on the authority and rights of parents regarding education and supervision of their children.

3. The effect on the functioning of the family. This proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Parental contributions are financial contributions based on the parents' ability to pay, made towards the care of their child(ren) while the child(ren) is in Foster Care. At initial assessment, which is determined when the child(ren) enters the custody of the state, the gross income of the family shall be considered as a base from which to begin the assessment process.

5. The effect on the behavior and personal responsibility of children. This proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. Article 685 of the Louisiana Children's Code mandates that when a child is committed to the custody of the State, the parent/guardian will be required to contribute toward meeting the cost of care in such a manner as is commensurate with his/her ability to pay. This proposed Rule will have no effect on a local government to perform the function as contained in the proposed Rule.

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

Interested persons may submit written comments no later than Friday, November 20, 2009, to Kaaren Hebert, Assistant Secretary, Office of Community Services, P.O. Box 3318, Baton Rouge, LA 70821. She is responsible for responding to inquiries regarding this proposed Rule.

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Foster Care

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

This rule proposes to amend the Louisiana Administrative Code Title 67, Part V, Subpart 5, Chapter 35, Section 3501 to change the calculation for determining the amount of parental contributions for children in state custody. Currently, families are assessed 10% of the adjusted family income, which is gross income minus deductions for 1) each dependent child in the home and 2) state and federal taxes paid. Under the proposed rule the deduction for state and federal taxes paid will no longer be allowed. This rule also makes technical language changes and adds language already in current policy regarding

circumstances for which parental contributions will not be recommended.

The only state cost associated with this rule is \$164 (\$82 SGF; \$82 Federal) for publishing rulemaking in FY 10. This one-time cost is included in the agency's budget. There are no costs to local governmental units.

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

This Office of Community Services annually collects approximately \$50,000 in self-generated revenues for parental contributions. DSS anticipates that the disallowance of state and federal taxes could increase the amount of parental contributions received by some minimum but unknown amount because the majority of the parents are low income.

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

DSS anticipates that the proposed rule will increase the amount of the parental contribution for families that pay state and federal taxes since this deduction will no longer be allowed in the calculation to determine the adjusted family income. The amount of this increase cannot be determined.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Kaaren M. Hebert
Undersecretary
0910#045

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Support Enforcement
(LAC 67:III.2301, 2509, and 2801)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services (DSS), Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), Chapter 23, Subchapter A which provides for designation, authority, organization and staffing of support enforcement services; Chapter 25, Subchapter B which provides for support obligation payments through income assignment; and Chapter 28, Subchapter A which provides for non-IV-D case administration.

The Regular Session of the 2003 Louisiana Legislature repealed R.S. 46:236.1 and enacted R.S. 46:236.1.2 effective July 2, 2003, to authorize the Department to develop and implement a program of family support. Amendment of this section is necessary to provide the correct citation of authority in the Louisiana Administrative Code.

The Regular Session of the 1997 Louisiana Legislature amended R.S. 9:303 effective October 1, 1998. This amendment requires new child support orders that are not being enforced by the Department of Social Services to include, as part of the order, an immediate income assignment payable through the state disbursement unit. Amendment of this section is necessary to ensure compliance with Louisiana Revised Statute 9:303.

The Department of Social Services, Office of Family Support, Support Enforcement Services anticipates entering

into a Memorandum of Understanding (MOU) with the 24th Judicial District Court (JDC) agreeing that the 24th JDC will make all income assignment orders (IAOs) payable to DSS. SES will, upon receipt of payment from the noncustodial parent or that parent's employer, remove the court ordered administrative fee and send the fee to the court before disbursing the support collected in accordance with standards for child support orders not associated with IV-D services. Amendment of this section is necessary to comply with the provisions of the MOU.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 23. Single State Agency Organization

Subchapter A. Designation, Authority, Organization and Staffing

§2301. Authority

A. Support Enforcement Services (SES) is established in accordance with U.S.C.A., Title 42, Section 651 et seq. and R.S. 46:236.1.2 et seq.

AUTHORITY NOTE: Promulgated in accordance with U.S.C.A., Title 42, Section 651 et seq. and R.S. 46:236.1.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), amended LR 36:

Chapter 25. Support Enforcement

Subchapter B. Support Obligation

§2509. Income Assignment

A. In all new or modified child support orders enforced by Support Enforcement Services (SES), and all new child support orders after January 1, 1994, that are not being enforced by SES, the court shall order an immediate income assignment unless a written agreement exists between the parties for an alternate arrangement, or the court finds good cause not to require an immediate income assignment. Employers shall remit any amounts withheld through income assignment within seven days.

B. - D. ...

E. All income assignment orders shall be payable through the Louisiana state disbursement unit. Payments shall be made payable to the "Department of Social Services" and mailed to:

Centralized Collection Unit
Post Office Box 260222
Baton Rouge, Louisiana 70826-0222.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.3 and 45 CFR 303.100, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1083 (November 1985), amended by the Department of Social Services, Office of Eligibility Determinations, LR 16:33 (January 1990), amended by the Department of Social Services, Office of Family Support, LR 23:748 (June 1997), LR 26:356 (February 2000), LR 36:

Chapter 28. Non-IV-D Program

Subchapter A. Non-IV-D Case Administration

§2801. General Provisions

A. ...

B. Payments shall be made payable to the Department of Social Services. When a payment is received from the noncustodial parent or that parent's employer, the support payment will be distributed in accordance with standards for child support orders not associated with IV-D services. The

clerks of court will provide information to identify a case if requested by the Department of Social Services.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 303.100, P.L. 100-485 and R.S. 9:303; 42 U.S.C. section 654(b) and R.S. 46:236.11.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:1527 (December 1993), amended LR 20:449 (April 1994), LR 26:2830 (December 2000), LR 36:

Family Impact Statement

1. What effect will this Rule has on the stability of the family? This Rule will have no effect on the stability of the family.

2. What effect will this Rule has on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule has on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? This Rule will have no effect on family earnings or on family budgets.

5. What effect will this Rule 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? This Rule does not require any action on the part of the family or local government.

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

Interested persons may submit written comments by November 24, 2009, to Sammy Guillory, Deputy Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-90656. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on November 24, 2009, at the Department of Social Services, Iberville Building, 627 North Fourth Street, 1st Floor, Room 1-129, Baton Rouge, LA beginning at 9:00 a.m.

All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven

working days in advance of the hearing. For Assistance, call (225) 342-4120 (Voice and TDD).

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Support Enforcement Services

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

This rule proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Chapters 23, 25, and 28. Chapter 23 is being amended to provide the correct citation of authority. Chapter 25 is being amended to comply with Louisiana Revised Statute 9:303, which was enacted in 1998 to allow new child support orders after January 1, 1994 that are not being enforced by the Department of Social Services (DSS), to include an immediate income assignment payable through the DSS state disbursement unit. Chapter 28 makes technical changes to the language regarding distribution of child support payments.

Currently, the 24th JDC has been collecting child support payments in lieu of making them payable to DSS as required by R.S. 9:303. The annual cost for the 24th JDC to collect and distribute the child support payments is approximately \$15,809 based on 2008 expenditures. DSS is in the process of establishing a Memorandum of Understanding with the 24th JDC to have all child support payments currently collected by the court to be made payable to "The Department of Social Services" and sent directly to DSS. DSS will remove the court ordered administrative fee from the payment and send the fee to the 24th JDC at an annual cost of \$250 (.05 transaction fee X 5,000 transactions reported by the 24th JDC). The cost to the 24th JDC will be offset by the annual savings realized from no longer having to collect and distribute the child support payments, resulting in a net savings of \$15,559.

DSS will distribute child support payments through either direct deposit or store value cards. DSS contracts with Affiliated Computer Services to process the child support payments at a cost of .79 per transaction. The additional annual cost to process 5,000 transactions is \$3,950. DSS has indicated that this cost will be absorbed in the agency's budget for FY 10 through FY 12. The only other cost anticipated is \$1,000 for the cost of publishing rulemaking and printing policy. This is a one-time cost that is routinely included in the agency's budget.

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

DSS anticipates an annual increase of \$250 (\$.05 X 5,000) in Self-generated revenues from the .05 transaction fee that will be assessed to the 24th JDC to send the court ordered administrative fee to the court.

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

There are no anticipated costs to any persons or non-governmental groups because no new court ordered administrative fees are being charged as a result of this proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
0910#042

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: JANUARY-SEPTEMBER 2009

LAC Title	Part.Section	Effect	Location LR 35 Month Page	LAC Title	Part.Section	Effect	Location LR 35 Month Page
4	VII.1301-1305	Amended	Apr. 662	28	CXI. Chapter 18	Adopted	Feb. 214
	VII. Chapter 24	Adopted	May 951		CXI.1901,1903,1907,1909	Amended	Feb. 208
7	I.101	Amended	Apr. 632	CXI.1911,1913,1915,1917	Amended	Feb. 208	
	V.2501,2503,2505	Adopted	Mar. 406	CXI.1905	Repromulgated	Feb. 208	
	XIII.103,121,125,129	Amended	Apr. 626	CXI.1919,1921,1923,1925	Adopted	Feb. 208	
	XIII.143,173,181,205	Amended	Apr. 626	CXV.303	Amended	Aug. 1474	
	XXI.101,121	Amended	Aug. 1465	CXV.303	Amended	Sept. 1876	
	XXI.339	Adopted	Aug. 1465	CXV.337	Amended	June 1100	
	XXI.507	Amended	Mar. 406	CXV.501,502	Repromulgated	Mar. 443	
	XXIII.181	Repromulgated	May 870	CXV.501	Amended	Aug. 1473	
	XXV.101,103,109,113,141	Amended	Feb. 205	CXV.502	Amended	June 1099	
	XXV.101,117,119,141,145	Amended	Aug. 1467	CXV.513,1103,1117,1121,1129	Amended	Aug. 1475	
	XXV.141	Repromulgated	Sept. 1872	CXV.519	Amended	June 1100	
	XXVII.139	Repealed	Apr. 629	CXV.723	Amended	June 1098	
	XXVII.191-217	Adopted	Apr. 629	CXV.1103	Amended	Apr. 641	
	XXIX.105,107,109,113	Amended	July 1227	CXV.1103	Amended	June 1097	
	XXIX.107,111	Amended	July 1228	CXV.1110	Adopted	June 1098	
	XXIX.115,117	Amended	July 1127	CXV.1118	Adopted	Apr. 641	
	XLV. Chapter 1	Adopted	Feb. 204	CXV.1309	Amended	June 1098	
10	XV.1101	Amended	July 1236	CXV.2304	Adopted	Aug. 1476	
	XV.1103	Repealed	July 1236	CXV.2319	Amended	July 1230	
13	III.101-115,131-145	Amended	May 870	CXV.2319	Amended	Sept. 1876	
	III.117,147	Repealed	May 870	CXV.2321	Amended	Mar. 443	
	III.301-319	Amended	May 883	CXV.2321	Amended	Mar. 443	
	III.321	Repealed	May 883	CXV.2373,2381	Amended	Sept. 1875	
	III.Chapter 17	Amended	Apr. 635	CXV.2377,2385	Amended	July 1229	
	III.Chapter 19	Adopted	Jan. 54	CXV.2382	Adopted	Sept. 1875	
	V.Chapter 2	Amended	May 887	CXV.3103	Amended	Sept. 1877	
22	I.101	Amended	Jan. 85	CXXXI.233,235	Amended	Aug. 1477	
	I.207	Amended	May 958	CXXXI.237	Amended	Aug. 1482	
	I.303	Amended	Mar. 487	CXXXI.239	Amended	Feb. 222	
	I.315	Amended	Jan. 87	CXXXI.241	Amended	Apr. 644	
	I.316	Amended	July 1248	CXXXI.305,309	Amended	Feb. 222	
	I.403	Amended	Feb. 252	CXXXI.309	Amended	May 893	
	III.4703,4707,4721	Amended	July 1234	CXXXI.311	Amended	Apr. 642	
	III.4105	Amended	July 1235	CXXXI.313	Amended	Feb. 221	
	III.4723	Amended	Feb. 238	CXXXI.325	Amended	Aug. 1487	
	XIII.301,503	Amended	Jan. 65	CXXXI.348	Adopted	Feb. 220	
	XV. Chapter 7	Adopted	Apr. 663	CXXXI.410	Amended	May 894	
	28	I.501	Amended	Feb. 223	CXXXI.629,630	Amended	Aug. 1484
		I.501,503,703	Amended	Sept. 1874	CXXXI.710	Adopted	Apr. 645
	I.725	Adopted	Aug. 1470	CXXXI.711	Amended	July 1231	
IV.103,301,504,701,703,803,1001	Amended	Feb. 227	CXXXI.741	Amended	July 1231		
IV.301,805,1901,1903	Amended	Aug. 1489	CXXI.1103	Amended	Apr. 643		
IV.301,1303,1903	Amended	Aug. 1490	CXXXV.115	Amended	June 1097		
IV.1203	Amended	Apr. 647	I. Chapter 1	Adopted	July 1257		
IV.1401-1409,1413-1417	Amended	Feb. 227	32	III.601	Amended	Jan. 66	
IV. Chapter 16	Adopted	Feb. 224		V.601	Amended	Jan. 66	
IV.1705,1901	Amended	Feb. 227	33	I.807	Amended	Jan. 62	
IV.1903	Amended	July 1233		I.2701,2703,2705,2707,2709,2711	Adopted	Mar. 449	
IV.2103	Amended	July 1233		I.2713,2715,2717,2719,2721	Adopted	Mar. 449	
VI.107,315	Amended	Aug. 1491		I.3931	Amended	June 1106	
VI.305,309,311	Amended	Feb. 235		III.111,2123,2143	Amended	June 1101	
VI.305	Amended	July 1234		III.301,303,305,307,309,311,313	Adopted	Mar. 456	
XXV.1101	Amended	Apr. 646		III.501	Amended	Mar. 456	
XXVII.2511	Amended	Apr. 645		III.506,507,2160,3003	Amended	June 1106	
XXXI.503,507	Amended	Aug. 1488		III.535,537	Adopted	Apr. 658	
XXXIII.301,311	Amended	Apr. 646		III.1327, 1333	Amended	July 1234	
XXXIII.513	Amended	Sept. 1878		III.1432,1434	Amended	Mar. 461	
XLIII.464	Amended	July 1232		III.1435,1437	Adopted	Mar. 461	
LXXV. Chapter 1	Amended	May 891		III.2117	Amended	May 924	
LXXXIII.301,611,1101,2401	Amended	Apr. 638		III.5116,5122,5311,5901	Amended	June 1106	
LXXXIII.613	Amended	Aug. 1471		V.105,321,1513,1529,3005,3105	Amended	Sept. 1878	
LXXXIII. Chapter 35	Amended	Aug. 1471		V.3099	Amended	June 1106	
LXXXIII.1403,3905	Amended	Apr. 641		VII.508,709,717,719	Amended	May 925	
LXXXIII.1501-1505,1701-1707	Repealed	Apr. 638	VII.715,1101	Amended	Sept. 1878		
LXXXIII.3905,4311	Amended	Apr. 638	IX.1105,1113,1123	Amended	Mar. 445		
CL. Chapters 1-15	Adopted	May 894	IX.1123	Amended	Apr. 654		
CXI.305,307,309,311,312,313	Amended	Feb. 216	IX.1319	Amended	Aug. 1493		
CXI.309	Amended	Mar. 443	IX.1309,1311,1313,1315,1317	Amended	Aug. 1493		
CXI.315,501,701,2011,2701	Amended	Feb. 216	IX.1319	Amended	Aug. 1493		
CXI.501,511,1801,2007,2011	Repromulgated	Jan. 57	IX.2301,4901,4903	Amended	June 1106		
CXI.2015,2305,2311,3505	Repromulgated	Jan. 57	IX.2501,2505,2515,2703	Amended	Apr. 648		
			IX.2903,2905,4903	Amended	Apr. 648		
			IX.5903	Amended	Sept. 1878		
			IX.7301,7303,7305,7307,7309	Amended	May 926		

LAC Title	Part.Section	Effect	Location LR 35 Month Page	LAC Title	Part.Section	Effect	Location LR 35 Month Page	
33	IX.7313,7395	Amended	May 926	48	I. Chapter 60	Adopted	Mar. 466	
	XI.101,303	Amended	Aug. 1492		I.6803,6851,6867	Amended	Aug. 1540	
	XI.1121	Amended	Sept. 1878		I.9335	Amended	Feb. 245	
	XV.1599	Amended	June 1106		I.9701,9727	Amended	Aug. 1541	
					I.9729	Amended	Feb. 248	
34	III. Chapter 3	Adopted	Aug. 1521	50	I.8103	Amended	Sept. 1891	
35	I.1507,1509	Amended	May 950		III.2303	Amended	Jan. 69	
	I.1721	Amended	Mar 463		III.2311	Adopted	June 1111	
	V.6359	Amended	Mar 463		III.10305	Amended	Sept. 1898	
	XIII.503,505,506,510,515	Amended	June 1114		III.10705	Adopted	Sept. 1899	
	XIII.507	Repealed	June 1114		III.20301-20305	Adopted	Jan. 72	
	XIII.516,521,591	Adopted	June 1114		V.953,955,959	Amended	Sept. 1895	
	XIII.520	Repromulgated	June 1114		V.953,955,959	Amended	Sept. 1896	
	XIII.525,535,560,565,599	Amended	June 1114		V.965	Amended	Apr. 674	
					V.1125,1127	Adopted	May 955	
					V. Chapters 53-61	Adopted	May 955	
37	XIII.503	Repromulgated	July 1247		V.5313,5513,5713,5913,6113	Adopted	Sept. 1900	
	XIII. Chapter 133	Adopted	May 957		VII.1321	Adopted	Sept. 1899	
	XIII. Chapter 135	Adopted	Apr. 675		VII.32913	Amended	Sept. 1897	
42	VII.2159,3311,	Amended	Jan. 84		IX.8301,8305	Adopted	Jan. 70	
	VII.2711	Repromulgated	Jan. 82		IX.15111	Adopted	Sept. 1902	
	IX.2159,3311	Amended	Jan. 84		XI.6901	Amended	Sept. 1890	
	XI.2405	Amended	Jan. 82		XI.6903	Adopted	Sept. 1890	
	XI.2405	Repromulgated	Mar. 490		XI. Chapter 75	Adopted	Sept. 1888	
	XI.2731	Repromulgated	Jan. 83		XI.16705	Adopted	May 957	
	XIII.2159,3311	Amended	Jan. 84		XIII.103	Adopted	Sept. 1894	
					XV.901	Amended	Sept. 1899	
43	I. Chapter 41	Adopted	Jan. 73		XV.4307	Amended	Sept. 1894	
	VI.101,103,301,303,305	Amended	Feb. 249		XV.6903,6905	Amended	Sept. 1889	
	VI.307,309,501,505,507	Amended	Feb. 249		XV.7107	Amended	Jan. 69	
	VI.701,703,705	Amended	Feb. 249		XV.10701	Amended	Jan. 73	
	VI.105	Adopted	Feb. 249		XV.10701	Amended	Sept. 1903	
					XV.10703	Adopted	Jan. 73	
					XV.12917	Amended	Sept. 1901	
					XV.16105,16107	Amended	Sept. 1902	
46	I.701	Amended	Jan. 64		XV. Chapters 251-257	Adopted	Feb. 245	
	I.1107	Adopted	Jan. 64		XVII.301,303,501	Repromulgated	Jan. 71	
	I.2117	Amended	May 949		XVII.501	Amended	Sept. 1903	
	V.113,115,1801,1802,1803,1804	Repromulgated	Aug. 1525		XIX.4329,4335	Amended	Sept. 1897	
	V.1805,1806,1901,1903,1905	Repromulgated	Aug. 1525		XIX.4334,4337	Adopted	Sept. 1897	
	XI.102,108	Amended	Jan. 53		XXI.1101	Amended	Sept. 1891	
	XI.737	Adopted	Jan. 53		XXI.1103,1105,1107	Adopted	Sept. 1891	
	XIX.1503	Amended	Feb. 236		XXI.9101	Amended	Sept. 1893	
	XXI.301,311	Amended	Jan. 64		XXI.14301	Amended	Mar. 482	
	XXI.603,607	Amended	Sept. 1881		XXI.14301	Amended	Sept. 1893	
	XXXIII.306,415,419,420,706	Repromulgated	Jan. 67		XXIX.113	Amended	Sept. 1901	
	XXXIII.1611, 1613, 1615	Amended	July 1237		XXXI.101,103,105,107	Adopted	June 1112	
	XXVII.301,306,318	Repealed	May 953		XXXVII.351,353	Adopted	Jan. 70	
	XXVII.307,308,310,501	Amended	May 953					
	XXVII.320	Adopted	May 953					
	XL.119,120	Amended	Aug. 1519		51	II.117	Amended	Feb. 249
	XLV.315	Amended	June 1110			IX.305, 321, 331	Amended	July 1239
	XLV.408	Adopted	Aug. 1531			XII.101,913,1139,1507,1509	Amended	Mar. 483
	XLV.411	Amended	Mar 464			XII.101,355,1101,1103,1113	Amended	July 1239
	XLV.1303,1305	Amended	Feb. 240			XII.1115,1117,1119,1123,1125	Amended	July 1239
	XLV.1304,1307,1319,1321	Adopted	Feb. 240			XII.1127,1129,1133,1135,1137	Amended	July 1239
	XLV.1323,1325,1327,1357	Adopted	Feb. 240			XII.1139,1903,1911	Amended	July 1239
	XLV.1365,1367,1369	Adopted	Feb. 240			XII.1141	Adopted	July 1239
	XLV.3107,3113,3129,3133	Amended	Sept. 1886			XII.313	Repealed	Mar. 483
	XLV.3109,3135,3137,3139	Repealed	Sept. 1886			XII. Chapter 19	Adopted	Mar. 483
	XLV.3141,3143,3145,3151	Repealed	Sept. 1886			XXVII.301,501	Amended	July 1238
	XLV.3147,3153,3162	Amended	Sept. 1886			XXVII.503	Adopted	July 1238
	XLV. Chapter 72	Adopted	Aug. 1528					
	XLV. Chapter 75	Adopted	Aug. 1531		52	I.1318-1321	Adopted	Mar. 407
	XLVII.305, 1705	Amended	July 1246					
	XLVII.3330	Amended	Sept. 1888		55	I.301	Amended	June 1136
	XLVII.3333	Amended	Aug. 1536			I.1505,1543	Amended	Mar. 491
XLVII.3405	Amended	Aug. 1535			V. Chapter 31	Adopted	Apr. 677	
XLVII.3419	Amended	Aug. 1535			VI.301	Amended	Sept. 1904	
LI.109,301,501	Amended	June 1111			VI.703,705	Amended	Mar. 490	
LX.3303,3311,3313,3315	Amended	June 1113			VII.309	Amended	June 1136	
LX.3307,3309	Repealed	June 1113			VII.317	Amended	Jan. 89	
LXI.105,707,1301,1315,2701	Amended	Sept. 1908						
LXX.3103,3105,3107,3201,3203	Amended	Sept. 1882		58	I.305	Amended	Feb. 271	
LXX.3205,3207,3209,3211,3301	Amended	Sept. 1882			XIII.101	Adopted	May. 949	
LXX.3401,3403,3501,3601,3603	Amended	Sept. 1882						
LXX.3605,3607	Amended	Sept. 1882		61	I.1501	Amended	Feb. 255	
LXXXV.700,711	Amended	Feb. 244			I.1501	Amended	Aug. 1543	
XCI.103,301,303,305,315,321	Amended	Aug. 1537			I.1661-1671	Adopted	Apr. 632	
XCI.105	Adopted	Aug. 1537			I.4405	Repealed	July 1255	
XCI.317,319,501,503,507	Repealed	Aug. 1537			I.4420	Amended	July 1254	
XCI.509,711,801	Amended	Aug. 1537						

LAC Title	Part.Section	Effect	Location LR 35		LAC Title	Part.Section	Effect	Location LR 35				
			Month	Page				Month	Page			
61	III.101	Amended	June	1138	70	III.115	Amended	Feb.	271			
	III.501	Adopted	Feb.	254		76	I.318	Adopted	Mar.	501		
	III.1513-1523	Adopted	July	1252			I.319,321	Amended	Apr.	702		
	III.2111	Repealed	June	1137			I.337	Adopted	Sept.	1912		
	III.2501	Adopted	June	1137			76	III.329	Amended	May	968	
	V.101,303,703,705,901,907	Amended	Mar.	491				III.335	Amended	Apr.	707	
	V.1103,1301,1305,1307,1503	Amended	Mar.	491				V.111	Amended	Sept.	1910	
	V.2101,2501,2503,3101,3501	Amended	Mar.	491				V.125	Amended	Apr.	702	
	67	I. Chapter 1	Amended	May				966	V.701	Amended	Apr.	690
		III.403,1957,1983,1998,2013	Amended	Apr.				689	VII.205	Adopted	Apr.	702
III.2303,2547		Amended	Feb.	270	VII.357			Amended	Apr.	704		
III. 5567		Adopted	May	966	VII.527	Adopted		Mar.	503			
III.5591		Amended	July	1257	VII.529	Adopted		Mar.	503			
III.7388,7389,7390,7391		Amended	May	961	VII.905	Amended		June	1139			
III.7392,7393,7395		Amended	May	961	VII.905	Repromulgated	July	1263				
III.7399		Adopted	May	961	VII.1101	Amended	June	1140				
V.2301		Amended	May	961	XI.307	Adopted	Apr.	704				
V.2301		Amended	July	1256	XIX.101, 103	Amended	July	1278				
V.2303	Repealed	July	1256	XIX.111	Amended	July	1264					
V.3507	Repealed	July	1256	XIX.113	Amended	Jan.	91					
V. Chapters 61-69	Repromulgated	Aug.	1543	XIX.115	Amended	Jan.	90					

Potpourri

POTPOURRI

Department of Environmental Quality Office of the Secretary

Declaratory Ruling—No. DR-09-004

Subject: Proper interpretation of the term "facility" as used in Louisiana's Solid Waste Regulations

Under the authority of the Louisiana Environmental Quality Act, La. R.S. 30:2001 et seq., and in accordance with LAC 33:I.1125.A, the Secretary of the Louisiana Department of Environmental Quality (the Department) hereby issues this Declaratory Ruling regarding the proper interpretation of the definition of the term "facility," found in Louisiana Administrative Code, Title 33, Part VII, Section 115 (LAC 33:VII.115).

Background

By letter dated November 25, 2008, the North West St. Tammany Civic Association (NWSTCA) requested a declaratory ruling regarding the proper interpretation of the term "facility" as defined by the Department's solid waste regulations. In particular, the NWSTCA expressed concerns over the scope of the term "facility" as it relates to the buffer zone requirements of LAC 33:VII.508.B. The NWSTCA Petition also raises issues previously addressed in Declaratory Ruling No. DR-08-003, directed specifically to the buffer zone requirements of LAC 33:VII.508.B. The NWSTCA's Petition is further directed to the application of the term "facility" to a proposed non-processing transfer facility that, if built, will be operated by IESI Louisiana Corp., in St. Tammany Parish, Louisiana.

The NWSTCA's original request was not submitted in conformity with the Department's rules governing the issuance of declaratory rulings because it lacked the affidavit required by LAC 33:I.1117.A.9. A letter advising the NWSTCA of this defect in its Petition was issued by the Department on January 30, 2009. By correspondence dated March 16, 2009, and received by the Department on March 19, 2009, the NWSTCA submitted the required affidavit.

Analysis

In the NWSTCA's Petition, two regulations are specifically addressed. As previously noted, there is a discussion of LAC 33:VII.508.B, which, at the time of Petition submittal, stated:

New facilities in which construction has commenced after June 20, 2007, shall comply with a buffer zone requirement of not less than 200 feet between the facility and the property line. Facilities transferring only nonputrescible waste shall comply with a buffer zone requirement of not less than 50 feet between the facility and the property line. A reduction in the buffer zone requirement shall be allowed only with the permission, in the form of a notarized affidavit, of all adjoining landowners. A copy of the notarized affidavit waiving the 200-foot or 50-foot buffer zone requirement shall be entered in the mortgage and conveyance records of the parish or parishes in which the adjoining landowners'

properties are located. The affidavit shall be maintained with the records of the facility. No storage of solid waste shall occur within a facility's buffer zone.

The wording of this section created some confusion, and the Department has recently amended the regulation to clarify its intent. However, while the NWSTCA's Petition initially references LAC 33:VII.508.B, the actual subject of the Petition is the term "facility" found in the first and second sentences of the buffer zone regulation. This term is explicitly defined by the solid waste regulations. In particular, LAC 33:VII.115 defines the term "facility" as follows:

Facility—actual land and associated appurtenances used for storage, processing, and/or disposal of solid wastes, but possibly consisting of one or more units. (Any earthen ditches leading to or from a unit of a facility and that receive solid waste are considered part of the facility to which they connect, except for ditches lined with materials capable of preventing groundwater contamination. The term *facility* does not necessarily mean an entire industrial manufacturing plant.)

This definition is largely self-explanatory. However, because this definition references other terms defined by the solid waste regulations, the analysis is also contingent on those definitions. In particular, the following terms are relevant to the proper interpretation of the term "facility":

Unit of a Facility—designated area of a facility wherein solid waste is, has been, or will be processed, stored, or disposed of.

Process—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique that is designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* does not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither does the definition include activities of an industrial generator to simply separate wastes from the manufacturing process.

Site—the physical location, including land area and appurtenances, of an existing or proposed storage, processing, or disposal facility. A *site* may consist of a number of facilities, each subject to a permit to process or dispose of solid waste.

Non-Processing Transfer Station—a solid waste facility where solid waste is transferred from collection vehicles to other vehicles for transportation without processing.

Storage—the containment of solid waste on surfaces capable of preventing groundwater contamination in a means not constituting processing or disposal.

Transport—to move solid waste off-site to a non-processing transfer station or a collection, processing, or disposal facility.

Based on the foregoing definitions, the term "facility" encompasses only the actual area of a site where waste treatment, processing, storage or disposal takes place. While such a "facility" can consist of one or more individual waste management units, the term will not necessarily extend to the entirety of the location or "site" where waste processing occurs. Offices, green spaces, production/manufacturing areas and other areas where non-waste management activities are conducted do not fall within this definition. Further, the term does not apply to on-site roadways leading to a "facility," so long as those roadways are used for transporting waste to the area where it is actually stored, processed, disposed or treated.

With respect to roadways, the Department recognizes that there is an ancillary issue regarding the length of time a waste containing vehicle may be parked/stationary on a roadway within a site before such activity is considered storage (as opposed to transport). However, such issues will typically have to be determined on a case-by-case basis, based on factors such as the length of time vehicles are stationary and the reason they are stationary (equipment failure, high volume/traffic, etc.).

With respect to the NWSSTCA's concerns over activities involving white goods, yard trash and recyclable material, it is noteworthy that any areas of a waste management site where such solid waste is stored or processed will be "units" or "facilities" as the terms are defined by the solid waste regulations.¹ Accordingly, the boundary of such waste management units would need to be located outside the buffer zone contemplated by LAC 33:VII.508.B. However, areas where non-waste materials, including materials specifically exempted from regulation as solid wastes, are stored will not fall into the definition of the term "facility," and will not be subject to buffer zone requirements.

While the NWSSTCA Petition also suggests that truck staging areas and truck washing areas be viewed as "appurtenances" to "facilities," this labeling is misplaced. "Appurtenance" is not a term defined by the solid waste regulations. However, Black's Law Dictionary, 7th Edition, defines the term "appurtenance" as "something that belongs or is attached to something else." Similarly, looking to commonly used definitions, an appurtenance is defined as "a subordinate part or adjunct" (Merriam-Webster on-line dictionary). Given these definitions, as well as the context in which the term is used in the solid waste regulations, "appurtenances" will typically be limited to ancillary equipment directly associated with a particular waste management unit or facility (piping, pumps, earthen ditches, etc.). However, areas such as those identified in the NWSSTCA Petition may well fall within the term "facility" depending on the activities conducted therein. For example, as noted above, areas used as roadways where waste containing trucks are left unattended or parked for lengths of time clearly unrelated to active "transport," may be viewed by the Department as storage areas (and thus falling within the definition of "facility").

With respect to truck washing, it is noteworthy that there are sections of the solid waste regulations specifically directed to this activity. In particular, truck washing regulations are included in a section governing waste transporters, LAC 33:V11.505.B. These requirements apply to any truck washing areas irrespective of whether

processing, collection or disposal facilities are also found at the same site. However, because truck washing is regulated as a transportation activity, areas where this activity is conducted will not be considered "facilities" for the purposes of LAC 33:VII.508.B's buffer zone requirements.² However, if the vehicles still contain appreciable quantities of waste (as opposed to road grime), or if waste is allowed to accumulate in these areas, the Department will likely view these areas as out of compliance with the solid waste regulations.

In accordance with LAC 33:I.1149.B.3, this declaratory ruling shall be published in the *Louisiana Register*.

Please note that, pursuant to LAC 33:I.1145 and La. R.S. 30:2050.21 an aggrieved person may appeal this Declaratory Ruling to the 19th Judicial District Court, Parish of East Baton Rouge. A petition for review must be filed in the district court within 30 days of notice of the action.

Date: September 8, 2009
Signed: Harold Leggett, Ph.D.
Secretary

¹While non-processing transfer stations do not require a solid waste permit, it is noteworthy that the sorting of recyclable materials such as white goods will be subject to regulation as waste processing (and require a solid waste permit).

²As previously noted, the definition of "facility" encompasses only areas where waste treatment, storage, processing or disposal takes place.

For more information contact Elliott Vega, Office of the Secretary, Legal Affairs Division, at (225) 219-3985.

Herman Robinson, CPM
Executive Counsel

0910#038

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

2008 State Implementation Plan (SIP) General Revisions

Under the authority of the Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice of proposed general revisions to the air quality State Implementation Plan (SIP). The revisions include amendments to various air quality regulations in LAC 33:III.Chapters 1, 5, 6, 7, 21, 22, and 23, which were previously promulgated in 2008, and which were not previously included in other revisions to the SIP.

A public hearing will be held on November 24, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, Louisiana. Interested persons are invited to attend and submit oral comments on the proposed revisions. Should individuals with a disability need an accommodation in order to participate, contact Sandra Hilton at the address given below or at (225) 219-3511. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed 2008 SIP general revisions.

Comments must be submitted no later than 4:30 p.m. on December 1, 2009, and should be submitted to Sandra Hilton, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or faxed to (225) 219-3240 or emailed to sandra.hilton@la.gov.

A copy of this document may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. This SIP revision is available on the internet at: www.deq.louisiana.gov/portal/tabid/2381/Default.aspx.

Summary of Rules Promulgated in 2008			
LAC 33:III	Louisiana Register Citation	Description	Comments
§701	March 2008 LR 34:433 AQ288	Ambient Air Standards for Particulate Matter	This rule updates the Louisiana air quality regulations to include the revised particle standards.
§703	March 2008 LR 34:433 AQ288	Ambient Air Standards for Particulate Matter	This rule updates the Louisiana air quality regulations to include the revised particle standards.
§711	March 2008 LR 34:433 AQ288	Ambient Air Standards for Particulate Matter	This rule updates the Louisiana air quality regulations to include the revised particle standards.
§2132	November 2008 LR 34:2397 AQ291	Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities	The proposed rule would provide an exemption from Stage II vapor recovery requirements for facilities used exclusively for the initial fueling and/or refueling of vehicles equipped with onboard refueling vapor recovery (ORVR) equipment.
§523	September 2008 LR 34:1903 AQ294	Revisions to Performance Testing Notifications and Report Submittals	This rule will amend the timeframes in the regulations so that all reports are due 60 days after the completion of testing.
§2107	September 2008 LR 34:1903 AQ294	Revisions to Performance Testing Notifications and Report Submittals	This rule will amend the timeframes in the regulations so that all reports are due 60 days after the completion of testing.
§2108	September 2008 LR 34:1903 AQ294	Revisions to Performance Testing Notifications and Report Submittals	This rule will amend the timeframes in the regulations so that all reports are due 60 days after the completion of testing.
§111	January 2008 LR 34:70 MM005	Amendments and Corrections	This rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations.
§2121	January 2008 LR 34:70 MM005	Amendments and Corrections	This rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations.
§2125	January 2008 LR 34:70 MM005	Amendments and Corrections	This rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations.

Summary of Rules Promulgated in 2008			
LAC 33:III	Louisiana Register Citation	Description	Comments
§2145	January 2008 LR 34:70 MM005	Amendments and Corrections	This rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations.
§2147	January 2008 LR 34:70 MM005	Amendments and Corrections	This rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations.
§2201	January 2008 LR 34:70 MM005	Amendments and Corrections	This rule corrects outline numbering and wording errors that have been discovered in the Title 33, Environmental Quality regulations.
§504	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§605	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§2132	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§2133	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§2135	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.

Summary of Rules Promulgated in 2008			
LAC 33:III	Louisiana Register Citation	Description	Comments
§2137	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§2143	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§2145	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.
§2301	September 2008 LR 34:1887 MM008	Amendments and Corrections	This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department.

Herman Robinson, CPM
Executive Counsel

0910#037

POTPOURRI

Department of Health and Hospitals Board of Nursing

Public Hearing—Substantive Changes to Proposed Rule:
Registered Nurses—Peripherally Inserted Central Catheter
(PICC) Insertion (LAC 46:XLVII.3707)

A Notice of Intent concerning the above referenced proposed Rule was originally published by the Louisiana State Board of Nursing on January 20, 2009 in the *Louisiana Register* (See LR 35:153-154) and republished on February 20, 2009 in the *Louisiana Register* (See LR 35:341-342) relative to a revision of the “modified Seldinger technique” making it within the scope of practice for a Registered Nurse to insert, secure and remove central catheters through peripheral venous sites provided that specific criteria are met. Written comments were invited, received and considered, as were oral comments, views, arguments and information at a public hearing held by the board on March

27, 2009. Certain of those comments suggested substantive changes. In consideration of such comments the board proposes to amend several provisions of the proposed Rule by deleting the verification of PICC tip placement via x-ray from the scope of practice for a registered nurse; by deleting the first Subsection 3707.C in its entirety; by deleting any reference to radiographic verification of tip placement from Paragraph 3707.C.1; by deleting any reference to radiographic assessment of PICC tip location by deleting Subparagraph 3707.C.1.d; by renumbering Subparagraphs 3707.C.1.e-g to reflect the deletions; and by adding Paragraph 3707.B.5 to provide that catheter tip placement must be determined by a physician prior to initiation of therapy. Accordingly, the board proposes to amend the proposed Rule as follows:

Title 46
PROFESSIONAL STANDARDS AND
OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practical Nurses and Registered
Nurses
Subpart 2. Registered Nurses
Chapter 37. Nursing Practice
§3707. Peripherally Inserted Central Catheter (PICC)
Insertion and Removal

A. Definition

PICC Line—peripherally inserted central catheters (PICCs) are venous devices used to administer all types of intravenous medications and solutions. PICCs are soft, flexible catheters.

B. Registered nurses may insert, secure and remove central catheters through peripheral venous sites provided that the following conditions are met:

1. documentation of satisfactory completion of a minimum of four hours of study in an appropriate instructional program and verification of employment in a supervised clinical practice on file with the employer;
2. catheter placement is pursuant to a physician or other qualified prescriber’s order for the procedure;
3. the procedure is performed according to appropriately established policy and procedure of the health care facility, employing agency and/or physician’s office;
4. in view of the proliferation of various catheter products available for placement, the registered nurse must be knowledgeable about the manufacturer’s suggestions and precautions concerning the specific catheter product utilized, and should review product information on a frequent basis; and
5. catheter tip placement must be determined by a physician prior to initiation of therapy.

C. In order for a registered nurse to be authorized by the board under this Section, the instructional program shall include the following courses of study:

1. for nurses performing duties to include insertion of PICC lines:
 - a. anatomy and physiology of circulation and fluid balance;
 - b. indications and contradictions for PICC placement;
 - c. complications and management techniques to include potential adverse reactions;
 - d. techniques for placement of PICC lines may include ultrasound techniques;

- e. techniques for placement of PICC line placement and removal; and
 - f. nursing responsibilities.
2. for nurses performing duties that would include management and monitoring of PICC lines:
- a. anatomy and physiology of circulation and fluid balance;
 - b. indications and contraindications for PICC placement;
 - c. complications and management techniques to include potential adverse reactions; and
 - d. nursing responsibilities;
3. for nursing performing the duties of PICC line removal:
- a. techniques for PICC line removal
 - b. complications and management techniques to include potential adverse reactions; and
 - c. nursing responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and 920.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 36:

As such changes may be considered substantive by parties affected by the proposed Rule, notice is hereby given in accordance with the Administrative Procedure Act, specifically R.S. 49:968H(2), that a public hearing on the substantive changes will be held by the board on Monday, December 7, 2009, at 8:00 a.m. at the offices of the Louisiana State Board of Nursing, 17373 Perkins Road, Baton Rouge, LA 70808. All interested persons are invited to submit written comments concerning the proposed substantive changes to Barbara Morvant, Executive Director, Louisiana State Board of Nursing, 17373 Perkins Road, Baton Rouge, LA 70808. Written comments will be accepted until 4:00 p.m., December 3, 2009.

Barbara L. Morvant, MN, RN
Executive Director

0910#024

POTPOURRI
Department of Natural Resources
Office of Conservation

Hearing Notice—Rayne SWD, LLC
Docket No. ENV 2009-03

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6:00 p.m., Wednesday, December 2, 2009, at the Vermilion Parish Library located at 405 St. Victor Street, Room B, Abbeville, Louisiana.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Rayne SWD, LLC, 201-B Travis Street, Lafayette, LA 70503. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility for disposal of exploration & production waste (E&P Waste) fluids located in Township 10 South, Range 2 East, Section 33 in Vermilion Parish.

The application is available for inspection by contacting Mr. Daryl Williams, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North 3rd Street, Baton Rouge, LA. Copies of the application will be available for review at the Vermilion Parish Police Jury or the Public Library in Abbeville, LA. Verbal information may be received by calling Mr. Williams at (225) 342-7286.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, December 9, 2009, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2009-03
Commercial Facility Well Application
Vermilion Parish

James H. Welsh
Commissioner

0910#028

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
Affiliated Holdings, Inc.	Abbeville	L	C P Motty	007	212782
Affiliated Holdings, Inc.	Abbeville	L	C P Motty	002	216890
Affiliated Holdings, Inc.	Abbeville	L	5300 Ra Sua; C P Motty	008	225998
Affiliated Holdings, Inc.	Abbeville	L	C P Motty Swd	001	970797
Affiliated Holdings, Inc.	Welsh	L	Gulf Taber Swd	005	38727
Affiliated Holdings, Inc.	Welsh	L	3970 Mio Sud;Farmers Fee	002	102835
Affiliated Holdings, Inc.	Welsh	L	3900 Mio Sud;Farmers Fee	004	104974

Operator	Field	District	Well Name	Well Number	Serial Number
Affiliated Holdings, Inc.	Welsh	L	Farmers Oil Co Fee	007	107776
Affiliated Holdings, Inc.	Welsh	L	Cam 2 Sut;Farmers Oil Co Fee	007-D	108821
Affiliated Holdings, Inc.	Welsh	L	Dees Et Al Swd	003	113870
Affiliated Holdings, Inc.	Welsh	L	Dees Et Al	003D	114794
Affiliated Holdings, Inc.	Welsh	L	3900 Mio Ra Suc;Farmers Oil Co	008	125640
Affiliated Holdings, Inc.	Welsh	L	4000 Mio Suc;T A Dees	005	137982
Affiliated Holdings, Inc.	Welsh	L	Dees Et Al	006	147849
Affiliated Holdings, Inc.	Welsh	L	4050 Mio Ra Sub;Dees	006-D	148368
Affiliated Holdings, Inc.	Welsh	L	3970 Mio Sub;Farmers Oil Co	010	155343
Affiliated Holdings, Inc.	Welsh	L	Farmers Oil Co Fee	010-D	156461
Affiliated Holdings, Inc.	Welsh	L	Cam 4 Ra Sut;Farmers Oil Cofee	011	186796
Affiliated Holdings, Inc.	Welsh	L	Marg 1 Ra Sus;Empire Land	001	211615
Affiliated Holdings, Inc.	Welsh	L	3970 Suf;Empire Land	002	211764
Affiliated Holdings, Inc.	Welsh	L	Mo 2 Mio Ra Sua;Empire Land	003	213346
Affiliated Holdings, Inc.	Welsh	L	Cris H 1 Rd Sua;SI 13944	001	213584
Affiliated Holdings, Inc.	Welsh	L	B P America Fee	001	236423
Spillers Petroleum, Inc.	Monroe	M	Fairbanks Real Est	008	7031
Spillers Petroleum, Inc.	Monroe	M	Young	001	95491
Spillers Petroleum, Inc.	Monroe	M	Young	003	97259
Spillers Petroleum, Inc.	Monroe	M	Young	004	100634

Operator	Field	District	Well Name	Well Number	Serial Number
Spillers Petroleum, Inc.	Monroe	M	Young	005	100799
Spillers Petroleum, Inc.	Monroe	M	Navarro	005	139423
Spillers Petroleum, Inc.	Monroe	M	Navarro	006	139424
Spillers Petroleum, Inc.	Monroe	M	Navarro	004	139426
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs A	003	139514
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs C	002	139633
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs B	002	139720
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs B	003	139754
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs B	004	139936
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs B	001	140252
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs C	001	140615
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs A	004	140616
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs A	001	140797
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs A	002	140798
Spillers Petroleum, Inc.	Monroe	M	Snyder Heirs C	003	140799
Spillers Petroleum, Inc.	Monroe	M	Madison	001	141082
Spillers Petroleum, Inc.	Monroe	M	Fannie Haile Meeks	001	141796
Spillers Petroleum, Inc.	Monroe	M	Madison	002	142697
Spillers Petroleum, Inc.	Monroe	M	Madison	003	142715
Spillers Petroleum, Inc.	Monroe	M	G Eubanks	002	142726

Operator	Field	District	Well Name	Well Number	Serial Number
Spillers Petroleum, Inc.	Monroe	M	Case-Meeks	001	142772
Spillers Petroleum, Inc.	Monroe	M	G Eubanks A	001A	142862
Spillers Petroleum, Inc.	Monroe	M	Stella O'neal	001	143121
Spillers Petroleum, Inc.	Monroe	M	Stella O'neal	002	143122
Spillers Petroleum, Inc.	Monroe	M	Leiber Et Al	001	143196
Spillers Petroleum, Inc.	Monroe	M	Leiber Et Al	002	143197
Spillers Petroleum, Inc.	Monroe	M	Leiber Et Al	003	143198
Spillers Petroleum, Inc.	Monroe	M	Coulter	001	143249
Spillers Petroleum, Inc.	Monroe	M	Coulter	002	143250
Spillers Petroleum, Inc.	Monroe	M	Coulter	003	143251
Spillers Petroleum, Inc.	Monroe	M	Leiber Estate	001	143252
Spillers Petroleum, Inc.	Monroe	M	Leiber Estate	002	143253
Spillers Petroleum, Inc.	Monroe	M	Leiber Estate	003	143254
Spillers Petroleum, Inc.	Monroe	M	Z D Pickett	002	143255
Spillers Petroleum, Inc.	Monroe	M	Z D Pickett	003	143256
Spillers Petroleum, Inc.	Monroe	M	Fairbanks	001	143392
Spillers Petroleum, Inc.	Monroe	M	Philly	001	143480
Spillers Petroleum, Inc.	Monroe	M	Buckley	001	144311
Spillers Petroleum, Inc.	Monroe	M	Fred Hill	001A	144335
Spillers Petroleum, Inc.	Monroe	M	Stennett	001	144463

Operator	Field	District	Well Name	Well Number	Serial Number
Spillers Petroleum, Inc.	Monroe	M	Buckley	002	144716
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	011	144766
Spillers Petroleum, Inc.	Monroe	M	Fred Hill	002	144803
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	001	145170
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	002	145171
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	003	145172
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	007	145930
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	008	145955
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	009	145956
Spillers Petroleum, Inc.	Monroe	M	Fairbanks N	010	145957
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	001	146243
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	002	151051
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	003	151137
Spillers Petroleum, Inc.	Monroe	M	Grayling N	010	151840
Spillers Petroleum, Inc.	Monroe	M	Grayling N	011	151850
Spillers Petroleum, Inc.	Monroe	M	Grayling N	012	151860
Spillers Petroleum, Inc.	Monroe	M	Grayling N	013	151861
Spillers Petroleum, Inc.	Monroe	M	Grayling N	014	151899
Spillers Petroleum, Inc.	Monroe	M	Grayling N	015	151900
Spillers Petroleum, Inc.	Monroe	M	Grayling N	017	151967

Operator	Field	District	Well Name	Well Number	Serial Number
Spillers Petroleum, Inc.	Monroe	M	Grayling N	016	151968
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	004	152150
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	005	152151
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	006	152152
Spillers Petroleum, Inc.	Monroe	M	Fairbanks A	007	152153
Spillers Petroleum, Inc.	Monroe	M	Young F	004	156559
Spillers Petroleum, Inc.	Monroe	M	Young F	005	156560
Spillers Petroleum, Inc.	Monroe	M	Young 80	001	171640
Spillers Petroleum, Inc.	Monroe	M	Pender	001	181904
Spillers Petroleum, Inc.	Monroe	M	Navarro	001	188055
Spillers Petroleum, Inc.	Monroe	M	Navarro	002	188056
Spillers Petroleum, Inc.	Monroe	M	Navarro	003	188057
Spillers Petroleum, Inc.	Monroe	M	Mrs G M Hill	002	188058
Spillers Petroleum, Inc.	Monroe	M	Mrs G M Hill	003	188059
Spillers Petroleum, Inc.	Monroe	M	Mrs G M Hill	004	188060
Vinyard And Sons	Big Creek	M	Vinyard	001	175343
Vinyard And Sons	Big Creek	M	Vinyard	002	175344
Vinyard And Sons	Big Creek	M	Vinyard B	001	178057
Vinyard And Sons	Big Creek	M	Vinyard C	001	182697

Operator	Field	District	Well Name	Well Number	Serial Number
Vinyard And Sons	Big Creek	M	Vinyard D	001	184249
Vinyard And Sons	Big Creek	M	Vineyard B Swd	001	970847
Tarpon Oil Company	Caspiana	S	T J Smith	001	129388
Carlee Interests, Inc.	Quinn Bayou	M	Madison	C-2	108962
Bateman Drilling Company	Thibodaux, North	L	Philip Lagarde Et Al	001	62216

James H. Welsh
Commissioner

0910#020

POTPOURRI

**Department of Revenue
Office of the Secretary**

Meeting of Act 442 Collaborative Working Group

The next meeting for the Collaborative Working Group will be held on Wednesday, October 28, 2009, at 9 a.m. in the Griffon Room on the first floor of the LaSalle Building, 617 N. Third Street, Baton Rouge, Louisiana.

Section 4 of Act 442 of the 2009 Regular Session of the Louisiana Legislature established a collaborative working group of state and local tax administrators and industry representatives for the purpose of assisting in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

The group's mission is to study and develop specific proposals on the definition of tangible personal property under Chapters 2, 2-A, 2-B and 2-D of Title 47 of the Louisiana Revised Statutes of 1950. The group shall report its policy recommendations to the chairmen of the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than January 31, 2011.

The group shall cease to exist on June 30, 2011.

Further information concerning this meeting may be obtained from Ted James, Office of the Secretary, P.O. Box 66258, Baton Rouge, LA 70896, phone (225) 219-2707.

Cynthia Bridges
Secretary

0910#047

CUMULATIVE INDEX
(Volume 35, Number 10)

2009	
Pages	Issue
1-183.....	January
184-384.....	February
385-609.....	March
610-836.....	April
837-1056.....	May
1057-1191.....	June
1192-1418.....	July
1419-1835.....	August
1836-2122.....	September
2123-2277.....	October

EO—Executive Order
PPM—Policy and Procedure Memoranda
ER—Emergency Rule
R—Rule
N—Notice of Intent
CR—Committee Report
GR—Governor's Report
L—Legislation
P—Potpourri

ADMINISTRATIVE CODE UPDATE

Cumulative

- January 2008—December 2008, 175
- January 2009—March 2009, 825
- January 2009—September 2009, 2258

AGRICULTURE AND FORESTRY

Agricultural Finance Authority

- Louisiana farm and agribusiness recovery and loan program, 1203ER

Agriculture and Environmental Services, Office of

- Annual quarantine listing for 2009, 836P
- Pesticides, 626R, 870R, 1059ER
- Daily risk position report, 1321N
- Examinations, 626R, 870R
- Water and fish tissue sampling, 626R, 870R

Agro-Consumer Services, Office of

- Agriculture Commodities Commission**
- Grain and cotton indemnity fund, 629R

Animal Health, Board of

- Chronic wasting disease, 1913N
- Equine infectious anemia testing, 406R
- Trichomoniasis, 613ER, 712N, 1026ER, 1465R

Crawfish Promotion and Research Board

- Crawfish promotion and research program, 406R

Commissioner, Office of

- Agritourism, 204R
- Family farm credit, 1914N
- Market bulletin subscriber fee, 632R

Horticulture Commission

- Landscape architect registration exam, 378P, 2108P
- Landscape horticulturist, 1227R
- Retail floristry examination, 378P, 1035P, 1228R, 1821P

Structural Pest Control Commission

- Administration, 205R
- Applications, 205R
- Definitions, 715N, 1467R, 1872R
- Examinations, 205R
- Fees, 715N, 1467R, 1872R
- Pesticide, 615ER
- Termite treatment, 715N, 1467R, 1872R

CIVIL SERVICE

Board of Ethics

- Financial disclosure, 718N
- Records, 407R, 505N
- Reports, 407R, 505N

Civil Service Commission

- Civil service rules, chapters 1, 6, 24, 2207N
- Layoffs, 969N
- Merit increase suspension, 978P
- Performance planning and review, 977P

CULTURE, RECREATION AND TOURISM

Tourism, Office of

- Welcome centers, 2220N

ECONOMIC DEVELOPMENT

Boxing and Wrestling Commission

- Boxing and wrestling standards, 53R

Business Development, Office of

- Economic development award program (EDAP), 9ER, 272N, 870R
- Economic development loan program (EDLOP), 9ER, 272N, 870R
- Entertainment industries development
 - Entertainment industry tax credit programs
 - Digital media, 95N
 - Motion picture infrastructure tax credit program, 1921N
 - Musical and theatrical production income tax credit program, 727N, 1401P, 2173R
 - Regional awards and matching grant awards program, 635R, 1917N
 - Retention and modernization program, 2128ER
 - Small and emerging business development program, 1423ER, 1919N
 - Tax credits, research and development, 1918N
 - Workforce development and training program, 21ER, 289N, 883R

Louisiana Economic Development Corporation

- Economic development award program (EDAP), 9ER, 272N
- Economic development loan program (EDLOP), 9ER, 272N

ECONOMIC DEVELOPMENT (Continued)

Retention and modernization program, 2128ER
Workforce development and training program, 21ER,
289N
Workforce training award program, 54R

Secretary, Office of

Angel investor tax credit, 1838ER
Governor's economic development rapid response
program, 5ER, 285N, 887R
Regional awards and matching grant awards program,
635R, 1917N
Retention and modernization program, 2128ER
Veteran initiative, 2125ER

EDUCATION

Elementary and Secondary Education, Board of

BESE organization, 979N, 1874R
Board tenure hearings, 732N, 1470R
Bulletin 102—Louisiana Physical Education Content
Standards, 1634N
Bulletin 104—Louisiana Pre K-12 Educational
Technology Standards, 98N, 891R
Bulletin 111—The Louisiana School, District, and
State Accountability System, 638R, 1282N
Academic assistance waivers and LAA1 Results,
641R
Differentiated accountability pilot, 1656N
Graduation index, 733N
Pre-GED, 733N, 1467R
Bulletin 118—Statewide Assessment Standards and
Practices, 57R
End-of-course tests, 214R
Erasure analysis, 443R
LEAP alternate assessment, 208R
Testing, 216R
Bulletin 120—Adult Education Data Quality and
Procedures, 1286N
Bulletin 124—Supplemental Educational Services SES
Provider Responsibilities, 294N, 1097R
Bulletin 741—Louisiana Handbook for School
Administrators
Adult education program, 1289N
Agriculture education, 1658N
Alternative school/programs, 1290N
Carnegie credit for middle school students, 443R,
1291N
Compulsory attendance, 295N, 1097R
Curriculum and instruction, 981N, 1875R
Criminal background checks, 735N, 1473R
Educational governing authorities, 737N, 1876R
General career education, 524N, 1229R, 1293N,
1660N
Guidelines for expulsions, 296N, 1098R
Health occupations, 1294N, 1661N
High school graduation requirements, 526N, 983N,
1230R, 1295N, 1662N, 1876R
Immunizations, 1298N

Local educational governing authorities, 982N,
1474R, 1876R
Mathematics, 1295N
Other reports, 297N, 1098R
Placement of students, 297N, 1098R
Science education, 740N, 1476R
Staff development, 738N, 1475R
Staff misconduct, 298N, 443R, 1099R
Student services, 738N, 1475R
Teacher requirements, 985N, 1298N, 1877R
Teacher bill of rights, 300N, 1100R
Technical education, 1229R, 1299N, 1660N
Technology education, 1229R, 1299N, 1658N
Trade and industrial education, 1300N, 1664N
Written policies and procedures, 301N, 1100R
Bulletin 746—Louisiana Standards for State
Certification of School Personnel
Alternate teacher preparation, 741N, 1477R
Career and technical education, 1665N
Certification-only program, 747N, 1482R
Foreign language special certificate, 642R
Highly qualified policy for teachers, 643R
Introduction, 527N, 1231R
Math for professionals, 220R
Mild/moderate, 221R, 750N, 1484R
Nonpublic/charter schools, 1303
Orientation and mobility, 101N, 894R
Out-of-field authorization to teach, 753N, 1487R
Out-of-state certificate, 101N, 893R
Principals, 1302N
Practitioner licenses, 221R
PRAXIS I scores, 644R
Professional level certificates, 222R
State as a provider, 222R
Teacher leader endorsement, 528N, 1231R
Turnaround specialist endorsement, 645R
Bulletin 996—Standards for Approval of Teacher and/or
Educational Leader Preparation Programs, 1305N
Bulletin 1179—Driver Education, Traffic Safety, and
Administrative Guide for Louisiana Schools, 754N,
1488R
Bulletin 1213—Minimum Standards for School Buses,
646R
Bulletin 1508—Pupil Appraisal Handbook, 102N, 894R
Bulletin 1530—Louisiana's IEP Handbook for Students
with Exceptionalities, 1311N
Bulletin 1706—Regulations for Implementation of the
Children with Exceptionalities Act
Admission/release, 385ER, 529N, 1232R
Bulletin 1794—State Textbook Adoption Policy and
Procedure Manual, 646R, 986N, 1878R
Comments, public, 1928N
Criminal background checks, 443R
Nonpublic Bulletin 741—Louisiana Handbook for
Nonpublic School Administrators
Credit recovery, 1392N
Immunization, 530N, 1232R, 1327N
Standing executive committees, 223R

EDUCATION (Continued)

Student Financial Assistance Commission

Student Financial Assistance, Office of

Cosmetology schools, 756N, 1489R
Loan forgiveness program, 224R
Louisiana GO grant, 1328N
Proprietary schools, 756N
Scholarship/Grant programs, 227R, 386ER, 616ER, 987N, 1424ER, 1490R, 1929N, 2131ER
Definitions, 531N, 1233R
Go grant, 132N, 647R, 1059ER
Initial and continuous enrollment, 185ER
LEAP notification, 532N, 1233R
Post-secondary institutions, 185ER

Tuition Trust Authority

Student Financial Assistance, Office of

Interest rates—2008, 758N, , 1491R
START saving program, 235R, 387ER, 1426ER
Deposits, 186ER, 532N, 1234R, 1931N, 2133ER

ENVIRONMENTAL QUALITY

Environmental Assessment, Office of

Louisiana environmental analytical database management system (LEADMS), 1035P

Air Quality Division

Annual emissions inventory data submittals, 378P

Secretary, Office of the

Declaratory ruling
DR-08-003, 379P
DR-09-004, 2261P

Legal Affairs Division

2008 state implementation plan, 2262P
Abrasive blasting, 759N, 1234R
Advanced notice of rulemaking and solicitation of comments
Organic solvents and solvent degreasers, 1821P
Antidegradation implementation procedures, solicitation of comments on development, 2108
Asbestos penalties, 62R
Baton Rouge area ozone attainment demonstration state implementation plan revision, 1825P
Baton Rouge area redesignation request and 1997 8-hour ozone maintenance plan, 1826P
Biosolids, 311N, 926R, 1209ER
Concentrated animal feeding operations, 302N, 648R
Control technology guidelines, 1101R
Control techniques guidelines (CTG) state implementation plan (SIP), 1826P
Criteria pollutant emissions inventory, 1038P
Dissolved oxygen criteria for Barataria and Terrebonne basins, 445R, 654R
Emergency engines and air curtain incinerators, 456R
Exemption of VOCs, 533N, 924R
General conditions for air permits, 658R
Incorporation by reference for 2008, 760N, 1106R
Interstitial monitoring, 988N, 1492R
Lead penalties, 62R
MACT standards, 1932N
Mercury risk reduction, 449R
Miscellaneous corrections, 1146N, 1878R

Nitrogen oxide emissions, 1142N
Payment, methods of, 1330N, 2178R
Permit actions in hurricane impacted areas, 179P
Regulatory permits for oil and gas well testing, 456R
Release of natural gas from pipelines, 456R
Solid waste buffer zones, 309N, 925R
Sewage sludge, 311N, 926R, 1209ER
Toxic air pollutant emission control program, 1035P
Transportation conformity, 133N, 461R
Underground storage tank system operators, training requirements, 1933N
Water pollution control fee, 990N, 1493R
Water quality standard, triennial revision, 1406P

EXECUTIVE ORDERS

BJ 08-112 DOTD Disaster Relief Guidelines for Vehicles, Trucks and Loads—Rescinds and Supersedes Order No. BJ 2008-106, 1EO
BJ 08-113 Executive Branch—Ethical Standards—Supersedes Executive Order No. BJ 08-01, 2EO
BJ 08-114 Executive Department—Expenditure Reduction, 3EO
BJ 09-01 Carry-Forward Bond Allocation 2008, 184EO
BJ 09-02 Louisiana Innovation Council, 102EO
BJ 09-03 DOTD Guidelines for Vehicles, Trucks and Loads Which Haul Hay from Louisiana to Texas, 103EO
BJ 09-04 Governor's Military Advisory Board Amends and Supersedes Executive Order No. BJ 08-26, 104EO
BJ 09-05 Commission on Streamlining Government, 837EO
BJ 09-06 Establishment of Unified Command Group and Subcommittees—Amends Executive Order No. BJ 08-45, 1057EO
BJ 09-07 Solid Waste Disposal Facility Requirements and Economic Development, 1057EO
BJ 09-08 Bond Allocation—Industrial Development Board of the Parish of St. Mary, 1058EO
BJ 09-09 Establish the Office of Louisiana Youth for Excellence (LYFE), 1419EO
BJ 09-10 Office of Community Programs Amend Executive Order No. BJ 08-34, 1420 EO
BJ 09-11 Executive Department—Limited Hiring Freeze, 1420EO
BJ 09-12 Qualified School Construction Bond Program, 1422EO
BJ 09-13 Louisiana Shrimp Taskforce, 1836EO
BJ 09-14 Louisiana Complete Court Committee, 1837EO
BJ 09-15 Bond Allocation—Louisiana Public Facilities Authority Crescent Gardens Homes Project, 2123EO
BJ 09-16 Halting State Funding to Acorn, 2123EO

FIREFIGHTERS RETIREMENT SYSTEM

Claims for survivor benefits, 334N, 949R

GOVERNOR

Administration, Division of

Motion picture infrastructure tax credit program, 1921N

Community Development, Office of

Community water enrichment fund, 135N, 951R

Contractual Review, Office of
 Veteran initiative, procurement, 2135ER

Facility Planning and Control, Office of
 Uniform public work bid form, 335N, 1521R

Elderly Affairs, Office of
 Membership requirements, 767N

Financial Institutions, Office of
 Louisiana money transmitters, 534N, 1236R

Group Benefits, Office of
 EPO, 66R
 Influenza vaccinations, 2139ER
 PPO, 66R
 Influenza vaccinations, 2139ER

Information Technology, Office of
 OIT bulletins, 2108P

Racing Commission
 Bleeder medication, 388ER
 Claiming rule, 137N, 1150N
 Corrupt and prohibited practices, 25ER
 Entries, 26ER
 Jockey fee schedule, 839ER, 1151N, 1839ER
 Modern therapeutic measures, 463R
 Permitted medication, 137N, 950R
 Super Hi-Five, 1152N

Regents, Board of
 Consumer protection, 1335N, 1669N
 Licensure, 1335N, 1669N
 Registration, 1335N, 1669N

State Military Department
 National guard death and disability benefits, 1839ER, 2222N

State Purchasing, Office of
 Veteran initiative, purchasing, 2135ER

State Travel, Office of
 General travel PPM, 1192PPM

Architectural Examiners, Board of
 Examination, 64R
 Licensure renewal, 1016N
 Practical experience, 64R
 Vacancies, 949R

Certified Public Accountants, Board of
 Peer review, 235R
 Practice monitoring programs, 235R

Crime Victims Reparations Board
 Reparations eligibility, 65R

Coastal Protection and Restoration Authority, Office of
 Fiscal year 2010 annual plan, 179P

Elderly Affairs, Office of
 Membership requirements, 186ER
 State plan on aging, 662

Home Inspectors, Board of
 Licensure, 1519R
 Testing, 1519R
 Training, 1519R

Law Enforcement and Administration of Criminal Justice, Commission on
 General subgrant guidelines, 617ER, 765N, 1234R
 Peace officer training, 238R, 765N, 1235R, 1936N

Motor Vehicle Commission
 Recreational product industry, 1525R

Pilotage Fee Commission
 Officers of the commission, 463R

Public Defender Board
 Trial court performance standards, 139N, 663R

River Port Pilot Commissioners, Board of
 River port pilots, 1017N, 1761N, 1882R

Shorthand Reporters, Board of Examiners
 Continuing education, 1881

State Military Department
 Military forces of the state, 1674N

HEALTH AND HOSPITALS

Chiropractic Examiners, Board of
 Professional conduct and due process procedures for ethics violations, 953R

Dentistry, Board of
 Continuing education requirements, 768N, 1237R
 Provisions, general, 2226N
 Requirements, licenses, permits, 67R

Emergency Response Network Board
 Entry criteria, 1181P, 1407P
 Interregional transfer protocol, 2109N
 Region 4, 1181P
 Region 7, 1183P

Dentistry, Board of
 General provisions, 2192N

Examiners for Speech-Language Pathology and Audiology, Board of
 Complaint investigation, 389ER

Licensed Professional Counselors, Board of
 Licensure requirements, 200ER, 866ER
 Marriage and family therapists, 1113R

Medical Examiners, Board of
 Athletic trainer certification, 1153N, 1886R
 Consultation or collaboration with medical psychologists, 827P, 1528R
 Laboratory, personnel, licensure, certification, fees, 1340N, 2182R
 Physician licensure and certification; 464R, 1022N, 1110R, 1531R
 Podiatrists licensure and certification, 240R
 Short-term training permit, 464R
 Telemedicine, 1022N, 1531R
 Waiver of qualifications, 536N, 1110R

Nursing, Board of
 Registered nurses
 Criminal history, 1156N, 1888R
 Disciplinary proceedings, 151N, 340N, 1535R
 Alternative, 151N, 339N, 1535R
 License renewal, 153N, 342N, 1536R
 Peripherally inserted central catheter, 152N, 341N, 2264P

Optometry Examiners, Board of
 Employment restrictions, 536N, 1111R
 Continuing education, 536N, 1111R
 Professional conduct, 536N, 1111R

Practical Nurse Examiners

Adjudication, 810N, 1246R, 1941N

Public Health, Office of

Beach report, 2008 annual, 1410P

Cold storage and ice plants, 1079ER

Expedited partner therapy, 249R

Infectious waste, 799N, 1238R

Marine and freshwater animal food products, 545N, 1239R

Maternal and child block grant, 1048P

Medical waste, 799N, 1238R

Preventive health and health services block grant, public hearing, 2110N

Refuse, 799N, 1238R

Safe drinking water program, 483R, 547N, 802N, 1239R

Water supplies-flouridation, 2243N

Wholesale Drug Distributors, Board of

Enforcement action, 2231N

General provisions, 2232N

Wholesale drug or device distributors, 2232N

Secretary, Office of the**Aging and Adult Services, Office of**

Adult protective services, 1969N

Adult residential care, 1773

Estate recovery, 1165N, 1891R

Direct service worker registry

Medication administration and noncomplex tasks, 2234N

Home/Community based services waivers

Elderly and disabled adult, 29ER, 187ER, 396ER, 778N, 843ER, 1066ER, 1779N, 1847ER, 1893R

New opportunity waiver (NOW), 188ER

Medicaid eligibility

Long-term care insurance, 1162N, 1899R

Personal care services, 32ER, 199ER, 401ER, 861ER, 1075ER, 1784N, 1858ER, 1901R

Citizens with Developmental Disabilities, Office of

Direct service worker registry

Medication administration and noncomplex tasks, 2234N

Home/Community based services waivers

Children's choice, 26ER, 842ER, 1159N, 1430ER, 1431ER, 1846ER, 1891R

New opportunities waiver (NOW), 28ER, 844ER, 845ER, 1432ER, 1850ER, 1851ER, 1893R

Resource allocation model, 2240N

Skilled nursing services rate increase, 482R

Supports waiver, 846ER, 1433ER

Health Services Financing, Bureau of

Adult dentures, 839 ER

Reimbursement rate reduction, 1426ER, 1427ER

Adult residential care providers

Dementia training, 773N, 1540R

Ambulatory surgical center, 391ER, 775N, 1061ER, 1888R

Dental services rate increase, 34ER

Direct service worker registry, 392, 1062ER, 1766N, 2140ER

Medication administration and noncomplex tasks, 2234N

Disproportionate share hospital payments

Length of stay assignment, 1341N

Non-Rural community hospitals, 1209ER, 2141

Pre-admission certification, 1341N, 1342N

Early and periodic screening, diagnosis and treatment program

Dental program reimbursement, 35ER, 618ER, 1156N, 1427ER, 1889R

EarlySteps reimbursement rate increase, 69R

Electronic reporting requirements, 245R

End stage renal disease facilities

Reimbursement rate reduction, 776N, 840ER, 1063ER, 1429ER, 1890R

Emergency preparedness, 245R

Estate recovery, 1165N, 1891R

Facility need review

Adult day health care providers, 1942N

Bed approval criteria, 37ER, 155N, 393ER, 1064ER

Exception criteria for bed approval, 1768N, 1844ER, 2144ER

Home and community-based service providers, 620ER, 853ER 1211ER, 2142ER

Exception criteria 1768N

Home and community-based waivers

Adults, elderly and disabled, 187ER, 396ER, 778N, 843ER, 1066ER, 1779N, 1847ER, 1893R

Adult residential care, 1773N

Children's choice, 841ER, 842ER, 1159N, 1430ER, 1431ER, 1846ER, 1891R

NOW, 188ER, 482R, 779N, 845ER, 1432ER, 1850ER, 1851ER, 1893R, 2240N

Supports waiver, 846ER, 1433ER

Home health program

Durable medical equipment, 189ER, 781N, 847ER, 848ER, 1433ER, 1434ER, 1853ER, 1894R

Hospice

Long term care payment, 190ER, 784N, 849ER, 1435ER, 1894R

Hospital services

Inpatient, 191ER, 1342N, 1854ER

Non-Rural/Non-State, 852ER, 1896R
Major teaching hospitals, 2148ER

Reimbursement rate reduction, 1069ER, 1436ER, 1438ER, 1895R

Supplement payments, 1213ER

Hemophilia blood products, 38ER, 156N, 674R

Outlier payment reduction, 850ER, 1439ER

Reimbursement rate adjustment, 538N, 2182R

Small rural, 192ER, 955R

Intermediate care facilities

Developmental disabilities, 193ER

Leave of absence days, 539N, 1897R

Reimbursement rate reduction, 539N, 1071ER, 1855ER, 1897R

Laboratory/radiology, 399ER, 786N, 1344N

Reimbursement rate reduction, 1072ER, 1440ER, 1897R

Medicaid Eligibility

Express lane eligibility, 2152ER

Family opportunity act medicaid program, 69R

HEALTH AND HOSPITALS (Continued)

Home and community-based services, 1161N, 1898R
 Long-term care insurance, 1162N, 1899R
 Louisiana health insurance premium payment program, 541N, 1111R
 Youth aging out of foster care, 194ER, 1073ER, 1782N, 2154ER
 Medical transportation program
 Emergency aircraft transportation rate increase, 70R
 Emergency ambulance services, 855ER
 Reimbursement rate reduction, 1442ER, 1443ER, 1856ER
 Non-emergency ambulance services, 856ER
 Reimbursement rate reduction, 1443ER, 1444ER
 Non-emergency medical transportation, 857ER
 Rotor winged ambulance rate increase, 70ER
 Mental health rehabilitation program, 195ER, 788N, 858ER, 1444ER, 1899R
 Parent/family intervention services, 1944N
 Minimum licensing standards
 Emergency medical transportation services, 180P, 466R
 Multi-systematic therapy, 38ER, 245R
 Provider responsibilities and sanctions, 1945N
 Reimbursement rate reduction, 1446ER
 Nursing facilities
 Leave of absence days, 196ER, 400ER, 1074ER
 Reimbursement reduction, 542N, 1899R
 Minimum licensing standards
 Dementia training, 789N, 1541R
 Emergency preparedness, 41ER, 248R, 858ER, 1446ER
 Electronic reporting requirements, 2241N
 Reimbursement methodology rate determination, 1217ER, 2155ER
 Reimbursement rate reduction, 1217ER
 Outpatient hospital services
 Non-rural, non-state hospitals, 791N, 859ER, 1078ER, 1857ER
 Major teaching hospitals, 2157
 Reimbursement rate reduction, 1447ER, 1449ER, 1900R
 Private hospitals, 197ER
 Radiology utilization management, 1346N
 Small rural hospitals, 42ER, 955R
 State-owned hospitals, 198ER, 955R
 Supplemental payments, 1218ER
 Targeted case management
 Nurse family partnership program
 Reimbursement rate reduction, 2160ER
 Pediatric day health care facilities
 Licensing standards, 1947N
 Personal care services, 199ER, 401ER, 792N, 861ER, 1075ER, 1450ER, 1784N, 1858ER, 1901R
 Pharmacy program prescription limit reduction, 622ER, 1450ER, 1901R
 Prior authorization for Tamiflu and Relenza, 861ER, 862ER

Medication administration H1N1 immunizations, 2159ER
 Pregnant women extended services
 Dental services, 623ER, 1163N, 1451ER, 1902R
 Professional services program
 Anesthesia services, 403ER, 795N, 863ER, 1077ER
 Reimbursement rate reduction, 1452ER, 1453ER, 1902R
 Children's immunizations, 70R
 Physician services
 Inpatient, 1347N
 Reimbursement rate reduction, 1454ER
 Prosthetics and orthotics, 404ER, 797N, 864ER, 1078ER
 Reimbursement rate reduction, 1455ER, 1456ER, 1903R
 Provider accreditation, 71R
 Refugee medical assistance, 544N, 1112R
 Rural health clinics, 44ER, 957R
 State children's health insurance, 72R
 Targeted case management, 73R, 199ER, 797N, 864ER, 865ER, 1220ER
 Reimbursement rate reduction, 1456ER, 1457ER, 1903R

Veterinary Medicine, Board of

Continuing education, 1026N
 Examination dates, fall/winter, 1406P
 Veterinary practice, 244R

Wholesale Drug Distributors, Board of

Wholesale drug distributors, 769N, 1537R

INSURANCE**Commissioner, Office of the**

Regulation 28—Variable Contract Regulation, 1974N, 2248N
 Regulation 33—Medicare Supplemental Insurance Minimum Standards, 555N, 1114R, 1247R
 Regulation 81—Military Personnel
 Automobile liability insurance premium discount, 1976N
 Insurer tax credit program, 1976N
 Regulation 82—Insure Louisiana Incentive Program, 1978N, 2250N
 Regulation 93—Named Storm and Hurricane Deductibles, 675R
 Regulation 97—Vehicle Tracking Systems, 344N, 957R
 Regulation 98—Annual Financial Reporting, 1786N
 Viatical settlements, 1796N

Health, Office of

HIPAA assessment rate, 1184P, 1410P

**LOUISIANA STATE UNIVERSITY SYSTEM
Health Sciences Center**

Tumor registry, 1984N

NATURAL RESOURCES

Conservation, Office of

- E and P waste, 1049P
- Fees 1798N
- Hearing notice—Rayne SWD, LLC, 2265N
- Ground water management, 249R, 1989N
- Orphaned oilfield sites, 180P, 380P, 603P, 829P, 1185P, 1410P, 1827P, 2110P, 2265P
- Pipeline safety
 - Hazardous liquids, 1990N
 - Natural gas, 2000N
- Pit closure and onsite disposal of E and P waste, 1800N

Secretary, Office of

- Coastal use permit extension, 1352N, 2187R
- Certification of land conservation organizations, 73R
- Dredged material, beneficial use, 1348N, 2183R
- Fishermen's gear compensation fund
 - Loran coordinates, 180P, 380P, 603P, 829P, 1050P, 1184P, 1411P, 1827P, 2111P

Policy Services Division

- Natural gas severance tax rate, 829P

PUBLIC SAFETY AND CORRECTIONS

Corrections Services

- Adult services
 - Restoration of good time, 2163ER
- Americans with disabilities act, 1080ER, 1354N, 2188R
- Communication with the hearing impaired, 1083ER, 1356N, 2190R
- Drug-free workplace, 345N, 958R
- Equal employment opportunity, 1087ER, 1360N, 2194R
- Offender records, 85R
- Offender visitation, 811N, 1248R
- Telephone policy, 87R
- Searches of visitors, 487R
- Sex offender assessment panels, 1860ER
- Sex offender supervised release, 252R

Gaming Control Board

- Accounting, 815N, 2198R
- Advertising, 815N, 2199R, 1029N, 2199R
- Application, 82R, 490R
- Compulsive gaming, 815N, 2199R, 817N, 2199R
- Gaming, 82R, 83R, 1166N, 1364N
- License, 82R, 84R, 490R
- Permits, 84R
- Retrieval, 84R
- Storage, 84R
- Video draw poker, 490R, 819N, 2200R

Liquefied Petroleum Gas Commission

- Insurance requirements, 1802N
- Permit fee, 1367N, 2201R

Management and Finance, Office of

- Wind mitigation surveyor, 490R

Oil Spill Coordinator's Office

- Duck lake oil and gas field crude oil discharge final settlement agreement, 2112N
- East lake palourde crude oil discharges, 2112N

Private Security Examiners, Board of

- Administrative penalties, 2014N
- Licensure, 2016N, 2161ER
- Security officer registration, 2017N

Training, 2253N

State Police, Office of

- Criminal identification and information, bureau
 - Right to review procedures, 2018N
- Towing recovery and storage, 1368N, 2201R
- Transportation and environmental safety section
 - Explosives code, 491R
- User fees for state police facility, 1136R

State Fire Marshal, Office of

- Code enforcement and building safety
 - Emergency elevator access, 577N
 - Industrialized buildings, 580N
- Fire sprinkler systems, 157N, 677R
- Fire hoses, 157N, 677R

Uniform Construction Code Council

- International mechanical code, 1091ER, 1169N, 1904R
- Temporary exemption to certification requirement, 803N
- Uniform construction code, 2019N
- Wind mitigation surveyor, 490R

REVENUE

Alcohol and Tobacco Control, Office of

- Regulation V—Solicitors, 589N, 1136R
- Regulation IX—Prohibition of certain unfair business practices, 89R

Policy Services Division

- Act 442 of 2009 meeting of collaborative working group, 1827P, 2113P
- Electronic filing, 820N, 1252R, 1371N, 2204R
- Filing extensions following disasters, 590N
- Income tax tables, 2022N
- Income tax withholding tables, 1030N, 1373N
- Individual income tax filing extensions, 45ER, 169N, 181P, 1137R, 2254N
- Interest waiver, 590N, 1137R
- New markets tax credit cap, 44ER
- Prepaid wireless 911 service charge, 2164ER
- Point of sale, 1175N
- Policy statements, 591N, 1138R
- Property used in interstate commerce, 1254R
- Residential licensing, 1543R
- Sales and use tax exemptions, 593N, 1255R
- Tax holiday, annual weekend sales, 1460ER
- Tax matters person, 255R

Secretary, Office of the

- Act 442, organizational meeting announcement of, 1451N, 2268P
- Tax delinquency amnesty act of 2009, Louisiana, 1458ER

Tax Commission

- Ad valorem taxation, 491R

SOCIAL SERVICES

Community Services, Office of

- 2009 Annual progress and services report, 1050P
- 2009 Louisiana emergency shelter grants program
 - Anticipated funds availability, 604P
- 2010-2015 child and family services plan, 1050P
- Chafee foster care independence program, 1176N, 2205R

SOCIAL SERVICES (Continued)

Daycare services, 170N, 202ER, 404ER, 593N, 961R, 1095ER, 1256R, 2205R
Developmental and socialization activities program for foster children, 595N, 1256R
Foster care, 2254N
Residential licensing, 1863ER, 2041N, 2165ER
Kinship guardianship subsidy program, 1804N
SSBG supplemental funds—intended use report, 380P, 830P
Youth adult program, 1176N, 2205R

Family Support, Office of

2008 Act requirements, 46ER
Daycare services and child care quality rating system, 2168ER
Day care centers caring for sick children, 348N, 961R
Electronic benefits, 171N, 689R
Jobs for america's graduates louisiana program, 202ER, 823N, 868ER, 1257R
LA 4 public pre-kindergarten program, 2090N
Passport denial, 270R
Residential licensing, 1863ER, 1863N
State plan, 270R
Support enforcement, 2256N
TANF initiatives,
 Caseload reduction report, 181P
 LA 4 public pre-kindergarten program, 1221ER, 2171ER
 Legal access and visitation, 355N, 966R
 SES access and visitation, 47ER, 624ER

Secretary, Office of

Substance abuse testing, 353N, 966R

STATE DEPARTMENT

Elections Division

Polling place accessibility, 596N, 1257R

SUPREME COURT

Judicial Council

Notification of Judicial Council action on
 Act 26 of the 2009 regular session, 1828P
 Act 77 of the 2009 regular session, 1828P
 Act 88 of the 2009 regular session, 1828P
 Act 121 of the 2009 regular session, 1828P
 Act 267 of the 2009 regular session, 1828P
 Act 269 of the 2009 regular session, 1828P

TRANSPORTATION AND DEVELOPMENT

LOGO signing, 271R

Highways/Engineering, Office of

Design guidelines for political subdivisions, 2091N

Professional Engineering and Land Surveying Board

Conduct, professional, 2101N
Continuing professional development, 2101N
Committees, 1178N, 1908R

Examination, 1178N, 1908R
Licensure, 1178N, 1908R
Seal, 1178N, 1908R
Signature, 1178N, 1908R
Supervising professional, 2101N

Public Works, Office of

Statewide flood control maps, 1807N

TREASURY

Board of Trustees of the State Employees' Retirement System

Active member vacancies, 271R
DROP disbursements, 1814N
Public safety services secondary component, 1815N
Voluntary deductions from retiree benefits, 1816N

WILDLIFE AND FISHERIES

Wildlife and Fisheries Commission

Alligator, 690R
Bait dealer's permit, 2105N
Bird, 1463ER
Crab traps, removal of abandoned, 2104N
Charter landings report, 702R
Deer, 1031N, 1910R
Domesticated aquatic organisms, 357N, 1139R, 1303R
Elmer's island wildlife refuge, 2172ER
Fishing, 869ER, 869ER, 1034N
General and wildlife management area hunting, 358N, 1304R
Grouper, 1223ER
King mackerel, 47ER, 624ER, 1870ER
Kisatchie national forest hunting season 1223ER
Invasive noxious aquatic plants, 372N, 1140R
Natural areas dedication and servitudes, 501R
Nuisance wildlife control operator program, 2102N
United states coast guard motorboats, 704R
Oyster seed ground vessel
 Permit appeals board, 503R
 Permit renewal and re-issuance, 503R
Oyster, 405ER, 1462ER
Red snapper, 48ER, 1096ER
Reef fish, 48ER
Resident game hunting season, 374N, 1278R
 Kisatchie national forest, 1818N
Residential facility fishing permit, 1034N, 1912R
Sawfish, 50ER, 704R
Shark, 50ER, 704R
 Coastal, 49ER, 203ER, 1225ER
Shrimp, 202ER, 625ER, 868ER, 1222ER, 1226ER, 1461ER
Spanish Lake, 173N, 968R
Tilefish, 1096ER
Turkey, 90R, 91R, 1394N
 Bag limit, 90R, 1394N
 Hunting regulations, general and WMA, 1391N

Waterfowl season, 1869ER
White lake wetlands conservation area conservation
Management plan, 707R
Wild quadrupeds, 703R
Wildlife violator compactor, 1396N

WORKFORCE COMMISSION
Office of Workers' Compensation Administration
Compensation benefits limits, weekly, 2114P
Wage rate, average weekly, 2113P