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Executive Orders

EXECUTIVE ORDER BJ 10-20

Executive Branch—Expenditure Reduction

WHEREAS, pursuant to R.S. 39:75(A)(1), the Division of Administration is directed to submit a monthly budget status report to the Joint Legislative Committee on the Budget (hereafter "Committee") indicating the balance of the budget for the state general fund and dedicated funds by comparing the official forecast for these funds to the total authorized appropriations from each fund; once approved by the Committee, the most recent budget status report becomes the official budget status of the state;

WHEREAS, pursuant to R.S. 39:75(A)(2), the budget status report presented at the first meeting of the Joint Legislative Committee on the Budget after October fifteenth of any fiscal year shall reflect the balance in any fund for the previous fiscal year and said budget status report indicates that the previous Fiscal Year, Fiscal Year 2009-2010, ended with a projected deficit of \$106,832,546;

WHEREAS, Article VII Section 10 (G) of the Constitution of Louisiana and R.S. 39:76 state that if a deficit exists in any fund at the end of a fiscal year, that deficit shall be eliminated no later than the end of the next fiscal year;

WHEREAS, if the most recently approved budget status report indicates that the total appropriation from any fund will exceed the official forecast for that fund, R.S. 39:75(B) requires the Committee to immediately notify the governor that a projected deficit exists for that fund;

WHEREAS, the Committee notified the governor that it approved a budget status report at its October 22, 2010 meeting, indicating a projected deficit of one hundred six million seven hundred thirty-two thousand five hundred forty-six dollars (\$106,732,546) exists in the state general fund for Fiscal Year 2010-2011, based on the official forecast of revenue available for appropriation adopted by the Revenue Estimating Conference on June 21, 2010, compared to total appropriations;

WHEREAS, once notified that a projected deficit exists, pursuant to Article VII, Section 10 of the Constitution of Louisiana and R.S. 39:75(C)(1)(a), the governor has interim budget balancing powers to adjust the budget, including the authority to reduce appropriations for the executive branch of government for any program that is appropriated from a fund that is in a deficit posture, not exceeding three percent (3%) in the aggregate of the total appropriations for each budget unit for the fiscal year, and if the governor does not make necessary adjustments in the appropriations to eliminate the projected deficit within thirty (30) days of the determination of the projected deficit in a fund, R.S. 39:75(D) mandates the governor call a special session of the legislature for that purpose;

WHEREAS, as authorized by R.S. 39:75(C)(1)(a), I am exercising my unilateral interim budget balancing powers to reduce the projected deficit by \$106,732,546, resulting in a 1.38% overall reduction in total state general

fund and a 0.35% reduction in the total appropriation for the state;

WHEREAS, as authorized by R.S. 39:75(C)(3), my executive order may utilize all or a portion of the general fund dollar savings objective specified in Executive Order BJ 2010-12.

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

SECTION 1: The following departments, agencies, and/or budget units (hereafter "Unit" and/or "Units") of the executive branch of the state of Louisiana, as described in and/or funded by appropriations through Acts 11 and 41 of the 2010 Regular Session of the Louisiana Legislature (hereafter "the Acts"), shall reduce expenditure of funds appropriated to the Unit from the state general fund by the Acts, in the amounts shown below:

State General Fund	
Schedule 01-Executive Department	\$ 6,094,311
Schedule 03-Veterans Affairs	\$ 350,495
Schedule 04-Elected Officials	
04-139 Secretary of State	\$ 2,430,964
04-141 Office of Attorney General	\$ 350,000
04-146 Lieutenant Governor	\$ 93,129
04-160 Agriculture and Forestry	\$ 1,646,031
Schedule 05-Economic Development	\$ 1,195,191
Schedule 06-Culture, Recreation and Tourism	\$ 1,350,618
Schedule 08A-Corrections Services	\$ 5,071,813
Schedule 08B-Public Safety Services	\$ 3,485,973
Schedule 08C-Juvenile Justice	\$ 4,564,339
Schedule 09-Health and Hospitals	\$20,804,466
Schedule 10-Children and Family Services	\$11,711,646
Schedule 14-Louisiana Workforce Commission	\$ 275,000
Schedule 17-Civil Service	
17-562 Ethics Administration	\$ 115,216
17-563 State Police Commission	\$ 17,998
17-564 Division of Administrative Law	\$ 19,645
Schedule 19A-Higher Education	\$34,745,030
Schedule 19B-Special Schools and Commissions	
19-657 Louisiana School for Math, Science, & the Arts	\$ 134,066
19-662 Louisiana Educational Television Authority	\$ 100,000
19-666 State Board of Elementary & Secondary Education	\$ 72,040
19-673 New Orleans Center for the Creative Arts	\$ 155,875
Schedule 19D-Education	\$ 6,320,266
Schedule 19E-LA Health Care Services Division	\$ 5,307,534
Schedule 20-Other Requirements	
20-452 Local Housing of State Juvenile Offenders	\$ 201,430
20-933 Governor's Conferences and Interstate Compacts	\$ 15,778
20-941 Agriculture and Forestry—Pass Through Funds	\$ 102,692
Schedule 21-Ancillary	
21-804 Office of Risk Management	\$ 1,000

SECTION 2:

A. No later than November 5, 2010, the head of each Unit listed in Section 1 of this Order shall submit to the commissioner of administration (hereafter "commissioner") a mid-year budget reduction plan, on the BA-7 form and questionnaire, which reflects the Unit's proposed allocation of the expenditure reduction ordered in Section 1 of this

Order (hereafter "mid-year budget reduction plan"), and a description of the methodology used to formulate the mid-year budget reduction plan. The heads of each department may exercise discretion and reallocate the aggregate reduction within the department to maximize recurring savings to the state fiscal for future fiscal years, while remaining in compliance with R.S. 39:75(C)(1)(a) by ensuring that no reduction to any budget unit exceeds 3% of the total appropriation of that budget unit.

B. In the event that positions of employment will be affected by the midyear budget reduction these positions should be included in your midyear budget reduction plan.

C. No Unit shall implement the expenditure reduction mandated by Section 1 of this Order without the commissioner's prior written approval of the Unit's mid-year budget reduction plan.

D. After the commissioner has given approval of a Unit's mid-year budget reduction plan, any change to the mid-year budget reduction plan requires prior written approval from the commissioner.

SECTION 3: The commissioner of administration is authorized to develop additional guidelines as necessary to facilitate the administration of this Order.

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 cooperate in the implementation of the provisions of this Order.

SECTION 5: This Order is effective upon signature and shall remain in effect through June 30, 2011, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 22nd day of October, 2010.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
1011#135

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services

Agricultural Commodities Commission—Official Services
(LAC 7:XXVII.128)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and the authority of R.S. 3:3405, the Louisiana Agricultural Commodities Commission proposes to adopt by emergency rule fees for the testing and sampling of aflatoxin for corn.

Aflatoxin is a toxic metabolite produced primarily by a naturally occurring fungus that affects corn. Aflatoxin is listed as a human and animal carcinogen. Aflatoxicosis in humans is characterized by vomiting, abdominal pain, pulmonary edema, convulsions, coma and death with cerebral edema and fatty involvement of the liver, kidneys and heart. Aflatoxicosis in animals causes liver damage, cancer, decreased milk and egg production, increased infections due to immunity suppression, anemia, jaundice and death. Aflatoxicosis in humans and animals results from the eating of food contaminated with aflatoxin. The United States Food and Drug Administration have established a limit of 20 parts per billion for aflatoxin in foods to be consumed by humans.

The presence and levels of aflatoxin in corn can be determined only by sampling and testing the corn. The accuracy and reliability of the methods of testing corn directly affect both the marketability of the corn and the price received for the corn by the farmer and operators of grain elevators. Failure to immediately implement regulations governing the testing of corn at grain elevators creates and imminent peril to the public health, safety and welfare of the farmers and economy of this state.

The Louisiana Agricultural Commodities Commission has, therefore, determined that these emergency rules are necessary in order to ensure an accurate and reliable sampling and testing of corn for aflatoxin.

This Emergency Rule becomes effective on October 14, 2010 and will remain in effect for 120 days, unless renewed or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Agricultural Commodities Commission

Subchapter E. Assessments and Fees

§128. Fees: Amount, Time of Payment

A. - C.3. . . .

4. Official Services (including sampling except as indicated)

Online D/T sampling inspection service (sampling, grading and certification), per regular hour	\$25.00
Overtime hourly rate, per hour	\$40.00
Unit Inspection Fees:	
Aflatoxin Testing, per sample	\$30.00
Hopper Car, per car	\$20.00
Boxcar, per car	\$15.00
Truck/Trailer, per carrier	\$10.00
Barge, per 1,000 bushels	\$ 2.50
Submitted sample inspection	\$12.00
Re-grade grain sample	\$15.00

D. - D.2. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3414.3 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended LR 14:528 (August 1988), LR 19:889 (July 1993), LR 23:196 (February 1997), LR 27:815 (June 2001), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Agricultural Commodities Commission, LR 30:197 (February 2004), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, LR 37:

Mike Strain, DVM
Commissioner

1011#003

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Structural Pest Control Commission

Bait and Baiting System Requirements (LAC 7:XXV.141)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:3306, the Structural Pest Control Commission declares an emergency to exist and adopts by emergency process the attached regulations to supersede the current permanent regulations found at LAC 7:XXXV.141.J. The regulations that are being put into place by this declaration of emergency are in the process of being promulgated as permanent rules and are anticipated to become effective on January 20, 2011. The implementation of these regulations by the emergency process is necessary in order to allow pest control operators in Louisiana who install and monitor bait and baiting systems for termites to participate in a nationwide program initiated by a manufacturer of a bait and baiting termiticide. Under the current regulations pest control operators in this state would not be able to participate and take advantage of the program, thereby placing them at a severe disadvantage and creating an economic hardship on them. The implementation of these rules will also allow pest control operators to immediately

use a new bait product, thereby increasing the amount of termite protections that they can offer to the public to protect homes and other structures from infestation by termites.

This Emergency Rule becomes effective November 1, 2010 when signed by the commissioner and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§141. Minimum Specifications for Termite Control

Work

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

J. Requirements for Baits and Baiting Systems

1. Any licensee or any person working under the supervision of a licensee, who applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system. Manufacturer certification and training programs shall have department approval of the agenda prior to the program presentation.

2. All baits and baiting systems applications shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.119.D and pay the fee as described in LAC 7:XXV.119.E.

3. Bait and baiting systems shall be used according to label and labeling.

4. Above ground bait stations shall be used according to their label and labeling when the presence of subterranean termites are detected in the contracted structure.

5. All bait stations, except those products in the pilot project, shall be monitored/inspected according to the label and labeling.

6. Monitoring and ground bait stations shall surround the contracted structure and shall not be more than 20 feet apart, where soil is available unless the label requires stations closer and/or does not allow for "where soil is available."

7. Monitoring and ground bait stations, where soil is available, shall be no further than 20 feet from the slab or pier's outside perimeter except for non-structural wood elements including but not limited to trees, stumps, wood piles, landscape timbers and detached fences.

8. Records of contracts, graphs, monitoring, and bait applications shall be kept according to LAC 7:XXV.117.I.

9. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

10. All monitoring and bait stations shall be removed by the pest control operator from the contracted property within 30 days of the termination of the contract. In the event the bait and baiting system manufacturer stops the use by the pest control operator of their bait and baiting system; all monitoring and bait stations shall be removed by the pest control operator from the contracted property within 90 days of the stop use notification.

11. The commission hereby establishes a pilot program for the use of bait and baiting systems and shall include but not be limited to the following.

a. All baits and baiting systems products shall be subject to the pilot project for a period of a minimum of one year. The commission shall reevaluate the products in the pilot program prior to the end of the first quarter of every calendar year.

b. Pilot project bait and baiting system products shall, upon approval of the commission, be listed in the *Louisiana Register*.

c. Pilot project bait and baiting system products are subject to all regulations in LAC 7:XXV.141.J.

d. Baits and baiting systems may be used as a stand-alone termite treatment only with written approval by LDAF.

e. Baits and baiting systems may be used as a supplement to traditional ground termiticide treatments.

f. Ground bait delivery shall begin when the presence of subterranean termites are detected in the monitoring station or if the label allows, Ground bait stations may be used as monitoring stations and inspected as required in LAC 7:XXV.141.J.11.

g. Ground monitoring and bait stations, used as monitors, shall be inspected monthly, not to exceed 35 days, from the date of installation or last inspection. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.11.

h. When there is termite feeding on any bait and/or monitoring station(s) at the contracted structure; all above ground bait stations and ground monitoring and bait stations shall be inspected monthly, not to exceed 35 days from the date of installation or last inspection and such inspections shall continue until there is no termite feeding on any bait and/or monitoring station, in any station, at the contracted structure for 90 days from the date of installation or last inspection. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.11.

i. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitoring shall resume at regular intervals, not to exceed 90 days from the date of the last inspection; when termites are detected again, monitoring and/or baiting shall follow the requirements set forth in LAC 7:XXV.141.J.11.

j. Pilot project bait and baiting system products are subject to all regulations in LAC 7:XXV.141.J.

K - M.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:235 (February 1999), LR 25:1620 (September 1999), LR 26:2437 (November 2000), LR 27:1180 (August 2001), LR 29:1063 (July 2003), LR 30:1145 (June 2004), repromulgated LR 30:1614 (August 2004), amended LR 35:207 (February 2009), LR 35:1469 (August 2009), repromulgated LR 35:1872 (September 2009), amended LR 37:

Mike Strain, DVM
Commissioner

1011#002

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs

Portability of Criminal History, Religious
Exemption, and Sex Offender Rule
(LAC 67:III.Chapter 73)

The Department of Children and Family Services (DCFS), has exercised the emergency provision in accordance with R.S. 49:950 et seq., the Administrative Code Act to adopt LAC 67, Part III, Subpart 21 Chapter 73, Sections 7302, 7303, 7305, 7311, 7357, 7359, 7361 and 7365 Child Care Licensing to comply with Acts 429, 508 and 569 of the 2010 Regular Session of the Louisiana Legislature and Act 210 of the 2009 Regular Session of the Louisiana Legislature. This emergency rule is effective upon the signature of the DCFS secretary and shall remain in effect for a period of 120 days.

The Department of Children and Family Services finds that an imminent threat to the safety and welfare of children in licensed child care facilities exists. Pursuant to Act 508 of the 2010 Legislative Session, the Department of Children and Family Services finds it necessary to allow for the portability of criminal history information. This rule shall allow an individual applying for a position of supervisory or disciplinary authority over children in a child care facility, or an independent contractor who performs work in a child care facility, to receive a certified copy of his/her criminal history information upon written request to the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police. The certified copy of the criminal background check may be accepted by a prospective employer and shall be deemed to satisfy the requirements of R.S. 15:587.1 for each facility requesting criminal history information for a period of one year from the date of issuance of the certified copy.

In accordance with Acts 429 and 569 of the 2010 Legislative Session a recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code, which remains open for not more than 24 hours in a continuous 7-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall not be considered a "day care center" for the purposes of this Chapter. In addition, there shall be a moratorium on the enforcement of any rule and regulation by the Department of Children and Family Services upon a child care facility, operated by a religious, nonprofit organization which is exempt from federal income taxes pursuant to 26 U.S.C. 501(c)(3), and which was not licensed as either a Class "A" or Class "B" facility on June 1, 2010, and provides childcare for not less than 25 hours and not more than 40 hours in a continuous 7-day week. This moratorium shall terminate and cease to be effective upon July 1, 2011.

Pursuant to Act 210 of the 2009 Legislative Session, any person that has been convicted of a sex offense as defined in R.S. 15:541, is prohibited from owning, operating, or in any way participating in the governance of a child day care facility. The department also prohibits any employer from knowingly employing a person convicted of a sex offense as

defined in R.S. 15:541, to work in a day care center or a child day care facility. This rule shall also require any owner/owners of a child day care facility to provide documentation of a satisfactory criminal record check, as required by R.S. 15:587.1.

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 Children and Family 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 Children and Family 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. R.S. 46:1403 defines a child day care facility as 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 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.

In accordance with Act 429 and Act 569 of the 2010 Legislative Session, a recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code, which remains open for not more than 24 hours in a continuous 7-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall not be considered a "day care center" for the purposes of this Chapter. In addition, there shall be a moratorium on the enforcement of any rule and regulation by the Department of Children and Family Services upon a child care facility, operated by a religious, nonprofit organization which is exempt from federal income taxes pursuant to 26 U.S.C. 501(c)(3), and which was not licensed as either a Class A or Class B facility on June 1, 2010, and provides childcare for not less than 25 hours and not more than 40 hours in a continuous 7-day week. This moratorium shall terminate and cease to be effective upon July 1, 2011.

B. - F.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended LR 36:332 (February 2010), LR 36:847 (April 2010), amended by the Department of Children and Family Services, LR 37:

§7303. Procedures

A.1. - A.2.g.viii. ...

ix. three current, positive, signed references on director designee (if applicable);

x. licensure survey verifying compliance with all minimum standards;

xi. documentation of a satisfactory criminal record clearance for all staff including all owners and operators; and

xii. documentation of completed State Central Registry Disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

3. - 4.h. ...

i. three current, positive, signed references on director designee (if applicable);

j. copy of bill of sale;

k. documentation of a satisfactory criminal record clearance for all owners and operators and all staff not employed by the previous owner; and

l. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

NOTE: If the above information is not received prior to the sale or day of the sale, the new owner must not operate until a license is issued. When the application is received, it will be treated as an initial application rather than a change of ownership.

A.5. - C.3. ...

4. The bureau shall be notified prior to making changes which may have an effect upon the license, e.g., age range of children served, usage of indoor and outdoor space, director, hours/months/days of operation, transportation, etc.

D. Denial, Revocation or Non-Renewal of License. An application for a license may be denied, or a license may be revoked, or renewal denied, for any of the following reasons:

1. - 14. ...

15. presence or use of any recalled product by the provider that is listed in the newsletters issued by the Office of the Attorney General;

16. failure to attend any mandatory training session offered by the bureau;

17. presence of an individual with a justified (valid) finding of child/abuse neglect not being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry until a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children;

18. presence of an individual on the child care premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the Division of Administrative Law within the required time frame;

19. presence of an individual on the child care premises with a ruling by the Division of Administrative Law that the individual poses a risk to children; or

20. having knowledge that a convicted sex offender is physically present within 1000 feet of the child care facility

and failing to notify law enforcement and licensing management staff immediately upon receipt of such knowledge.

E. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended LR 36:333 (February 2010), LR 36:832 (April 2010), repromulgated LR 36:1272 (June 2010), amended LR 36:1279 (June 2010), amended by the Department of Children and Family Services, LR 37:

§7305. General Requirements

A. - M. ...

N. Conditions for Participation in a Child-Related Business

1. Any owner/owners of a child day care facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and R.S. 15:587.1. A criminal background check shall be required of each owner of a facility submitting a new application, change of ownership application, change of location application, and/or application for renewal for a child day care license. No person with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

2. New members/owners added to a partnership, church, corporation, limited liability corporation or governmental entity which does not constitute a change of ownership shall provide documentation of a satisfactory criminal record check as required by R.S. 46:51.2 and R.S. 15:587.1. No member/owner with a criminal conviction of conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

3. Every owner shall submit the criminal background check showing that he or she has not been convicted of any offense enumerated in R.S. 15:587.1 or a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, together with the initial application or, in the case of an existing center, with the application for renewal of the license. If the criminal background check shows that any owner has been convicted of any enumerated offense under R.S. 15:587.1 or a felony, a plea of guilty or nolo contendere of a felony, or any offense involving a juvenile victim, the owner or director shall submit the information to the licensing section management staff within 24 hours or no later than the next business day, whichever is sooner, upon receipt of the result.

4. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited.

Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 physical access to a child day care facility as defined in R.S. 46:1403.

5. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the licensing section management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2759 (December 2007), amended LR 36:333 (February 2010), amended by the Department of Children and Family Services, LR 37:

§7311. Personnel Records

A. - A.4. ...

5. documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be eligible to own, operate, and/or be present in any capacity in any licensed child care facility. For any owner or operator, a clear criminal background check in accordance with R.S. 46:51.2 shall be obtained prior to the issuance of a license or approval of a change of ownership. In addition, neither an owner, nor a director, nor a director designee shall have a conviction of, or pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense.

a. An individual who applies for a position of supervisory or disciplinary authority over children in a child care facility may provide a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility in which the individual is currently employed. However, prior to the one year date of issuance of the certified criminal background check, the provider shall request and obtain a satisfactory criminal check from Louisiana State Police in order for the individual to continue employment at the center. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the staff person is no longer allowed on the child care premises until a clearance is received.

B. The following information shall be kept on file for independent contractors including therapeutic professionals and extracurricular personnel, e.g. computer instructors,

dance instructors, librarians, tumble bus personnel, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, art instructors, and other outside contractors:

1. documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be present in any capacity in any child care facility.

a. Independent contractors, therapeutic professionals, and/or extracurricular personnel may provide a certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police to the provider prior to being present and working with a child or children at the facility. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility. Prior to the one year date of issuance of the certified copy, the individual shall request and obtain a current certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police in order to continue providing services to a child or children at the child care facility. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the individual shall no longer be allowed on the child care premises until a clearance is received. This criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility.

B.2. - C.3.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1114 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2762 (December 2007), amended by the Department of Children and Family Services, LR 37:

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter B. Licensing Class "B" Regulations for Child Care Centers

§7357. Definitions

A. The following are definitions of terms used in these minimum standards.

* * *

Child Day Care Center—a child day care facility as defined in R.S. 46:1403, including vehicles or other structures owned or operated by the provider where care and supervision of children are provided, or where some process

or operation integral to providing or facilitating care or supervision is conducted.

* * *

Extra-Curricular Personnel/Therapeutic Professionals—individuals who are not employees of the center, but who come to the center to provide therapy, services, or enrichment activities for an individual child or group of children. Examples: computer instructor, dance instructor, librarian, tumble bus personnel, therapeutic personnel (occupational therapist, physical therapist, speech therapist), nutritionist, early interventionist, and nurse.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended LR 36:334 (February 2010), LR 36:850 (April 2010), amended by the Department of Children and Family Services, LR 37:

§7359. Procedures

A.1. - A.2.f.v. ...

vi. licensure survey verifying compliance with all minimum standards;

vii. documentation of a satisfactory criminal record clearance for all staff including all owners and operators;

viii. documentation of completed State central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

3. - 4. ...

a. documentation of a satisfactory criminal record clearance for all owners and operators and all staff not employed by the previous owner; and

b. documentation of completed state central registry disclosure forms noting no justified (valid) finding of abuse and/or neglect for all staff or documentation from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children.

A.5. - F.10. ...

11. presence of an individual with a justified (valid) finding of child/abuse neglect not being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry until a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children;

12. presence of an individual on the child care premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the Division of Administrative Law within the required time frame;

13. presence of an individual on the child care premises with a ruling by the Division of Administrative Law that the individual poses a risk to children;

14. having knowledge that a convicted sex offender is physically present within 1000 feet of the child care facility and failing to notify law enforcement and licensing

management staff immediately upon receipt of such knowledge.

G. - J.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended by the Department of Social Services, Office of Family Support LR 36:832 (April 2010), LR 36:1272 (June 2010), LR 36:1279 (June 2010), amended by the Department of Children and Family Services, LR 37:

§7361. General Requirements

A. - L. ...

M. Conditions for participation in a child-related business.

1. Any owner/owners of a child day care facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and R.S. 15:587.1. A criminal background check shall be required of each owner of a facility submitting a new application, change of ownership application, change of location application, and/or application for renewal for a child day care license. No person with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

2. New members/owners added to a partnership, church, corporation, limited liability corporation or governmental entity which does not constitute a change of ownership shall provide documentation of a satisfactory criminal record check as required by R.S. 46:51.2 and R.S. 15:587.1. No member/owner with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall directly or indirectly own, operate or participate in the governance of a child care facility.

3. Every owner shall submit the criminal background check showing that he or she has not been convicted of any offense enumerated in R.S. 15:587.1 or a felony, or plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, together with the initial application or, in the case of an existing center, with the application for renewal of the license. If the criminal background check shows that any owner has been convicted of any enumerated offense under R.S. 15:587.1 or a felony, a plea of guilty or nolo contendere of a felony, or any offense involving a juvenile victim, the owner or director shall submit the information to the licensing section management staff within 24 hours or no later than the next business day, whichever is sooner, upon receipt of the result.

4. The physical presence of a sex offender in, on, or within 1,000 feet of a child day care facility is prohibited. Providers and child care staff shall not permit an individual

convicted of a sex offense as defined in R.S. 15:541 physical access to a child day care facility as defined in R.S. 46:1403.

5. The owner or director of a child day care facility shall be required to call and notify law enforcement agencies and the licensing management staff if a sex offender is on the premises of the child day care facility or within 1,000 feet of the child day care facility. The licensing office shall be contacted immediately. The verbal report shall be followed by a written report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1638 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2773 (December 2007), amended LR 36:335 (February 2010), amended by the Department of Children and Family Services, LR 37:

§7365. Center Staff

A. - C.3. ...

4. Criminal Records Check. Documentation of a satisfactory criminal records check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be eligible to own, operate, and/or be present in any capacity in any licensed child care facility. For any owner or operator, a clear criminal background check in accordance with R.S. 46:51.2 shall be obtained prior to the issuance of a license or approval of a change of ownership. In addition, neither an owner, nor a director, nor a director designee shall have a conviction of, or pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense.

a. An individual who applies for a position of supervisory or disciplinary authority over children in a child care facility may provide a certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility in which the individual is currently employed. However, prior to the one year date of issuance of the certified criminal background check, the provider shall request and obtain a satisfactory criminal check from Louisiana State Police in order for the individual to continue employment at the center. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the staff person is no longer allowed on the child care premises until a clearance is received.

b. The following information shall be kept on file for independent contractors including therapeutic professionals and extracurricular personnel, e.g. computer

instructors, dance instructors, librarians, tumble bus personnel, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, art instructors, and other outside contractors.

i. Documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child care facility. No person who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be present in any capacity in any child care facility.

ii. Independent contractors, therapeutic professionals, and/or extracurricular personnel may provide a certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police to the provider prior to being present and working with a child or children at the facility. If an individual provides a certified copy of their criminal background check obtained from the Louisiana State Police to the provider, this criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility. Prior to the one year date of issuance of the certified copy, the individual shall request and obtain a current certified copy of their criminal background check obtained from the Bureau of Criminal Identification and Information Section of the Louisiana State Police in order to continue providing services to a child or children at the child care facility. If the clearance is not obtained by the provider prior to the one year date of issuance of the certified criminal background check, the individual shall no longer be allowed on the child care premises until a clearance is received. This criminal background check shall be accepted by the department for a period of one year from the date of issuance of the certified copy. A photocopy of the certified copy shall be kept on file at the facility.

c. No felon shall be employed in a Class "B" facility, unless approved in writing by a district judge of the parish and the local district attorney. This statement shall be kept on file at all times by the child care facility and shall be produced upon request to any law enforcement officer.

C.5. - D.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, LR 18:970 (September 1992), LR 26:1639 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2774 (December 2007), amended by the Department of Children and Family Services, LR 37:

Ruth Johnson
Secretary

1011#127

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—GO Grant Summer Billing
(LAC 28:IV.1205)

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, 17:3046-3046.2, R.S. 17:3048.1, R.S. 56:797.D(2)).

This rulemaking will add language to the GO Grant Program eligibility requirements regarding qualified summer sessions that is consistent with the GO Grant Program billing requirements for qualified summer sessions. To be eligible and for an institution to bill, the student who enrolls in a qualified summer session must be enrolled through the last day to drop and receive a full refund for the summer session.

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students. This Declaration of Emergency is effective October 19, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG11124E)

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education

Scholarship and Grant Programs

Chapter 12. Louisiana GO Grant

§1205. Application and Initial Eligibility

A. - B.4.c. ...

C. In order to receive a grant under this Chapter, an eligible student must be enrolled in an undergraduate program at an eligible Louisiana institution through the 14th class day for semester schools, or the 9th class day for quarter and term schools, or for any qualifying summer sessions, at the end of the last day to drop and receive a full refund for the full summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 37:

George Badge Eldredge
General Counsel

1011#008

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

All Inclusive Care for the Elderly
Reimbursement Rate Reduction
(LAC 50:XXIII.1301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXIII.1301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Program of All Inclusive Care for the Elderly (PACE) to: 1) remove the requirement that eligibility decisions be approved by the state administering agency; 2) revise PACE disenrollment criteria; 3) allow for service area specific rates instead of one statewide rate; and 4) clarify when the obligation for patient liability begins (*Louisiana Register*, Volume 33, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for PACE to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for the Program of All Inclusive Care for the Elderly to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIII. All Inclusive Care for the Elderly

Chapter 13. Reimbursement

§1301. Payment

A. - J.3. ...

K. Effective for dates of service on or after August 1, 2010, the monthly capitated amount paid to a PACE organization shall be reduced by 2 percent of the capitated amount on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:250 (February 2004), amended LR 33:850 (May 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#087

DECLARATION OF EMERGENCY

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

Ambulatory Surgical Centers
Reimbursement Rate Reduction
(LAC 50:XI.7503)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.7503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the

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

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates paid for ambulatory surgical services (*Louisiana Register*, Volume 36, Number 10).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ambulatory surgical centers to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XI.7503 as a result of the promulgation of the October 20, 2010 final Rule governing ambulatory surgical centers. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for ambulatory surgical centers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7503. Reimbursement Methodology

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 4.4 percent of the fee amounts on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in 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 35:1889 (September 2009), amended LR 36:2278 (October 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#075

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

CommunityCARE Program
Primary Care Providers—Reimbursement Rate Adjustment
(LAC 50:I.2913)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the August 20, 2002 Rule governing reimbursement rates in the CommunityCARE Program and amends LAC 50:I.2913 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the CommunityCARE Program in order to increase the reimbursement rates for designated services rendered to CommunityCARE recipients by providers enrolled in the CommunityCARE Program (*Louisiana Register*, Volume 28, Number 8). The department repromulgated the Rules governing the CommunityCARE Program in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 29, Number 6).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which repealed the August 20, 2002 Rule and amended the provisions governing reimbursements to primary care providers in the CommunityCARE Program to align these reimbursements with the established fees for primary care services rendered by providers in the Professional Services Program (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the August 20, 2002 Rule and amends the provisions governing the reimbursements to CommunityCARE providers to adjust the rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 29. CommunityCARE§2913. Primary Care Provider Reimbursement

A. The management fee paid to primary care providers in the CommunityCARE Program is \$3 per enrolled recipient per month.

B. Effective for dates of service on or after August 1, 2010, primary care providers enrolled in the CommunityCARE Program shall be reimbursed at the established fees on file for professional services in the Professional Services Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, 29:910 (June 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network
(LAC 50:I.Chapters 31-39)

The Department of Health and Hospitals, Bureau of Health Services Financing rescinds the October 1, 2010 Emergency Rule governing the Coordinated Care Network as authorized by R.S. 36:254. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted an Emergency Rule to establish the provisions governing the implementation of coordinated care networks in the Louisiana Medicaid Program (*Louisiana Register*, Volume 36, Number 10). As a

result of consultations with the legislative oversight committee, the department has determined that it is necessary to rescind the October 1, 2010 Emergency Rule.

Effective October 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds the Emergency Rule adopting provisions governing the implementation of coordinated care networks which was published on page 2192 of the October 20, 2010 edition of the *Louisiana Register*.

Bruce D. Greenstein
Secretary

1011#006

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50: XV.6903 and §6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to reduce the reimbursement fees (*Louisiana Register*, Volume 36, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for EPSDT dental services to further reduce the reimbursement rates. In addition, this emergency rule also amended the provisions governing the covered services and reimbursement methodology for the EPSDT Dental Program to include an additional dental procedure (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XV.6905 as a result of the promulgation of the September 20, 2010 final Rule governing EPSDT dental services. This action is being taken to ensure that these provisions are

appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for EPSDT dental services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening,

Diagnosis and Treatment

Chapter 69. Dental Services

§6903. Covered Services

A. - D. ...

E. Effective August 1, 2010, the prefabricated esthetic coated stainless steel crown-primary tooth dental procedure shall be included in the service package for coverage under the EPSDT Dental 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 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:1138 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1889 (September 2009), amended LR 36:

§6905. Reimbursement

A. - D.3. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for EPSDT dental services shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 69 percent for the following oral evaluation services:

- a. periodic oral examination;
- b. oral examination—patients under three years of age; and
- c. comprehensive oral examination—new patient;

2. 65 percent for the following annual and periodic diagnostic and preventive services:

- a. radiographs—periapical, first film;
- b. radiograph—periapical, each additional film;
- c. radiograph—panoramic film;
- d. prophylaxis—adult and child;
- e. topical application of fluoride—adult and child

(prophylaxis not included); and

- f. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age);

3. 50 percent for the following diagnostic and adjunctive general services:

- a. oral/facial images;
- b. non-intravenous conscious sedation; and
- c. hospital call; and

4. 58 percent for the remainder of the dental services.

F. Removable prosthodontics and orthodontic services are excluded from the August 1, 2010 rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), amended LR 36:2040 (September 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#076

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

End Stage Renal Disease Facilities
Reimbursement Rate Reduction (LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.6901 and §6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for end stage renal disease (ESRD) facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ESRD facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 36,

Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XI.6901-6903 as a result of the promulgation of the September 20, 2010 final Rule governing ESRD facilities. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for end stage renal disease facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 9. End Stage Renal Disease Facilities

Chapter 69. Reimbursement

§6901. Non-Medicare Claims

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

AUTHORITY NOTE: Promulgated in 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 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1891 (September 2009), amended LR 36:2040 (September 2010), LR 36:

§6903. Medicare Part B Claims

A. - D. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

AUTHORITY NOTE: Promulgated in 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 35:1891 (September 2009), amended LR 36:2040 (September 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#077

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Clinics—Reimbursement Rate Reduction (LAC 50:XI.3501)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.3501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Human Resources, Office of Family Services adopted a Rule which established the method of payment for services rendered by mental health clinics, substance abuse clinics and family planning clinics (*Louisiana Register*, Volume 4, Number 5). The provisions governing family planning clinic services were repromulgated in their entirety for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 5. Family Planning

Chapter 35. Reimbursement

§3501. Reimbursement Methodology

A. The reimbursement for family planning clinics is a flat fee for each covered service as specified on the established Medicaid fee schedule. Fee schedule rates are based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

1. - 2. Repealed.

B. Effective for dates of service on or after August 1, 2010, the reimbursement rates for family planning clinic services shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount minus any third party liability 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, Office of the Secretary, Bureau of Health Services Financing, LR 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#089

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Waiver Reimbursement Rate Reduction (LAC 50:XXII.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXII.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for family planning waiver services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 10).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule

which amended the provisions governing the reimbursement methodology for family planning waiver services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XXII.2701 as a result of the promulgation of the October 20, 2010 final Rule governing family planning waiver services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for the family planning waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement rates for services provided in the Family Planning Waiver shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2280 (October 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#078

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Adult Day Health Care—Reimbursement Rate Reduction
(LAC 50:XXI.2915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.2915 in the Medical

Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver to redefine and clarify the provisions of the waiver relative to the target population, the request for services registry, the comprehensive plan of care, and support coordination services (*Louisiana Register*, Volume 34, Number 10). The October 20, 2008 Rule also amended the provisions governing the reimbursement methodology to reduce the comprehensive ADHC rate paid to providers as a result of adding support coordination as a separate service since these services were traditionally reimbursed as part of the comprehensive ADHC rate. These provisions were repromulgated in December 2009 to correct an error of omission in the publication (*Louisiana Register*, Volume 34, Number 12).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Adult Day Health Care Waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the Adult Day Health Care Waiver to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 3. Adult Day Health Care

Chapter 29. Reimbursement

§2915. Provider Reimbursement

A. - D.2. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement rates for ADHC services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2170 (October 2008), repromulgated LR 34:2575 (December

2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#090

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers Elderly and Disabled Adults—Reimbursement Rate Reduction (LAC 50:XXI.9101 and 9107-9121)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.9101 and adopts §§9107-9121 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the department amended the provisions governing the reimbursement methodology for the Elderly and Disabled Adult (EDA) Waiver to reduce the reimbursement rates paid for designated services (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for EDA Waiver services to further reduce the reimbursement rates for personal assistance and adult day health care services and adopted provisions governing the reimbursement for adult day health care services (*Louisiana*

Register, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for EDA Waiver services to reduce the reimbursement rates and adopt provisions governing the reimbursement for adult day health care services.

Title 50

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

Subpart 7. Elderly and Disabled Adults

Chapter 91. Reimbursement

Subchapter A. General Provisions

§9101. Reimbursement Methodology

A. Reimbursement for EDA Waiver services, with the exception of ADHC services, shall be a prospective flat rate for each approved unit of service provided to the recipient. Adult day health care services shall be reimbursed according to the provisions of Subchapter B of this Chapter 91.

B. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for personal assistance services in the EDA Waiver shall be reduced by 2 percent of the rates on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:251 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1893 (September 2009), amended LR 36:

Subchapter B. Adult Day Health Care Services

Reimbursement

§9107. General Provisions

A. Providers of adult day health care services shall be reimbursed a per diem rate for services rendered under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for waiver recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9109. Cost Reporting

A. Cost Centers Components

1. Direct Care Costs. This component reimburses for in-house and contractual direct care staffing and fringe benefits and direct care supplies.

2. Care Related Costs. This component reimburses for in-house and contractual salaries and fringe benefits for activity and social services staff, raw food costs and care related supplies for activities and social services.

3. Administrative and Operating Costs. This component reimburses for in-house or contractual salaries and related benefits for administrative, dietary, housekeeping and maintenance staff. Also included are:

- a. utilities;
- b. accounting;
- c. dietary;
- d. housekeeping and maintenance supplies; and
- e. all other administrative and operating type expenditures.

4. Property. This component reimburses for depreciation, interest on capital assets, lease expenses, property taxes and other expenses related to capital assets.

B. Providers of ADHC services are required to file acceptable annual cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this Section and for which the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the center for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted to the accrual basis at year end are required in the cost report preparation process. The bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

C. The cost reporting forms and instructions developed by the bureau must be used by all facilities participating in the Louisiana Medicaid Program who render ADHC services. Hospital based and other provider based facilities which use Medicare forms for step down in completing their ADHC Medicaid cost reports must submit copies of the applicable Medicare cost report forms also. All amounts must be rounded to the nearest dollar and must foot and cross foot. Only per diem cost amounts will not be rounded. Cost reports submitted that have not been rounded in accordance with this policy will be returned and will not be considered as received until they are resubmitted.

D. Annual Reporting. Cost reports are to be filed on or before the last day of September following the close of the reporting period. Should the due date fall on a Saturday, Sunday, or an official state or federal holiday, the due date shall be the following business day. The cost report forms and schedules must be filed in duplicate together with two copies of the following documents:

1. a working trial balance that includes the appropriate cost report line numbers to which each account can be traced. This may be done by writing the cost report category and line numbers by each ending balance or by running a trial balance in cost report category and line number order that totals the account;

2. a depreciation schedule. The depreciation schedule which reconciles to the depreciation expense reported on the cost report must be submitted. If the center files a home office cost report, copies of the home office depreciation schedules must also be submitted with the home office cost report. All hospital based facilities must submit two copies

of a depreciation schedule that clearly shows and totals assets that are hospital only, ADHC only and shared assets;

3. an amortization schedule(s), if applicable;
4. a schedule of adjustment and reclassification entries;

5. a narrative description of purchased management services and a copy of contracts for managed services, if applicable;

6. For management services provided by a related party or home office, a description of the basis used to allocate the costs to providers in the group and to non-provider activities and copies of the cost allocation worksheet, if applicable. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule; and

7. all allocation worksheets must be submitted by hospital-based facilities. The Medicare worksheets that must be attached by facilities using the Medicare forms for allocation are:

- a. A;
- b. A-6;
- c. A-7 parts I, II and III;
- d. A-8;
- e. A-8-1;
- f. B part 1; and
- g. B-1.

E. Each copy of the cost report must have the original signatures of an officer or center administrator on the certification. The cost report and related documents must be submitted to the address indicated on the cost report instruction form. In order to avoid a penalty for delinquency, cost reports must be postmarked on or before the due date.

F. When it is determined, upon initial review for completeness, that an incomplete or improperly completed cost report has been submitted, the provider will be notified. The provider will be allowed a specified amount of time to submit the requested information without incurring the penalty for a delinquent cost report. For cost reports that are submitted by the due date, 10 working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. For cost reports that are submitted after the due date, five working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. An exception exists in the event that the due date comes after the specified number of days for submission of the requested information. In these cases, the provider will be allowed to submit the additional requested information on or before the due date of the cost report. If requested additional information has not been submitted by the specified date, a second request for the information will be made. Requested information not received after the second request may not be subsequently submitted and shall not be considered for reimbursement purposes. An appeal of the disallowance of the costs associated with the requested information may not be made. Allowable costs will be adjusted to disallow any expenses for which requested information is not submitted.

G. Accounting Basis. The cost report must be prepared on the accrual basis of accounting. If a center is on a cash basis, it will be necessary to convert from a cash basis to an

accrual basis for cost reporting purposes. Particular attention must be given to an accurate accrual of all costs at the year-end for the equitable distribution of costs to the applicable period. Care must be given to the proper allocation of costs for contracts to the period covered by such contracts. Amounts earned although not actually received and amounts owed to creditors but not paid must be included in the reporting period.

H. Supporting Information. Providers are required to maintain adequate financial records and statistical data for proper determination of reimbursable costs. Financial and statistical records must be maintained by the center for five years from the date the cost report is submitted to the Bureau. Cost information must be current, accurate and in sufficient detail to support amounts reported in the cost report. This includes all ledgers, journals, records, and original evidences of cost (canceled checks, purchase orders, invoices, vouchers, inventories, time cards, payrolls, bases for apportioning costs, etc.) that pertain to the reported costs. Census data reported on the cost report must be supportable by daily census records. Such information must be adequate and available for auditing.

I. Employee Record

1. The provider shall retain written verification of hours worked by individual employees.

a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

J. Billing Records

1. The provider shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

a. Records shall clearly detail each charge and each payment made on behalf of the client.

b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.

c. Records shall itemize each billing entry.

d. Records shall show the amount of each payment received and the date received.

2. The provider shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

K. Non-acceptable Descriptions. "Miscellaneous", "other" and "various", without further detailed explanation, are not acceptable descriptions for cost reporting purposes. If any of these are used as descriptions in the cost report, a request for information will not be made and the related line item expense will be automatically disallowed. The provider will not be allowed to submit the proper detail of the expense at a later date, and an appeal of the disallowance of the costs may not be made.

L. Exceptions. Limited exceptions to the cost report filing requirements will be considered on an individual

provider basis upon written request from the provider to the Bureau of Health Services Financing, Rate and Audit Review Section. If an exception is allowed, the provider must attach a statement describing fully the nature of the exception for which prior written permission was requested and granted. Exceptions which may be allowed with written approval are as follows.

1. If the center has been purchased or established during the reporting period, a partial year cost report may be filed in lieu of the required 12-month report.

2. If the center experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests for exception must contain a full statement of the cause of the difficulties that rendered timely preparation of the cost report impossible.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9111. Cost Categories Included in the Cost Report

A. Direct Care (DC) Costs

1. Salaries, Aides-gross salaries of certified nurse aides and nurse aides in training.

2. Salaries, LPNs-gross salaries of nonsupervisory licensed practical nurses and graduate practical nurses.

3. Salaries, RNs-gross salaries of nonsupervisory registered nurses and graduate nurses (excluding director of nursing and resident assessment instrument coordinator).

4. Salaries, Social Services-gross salaries of nonsupervisory licensed social services personnel providing medically needed social services to attain or maintain the highest practicable physical, mental, or psychosocial well being of the residents.

5. Salaries, Activities—gross salaries of nonsupervisory activities/recreational personnel providing an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interest and the physical, mental, and psychosocial well being of the residents.

6. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for direct care employees.

7. Group Insurance, DC—cost of employer's contribution to employee health, life, accident and disability insurance for direct care employees.

8. Pensions, DC—cost of employer's contribution to employee pensions for direct care employees.

9. Uniform Allowance, DC—employer's cost of uniform allowance and/or uniforms for direct care employees.

10. Worker's Comp, DC—cost of worker's compensation insurance for direct care employees.

11. Contract, Aides—cost of aides through contract that are not center employees.

12. Contract, LPNs—cost of LPNs and graduate practical nurses hired through contract that are not center employees.

13. Contract, RNs—cost of RNs and graduate nurses hired through contract that are not center employees.

14. Drugs, Over-the-Counter and Legend—cost of over-the-counter and legend drugs provided by the center to its residents. This is for drugs not covered by Medicaid.

15. Medical Supplies—cost of patient-specific items of medical supplies such as catheters, syringes and sterile dressings.

16. Medical Waste Disposal—cost of medical waste disposal including storage containers and disposal costs.

17. Other Supplies, DC—cost of items used in the direct care of residents which are not patient-specific such as recreational/activity supplies, prep supplies, alcohol pads, betadine solution in bulk, tongue depressors, cotton balls, thermometers, and blood pressure cuffs.

18. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as direct care costs when those costs include allocated overhead.

19. Total Direct Care Costs—sum of the above line items.

B. Care Related (CR) Costs

1. Salaries—gross salaries for care related supervisory staff including supervisors or directors over nursing, social service and activities/recreation.

2. Salaries, Dietary—gross salaries of kitchen personnel including dietary supervisors, cooks, helpers and dishwashers.

3. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for care related employees.

4. Group Insurance, CR—cost of employer's contribution to employee health, life, accident and disability insurance for care related employees.

5. Pensions, CR—cost of employer's contribution to employee pensions for care related employees.

6. Uniform Allowance, CR—employer's cost of uniform allowance and/or uniforms for care related employees.

7. Worker's Comp, CR—cost of worker's compensation insurance for care related employees.

8. Barber and Beauty Expense—the cost of barber and beauty services provided to patients for which no charges are made.

9. Consultant Fees, Activities—fees paid to activities personnel, not on the center's payroll, for providing advisory and educational services to the center.

10. Consultant Fees, Nursing—fees paid to nursing personnel, not on the center's payroll, for providing advisory and educational services to the center.

11. Consultant Fees, Pharmacy—fees paid to a registered pharmacist, not on the center's payroll, for providing advisory and educational services to the center.

12. Consultant Fees, Social Worker—fees paid to a social worker, not on the center's payroll, for providing advisory and educational services to the center.

13. Consultant Fees, Therapists—fees paid to a licensed therapist, not on the center's payroll, for providing advisory and educational services to the center.

14. Food, Raw—cost of food products used to provide meals and snacks to residents. Hospital based facilities must allocate food based on the number of meals served.

15. Food, Supplements—cost of food products given in addition to normal meals and snacks under a doctor's orders. Hospital based facilities must allocate food-supplements based on the number of meals served.

16. Supplies, CR—the costs of supplies used for rendering care related services to the patients of the center. All personal care related items such as shampoo and soap administered by all staff must be included on this line.

17. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as care related costs when those costs include allocated overhead.

18. Total Care Related Costs—the sum of the care related cost line items.

19. Contract, Dietary—cost of dietary services and personnel hired through contract that are not employees of the center.

C. Administrative and Operating Costs (AOC)

1. Salaries, Administrator—gross salary of administrators excluding owners. Hospital based facilities must attach a schedule of the administrator's salary before allocation, the allocation method, and the amount allocated to the nursing center.

2. Salaries, Assistant Administrator—gross salary of assistant administrators excluding owners.

3. Salaries, Housekeeping—gross salaries of housekeeping personnel including housekeeping supervisors, maids and janitors.

4. Salaries, Laundry—gross salaries of laundry personnel.

5. Salaries, Maintenance—gross salaries of personnel involved in operating and maintaining the physical plant, including maintenance personnel or plant engineers.

6. Salaries, Drivers—gross salaries of personnel involved in transporting clients to and from the center.

7. Salaries, Other Administrative—gross salaries of other administrative personnel including bookkeepers, receptionists, administrative assistants and other office and clerical personnel.

8. Salaries, Owner or Owner/Administrator—gross salaries of all owners of the center that are paid through the center.

9. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for administrative and operating employees.

10. Group Insurance, AOC—cost of employer's contribution to employee health, life, accident and disability insurance for administrative and operating employees.

11. Pensions, AOC—cost of employer's contribution to employee pensions for administration and operating employees.

12. Uniform Allowance, AOC—employer's cost of uniform allowance and/or uniforms for administration and operating employees.

13. Worker's Compensation, AOC—cost of worker's compensation insurance for administration and operating employees.

14. Contract, Housekeeping—cost of housekeeping services and personnel hired through contract that are not employees of the center.

15. Contract, Laundry—cost of laundry services and personnel hired through contract that are not employees of the center.

16. Contract, Maintenance—cost of maintenance services and persons hired through contract that are not employees of the center.

17. Consultant Fees, Dietician—fees paid to consulting registered dietitians.

18. Accounting Fees—fees incurred for the preparation of the cost report, audits of financial records, bookkeeping, tax return preparation of the adult day health care center and other related services excluding personal tax planning and personal tax return preparation.

19. Amortization Expense, Non-Capital—costs incurred for legal and other expenses when organizing a corporation must be amortized over a period of 60 months. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

20. Bank Service Charges—fees paid to banks for service charges, excluding penalties and insufficient funds charges.

21. Dietary Supplies—costs of consumable items such as soap, detergent, napkins, paper cups, straws, etc., used in the dietary department.

22. Dues—dues to one organization are allowable.

23. Educational Seminars and Training—the registration cost for attending educational seminars and training by employees of the center and costs incurred in the provision of in-house training for center staff, excluding owners or administrative personnel.

24. Housekeeping Supplies—cost of consumable housekeeping items including waxes, cleaners, soap, brooms and lavatory supplies.

25. Insurance, Professional Liability and Other—includes the costs of insuring the center against injury and malpractice claims.

26. Interest Expense, Non-Capital and Vehicles—interest paid on short term borrowing for center operations.

27. Laundry Supplies—cost of consumable goods used in the laundry including soap, detergent, starch and bleach.

28. Legal Fees—only actual and reasonable attorney fees incurred for non-litigation legal services related to patient care are allowed.

29. Linen Supplies—cost of sheets, blankets, pillows, gowns, under-pads and diapers (reusable and disposable).

30. Miscellaneous—costs incurred in providing center services that cannot be assigned to any other line item on the cost report. Examples of miscellaneous expense are small equipment purchases, all employees' physicals and shots, nominal gifts to all employees, such as a turkey or ham at Christmas, allowable advertising, and flowers purchased for

the enjoyment of the clients. Items reported on this line must be specifically identified.

31. Management Fees and Home Office Costs—the cost of purchased management services or home office costs incurred that are allocable to the provider. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule.

32. Nonemergency Medical Transportation—the cost of purchased nonemergency medical transportation services including, but not limited to, payments to employees for use of personal vehicle, ambulance companies and other transportation companies for transporting patients of the center.

33. Office Supplies and Subscriptions—cost of consumable goods used in the business office such as:

a. pencils, paper and computer supplies;

b. cost of printing forms and stationery including, but not limited to, nursing and medical forms, accounting and census forms, charge tickets, center letterhead and billing forms;

c. cost of subscribing to newspapers, magazines and periodicals.

34. Postage—cost of postage, including stamps, metered postage, freight charges and courier services.

35. Repairs and Maintenance—supplies and services, including electricians, plumbers, extended service agreements, etc., used to repair and maintain the center building, furniture and equipment except vehicles. This includes computer software maintenance.

36. Taxes and Licenses—the cost of taxes and licenses paid that are not included on any other line on Form 6. This includes tags for vehicles, licenses for center staff (including nurse aide re-certifications) and buildings.

37. Telephone and Communications—cost of telephone services, wats lines and fax services.

38. Travel—cost of travel (airfare, lodging, meals, etc.) by the administrator and other authorized personnel to attend professional and continuing educational seminars and meetings or to conduct center business. Commuting expenses and travel allowances are not allowable.

39. Vehicle Expenses—vehicle maintenance and supplies, including gas and oil.

40. Utilities—cost of water, sewer, gas, electric, cable TV and garbage collection services.

41. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital as administrative and operating costs.

42. Total Administrative and Operating Costs.

D. Property and Equipment

1. Amortization Expense, Capital—legal and other costs incurred when financing the center must be amortized over the life of the mortgage. Amortization of goodwill is not an allowable cost. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

2. Depreciation—depreciation on the center’s buildings, furniture, equipment, leasehold improvements and land improvements.

3. Interest Expense, Capital—interest paid or accrued on notes, mortgages, and other loans, the proceeds of which were used to purchase the center’s land, buildings and/or furniture, equipment and vehicles.

4. Property Insurance—cost of fire and casualty insurance on center buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

5. Property Taxes—taxes levied on the center’s buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

6. Rent, Building—cost of leasing the center’s real property.

7. Rent, Furniture and Equipment—cost of leasing the center’s furniture and equipment, excluding vehicles.

8. Lease, Automotive—cost of leases for vehicles used for patient care. A mileage log must be maintained. If a leased vehicle is used for both patient care and personal purposes, cost must be allocated based on the mileage log.

9. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital or state institution as property costs when those costs include allocated overhead.

10. Total Property and Equipment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9113. Allowable Costs

A. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs.

1. These general cost principles include determining whether the cost is:

a. ordinary, necessary, and related to the delivery of care;

b. what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm’s length transaction; and

c. for goods or services actually provided to the center.

B. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider’s reported costs. The Medicare Provider Reimbursement Manual is the final authority for allowable costs unless the department has set a more restrictive policy.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9115. Nonallowable Costs

A. Costs that are not based on the reasonable cost of services covered under Medicare and are not related to the care of recipients are considered nonallowable costs.

B. Reasonable cost does not include the following:

1. costs not related to client care;

2. costs specifically not reimbursed under the program;

3. costs that flow from the provision of luxury items or services (items or services substantially in excess or more expensive than those generally considered necessary for the provision of the care);

4. costs that are found to be substantially out of line with other centers that are similar in size, scope of services and other relevant factors;

5. costs exceeding what a prudent and cost-conscious buyer would incur to purchase the goods or services.

C. General nonallowable costs:

1. services for which Medicaid recipients are charged a fee;

2. depreciation of non-client care assets;

3. services that are reimbursable by other state or federally funded programs;

4. goods or services unrelated to client care;

5. unreasonable costs.

D. Specific nonallowable costs (this is not an all inclusive listing):

1. advertising—costs of advertising to the general public that seeks to increase patient utilization of the ADHC center;

2. bad debts—accounts receivable that are written off as not collectible;

3. contributions—amounts donated to charitable or other organizations;

4. courtesy allowances;

5. director’s fees;

6. educational costs for clients;

7. gifts;

8. goodwill or interest (debt service) on goodwill;

9. costs of income producing items such as fund raising costs, promotional advertising, or public relations costs and other income producing items;

10. income taxes, state and federal taxes on net income levied or expected to be levied by the federal or state government;

11. insurance, officers—cost of insurance on officers and key employees of the center when the insurance is not provided to all employees;

12. judgments or settlements of any kind;

13. lobbying costs or political contributions, either directly or through a trade organization;

14. non-client entertainment;

15. non-Medicaid related care costs—costs allocated to portions of a center that are not licensed as the reporting ADHC or are not certified to participate in Title XIX;

16. officers’ life insurance with the center or owner as beneficiary;

17. payments to the parent organization or other related party;

18. penalties and sanctions—penalties and sanctions assessed by the Centers for Medicare and Medicaid Services, the Internal Revenue Service or the State Tax Commission; insufficient funds charges;

19. personal comfort items; and

20. personal use of vehicles.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9117. Audits

A. Each provider shall file an annual center cost report and, if applicable, a central office cost report.

B. The provider shall be subject to financial and compliance audits.

C. All providers who elect to participate in the Medicaid Program shall be subject to audit by state or federal regulators or their designees. Audit selection shall be at the discretion of the department.

1. The department conducts desk reviews of all of the cost reports received and also conducts on-site audits of provider cost reports.

2. The records necessary to verify information submitted to the department on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to the department's audit staff.

D. In addition to the adjustments made during desk reviews and on-site audits, the department may exclude or adjust certain expenses in the cost report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

E. The center shall retain such records or files as required by the department and shall have them available for inspection for five years from the date of service or until all audit exceptions are resolved, whichever period is longer.

F. If a center's audit results in repeat findings and adjustments, the department may:

1. withhold vendor payments until the center submits documentation that the non-compliance has been resolved;

2. exclude the provider's cost from the database used for rate setting purposes; and

3. impose civil monetary penalties until the center submits documentation that the non-compliance has been resolved.

G. If the department's auditors determine that a center's financial and/or census records are unauditible, the vendor payments may be withheld until the center submits auditible records. The provider shall be responsible for costs incurred by the department's auditors when additional services or procedures are performed to complete the audit.

H. Vendor payments may also be withheld under the following conditions:

1. a center fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter from the department; or

2. a center fails to respond satisfactorily to the department's request for information within 15 days after receiving the department's notification letter.

I. The provider shall cooperate with the audit process by:

1. promptly providing all documents needed for review;

2. providing adequate space for uninterrupted review of records;

3. making persons responsible for center records and cost report preparation available during the audit;

4. arranging for all pertinent personnel to attend the closing conference;

5. insuring that complete information is maintained in client's records;

6. developing a plan of correction for areas of noncompliance with state and federal regulations immediately after the exit conference time limit of 30 days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9119. Exclusions from the Database

A. The following providers shall be excluded from the database used to calculate the rates:

1. providers with disclaimed audits; and

2. providers with cost reports for periods other than a 12-month period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

§9121. Provider Reimbursement

A. Cost Determination Definitions

Adjustment Factor—computed by dividing the value of the index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

Base Rate—calculated in accordance with §9121.B.5, plus any base rate adjustments granted in accordance with §9121.B.7 which are in effect at the time of calculation of new rates or adjustments.

Base Rate Components—the base rate is the summation of the following:

a. direct care;

b. care related costs;

c. administrative and operating costs; and

d. property costs.

Indices—

a. CPI, All Items—the Consumer Price Index for All Urban Consumers-South Region (All Items line) as published by the United States Department of Labor.

b. CPI, Medical Services—the Consumer Price Index for All Urban Consumers-South Region (Medical Services line) as published by the United States Department of Labor.

B. Rate Determination

1. The base rate is calculated based on the most recent audited or desk reviewed cost for all ADHC providers filing acceptable full year cost reports.

2. Audited and desk reviewed costs for each component are ranked by center to determine the value of each component at the median.

3. The median costs for each component are multiplied in accordance with §9121.B.4 then by the appropriate economic adjustment factors for each successive year to determine base rate components. For subsequent years, the components thus computed become the base rate components to be multiplied by the appropriate economic adjustment factors, unless they are adjusted as provided in §9121.B.7 below. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply

only when the state legislature allocates funds for this purpose. The inflationary adjustment shall be made prorating allocated funds based on the weight of the rate components.

4. The inflated median shall be increased to establish the base rate median component as follows.

a. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

b. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

c. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

5. At least every three years, audited and desk reviewed cost report items will be compared to the rate components calculated for the cost report year to insure that the rates remain reasonably related to costs.

6. Formulae. Each median cost component shall be calculated as follows.

a. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

i. For dates of service on or after February 9, 2007, and extending until the ADHC rate is rebased using a cost report that begins after July 1, 2007, the center-specific direct care rate will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

b. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

c. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI-All Items index for December of the year proceeding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

d. Property Cost Component. The property per diem costs from all acceptable full year cost reports, except those

for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

7. Interim Adjustments to Rates. If an unanticipated change in conditions occurs that affects the cost of at least 50 percent of the enrolled ADHC providers by an average of five percent or more, the rate may be changed. The department will determine whether or not the rates should be changed when requested to do so by 25 percent or more of the enrolled providers, or an organization representing at least 25 percent of the enrolled providers. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. The department may initiate a rate change without a request to do so. Changes to the rates may be temporary adjustments or base rate adjustments as described below.

a. Temporary Adjustments. Temporary adjustments do not affect the base rate used to calculate new rates.

i. Changes Reflected in the Economic Indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic indices, such as a change in the minimum wage, a change in FICA or a utility rate change, occur after the end of the period covered by the indices, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

ii. Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay, such as a change in certification standards mandating additional equipment or furnishings. Such adjustments shall be subject to the bureau's review and approval of costs prior to reimbursement.

b. Base Rate Adjustment. A base rate adjustment will result in a new base rate component value that will be used to calculate the new rate for the next fiscal year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

8. Provider Specific Adjustment. When services required by these provisions are not made available to the recipient by the provider, the department may adjust the prospective payment rate of that specific provider by an amount that is proportional to the cost of providing the service. This adjustment to the rate will be retroactive to the date that is determined by the department that the provider last provided the service and shall remain in effect until the department validates, and accepts in writing, an affidavit that the provider is then providing the service and will continue to provide that service.

C. Cost Settlement. The direct care cost component shall be subject to cost settlement. The direct care floor shall be equal to 90 percent of the median direct care rate component trended forward for direct care services (plus 90 percent of any direct care incentive added to the rate). The Medicaid Program will recover the difference between the direct care floor and the actual direct care amount expended. If a provider receives an audit disclaimer, the cost settlement for that year will be based on the difference between the direct care floor and the lowest direct care per diem of all facilities in the most recent audited and/or desk reviewed database trended forward to the rate period related to the disclaimer.

D. Support Coordination Services Reimbursement. Support coordination services previously provided by ADHC providers and included in the rate, including the Minimum Data Set Home Care (MDS/HC), the social assessment, the nursing assessment, the CPOC and home visits will no longer be the responsibility of the ADHC provider. Support coordination services shall be provided as a separate service covered in the waiver. As a result of the change in responsibilities, the rate paid to providers shall be adjusted accordingly.

1. Effective January 1, 2009, the rate paid to ADHC providers on December 31, 2008 shall be reduced by \$4.67 per day which is the cost of providing support coordination services separately.

2. This rate reduction will extend until such time that the ADHC provider's rate is rebased using cost reports that do not reflect the cost of delivering support coordination services.

E. Effective for dates of service on or after August 1, 2010, the reimbursement rate for ADHC services provided in the EDA Waiver shall be reduced by 2 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

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

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

Bruce D. Greenstein
Secretary

1011#091

DECLARATION OF EMERGENCY

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver—Reimbursement Rate
Reduction (LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed

the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) to reduce the reimbursement rates paid for NOW services (*Louisiana Register*, Volume 36, Number 6).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the New Opportunities Waiver to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the New Opportunities Waiver to further reduce the reimbursement rates.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Reimbursement Methodology

A. - I. ...

J. Effective for dates of service on or after August 1, 2010, the reimbursement rates for New Opportunity Waiver services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. environmental accessibility adaptations;
- b. specialized medical equipment and supplies;
- c. personal emergency response systems;
- d. one-time transitional expenses; and
- e. individualized and family support services—
night and shared night.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens

with Developmental Disabilities, LR 35:1851 (September 2009), amended LR 36:1247 (June 2010), LR 36:

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

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

Bruce D. Greenstein
Secretary

1011#092

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from institutional care (Louisiana Register, Volume 33, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (Louisiana Register, Volume 36, Number 4). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget for waiver participants and to reduce the reimbursement rates for waiver services (Louisiana Register, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule (Louisiana Register, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 20, 2010 Emergency Rule. The action is being taken to comply with the

provisions of the approved waiver application and to secure enhanced federal funding.

Effective December 19, 2010, the Department of Health and Hospitals, Bureau of Health Services and the Office for Citizens with Developmental Disabilities amend the provisions governing the Residential Options Waiver.

Title 50

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

Subpart 13. Residential Options Waiver

Chapter 161. General Provisions

§16101. Introduction

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

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16103. Program Description

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

B. ROW offers an alternative to institutional care that:

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

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

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

4. Repealed.

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

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

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

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

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

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

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16105. Participant Qualifications

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

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

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

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

4. be a resident of Louisiana; and

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

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

1 - 3.c. Repealed.

C. Justification must be documented in the OCDD approved POC that the ROW services are appropriate, cost effective and represent the least restrictive environment for the individual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 36:

§16106. Money Follows the Person Rebalancing Demonstration

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

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

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

1. Participants with a developmental disability must:

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 36:

§16107. Programmatic Allocation of Waiver Opportunities

A. ROW opportunities will be offered to individuals in the following targeted population groups:

1. children:

a. who are from birth through age 18;

b. who reside in a nursing facility;

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

d. who are participants in the MFP Rebalancing Demonstration; and

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

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

B. ROW opportunities will be offered to:

1. children who are currently residing in a Medicaid enrolled nursing facility and will be participating in the MFP Rebalancing Demonstration; and

2. individuals who are currently residing in a Medicaid enrolled facility that goes through the ICF-DD bed conversion process.

C. After an individual is offered a ROW opportunity, the individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination.

1. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing.

a. - c. Repealed.

2. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified.

C.3. - E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16109. Admission Denial or Discharge Criteria

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

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

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

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

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

5. The individual resides in another state.

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

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

8. Repealed.

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

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

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

3. loss of developmental disability system eligibility;

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

5. change of residence to another state ;

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Chapter 163. Covered Services

§16301. Assistive Technology and Specialized Medical Equipment and Supplies

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

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

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

1. evaluation of participant needs;
2. customization of the equipment or device;
3. coordination of necessary therapies, interventions or services;

4. training or technical assistance on the use and maintenance of the equipment or device for the participant or, where appropriate, his/her family members, legal guardian or responsible representative;

5. training or technical assistance, when appropriate, for professionals, other service providers, employers, or other individuals who are substantially involved in the participant's major life functions;

6. all service contracts and warranties included in the purchase of the item by the manufacturer; and

7. equipment or device repair and replacement of batteries and other items that contribute to ongoing maintenance of the equipment or device;

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

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

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

C.1.a. - D. ...

E. Service Exclusions

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16303. Community Living Supports

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

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

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

2. socialization skills training;

a. Repealed.

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

a. Repealed.

4. development of appropriate, positive behaviors.

a. - b. Repealed.

C. ...

D. Community living supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. In order for CLS services to be shared, the following conditions must be met:

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

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

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

4. a shared rate must be billed.

E. - E.1. ...

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

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

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

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

6. Community living supports shall not be provided in a licensed respite care facility.

a. - d. Repealed.

7. Community living supports services are not available to individuals receiving the following services:

a. shared living;

b. home host; or

c. companion care.

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

a. day habilitation;

b. prevocational;

c. supported employment;

d. respite-out of home services; or

e. transportation-community access.

F. - F.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16305. Companion Care

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

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

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

3. Repealed.

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

1. - 2. Repealed.

C. Provider Responsibilities

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

a. - c. ...

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

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

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

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

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

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

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

a. - b. Repealed.

D. Companion Responsibilities

1. The companion is responsible for:

a. participating in and abiding by the POC;

b. ...

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

E. Service Limits

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

F. Service Exclusions

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

a. respite care service—out of home;

b. shared living;

c. community living supports; or

d. host home.

2. - 2.d. Repealed.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16307. Day Habilitation Services

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

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

2. ...

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

B. Day habilitation services shall:

1. focus on enabling participants to attain maximum skills;

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

3. - 4. ...

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

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

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

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

e. no rounding up of hours is allowed.

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

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

2. - 4.c. Repealed.

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

E. Service Exclusions

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

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

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

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

a. community living supports;

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

c. respite care services—out of home.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16309. Dental Services

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

1. diagnostic services;

2. preventative services;

3. restorative services;

4. endodontic services;

5. periodontal services;

6. removable prosthodontics services;
7. maxillofacial prosthetics services;
8. fixed prosthodontics services;
9. oral and maxillofacial surgery;
10. orthodontic services; and
11. adjunctive general services.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16311. Environmental Accessibility Adaptations

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

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

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

1. assessments to determine the types of modifications that are needed;
2. training the participant and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;
3. repair of all equipment and/or devices, including replacement of batteries and other items that contribute to the ongoing maintenance of the adaptation(s); and
4. all service contracts and warranties which the manufacturer includes in the purchase of the item.

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

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

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

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

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

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

- a. host home; or

b. shared living settings which are provider owned or leased.

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

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

2. Repealed.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to:

- a. adapt vehicles that are owned or leased by paid caregivers or providers of waiver services; or
- b. to purchase or lease a vehicle.

2. - 4. ...

I. Provider Responsibilities

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

a. - b. Repealed.

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

a. Repealed.

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

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

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

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

a. In addition, these providers must:

- i. meet the applicable state and/or local requirements governing their licensure or certification; and
- ii. comply with the applicable state and local building or housing code standards governing home modifications.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16313. Host Home

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

1. Repealed.

B. Host home services include:

1. assistance with the activities of daily living and adaptive living needs;
2. assistance to develop leisure interests and daily activities in the home setting;
3. assistance to develop relationships with other members of the household;
4. supports in accessing community services, activities and pursuing and developing recreational and social interests outside the home; and
5. teaching community living skills to achieve participant's goals concerning community and social life as well as to maintain contacts with biological families and natural supports.

C. Host home provider agencies oversee and monitor the Host Home contractor to ensure the availability, quality, and continuity of services as specified in the ROW manual. Host Home provider agencies are responsible for the following functions:

1. arranging for a host home;
2. making an initial and periodic inspections of the host home; and
3. providing 24-hour oversight and supervision of Host Home services including providing emergency services and back-up for the scheduled and nonscheduled absences of the contractor.

a. Repealed.

D. Host home contractors are responsible for:

1. assisting with the development of the participant's POC and complying with the provisions of the plan;
2. maintaining and providing data to assist in the evaluation of the participant's personal goals;
3. maintaining adequate records to substantiate service delivery and producing such records upon request;
4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the Host Home setting; and
5. immediately reporting to the department and applicable authorities any major issues or concerns related to the participant's safety and well-being.

6. - 10. Repealed.

E. ...

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult participant's POC based

on medical, health and behavioral needs, age, capabilities and any special needs.

F.1. - I.1. ...

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

2.a. - 3....

J. Provider Qualifications

1. All agencies must:

- a. have experience in delivering therapeutic services to persons with developmental disabilities;
- b. have staff who have experience working with persons with developmental disabilities;
- c. screen, train, oversee and provide technical assistance to the host home contractors in accordance with OCDD requirements, including the coordination of an array of medical, behavioral and other professional services appropriate for persons with developmental disabilities; and
- d. provide on-going assistance to the Host Home contractors so that all HCBS requirements are met.

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

3. Agencies serving adults must be licensed by the Department of Health and Hospitals as a provider of substitute family care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16315. Intensive Community Supports

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2448 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16317. Nursing Services

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

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

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

3. Repealed.

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

1. - 2. ...

3. The health related training and education service is the only nursing service which can be provided to more than

one participant simultaneously. The cost of the service is allocated equally among all participants.

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

D. Provider Qualifications

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

E. Staffing Requirements

1. ...

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

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

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

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

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

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

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

a. volunteer nursing experience; or

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16319. One Time Transitional Services

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

1. - 1.d.iii. Repealed.

B. Allowable transitional expenses may include:

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

2. set-up fees for utilities;

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

a. bedroom and living room furniture;

b. table and chairs;

c. window blinds; and

d. food preparation items and eating utensils;

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

5. moving expenses; and

6. health and safety assurances including:

a. pest eradication; or

b. one-time cleaning prior to occupancy.

C. Service Limits

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

D. Service Exclusions

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

a. housing, rent or refundable security deposits; or

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

2. One-time transitional services are not available to participants who are receiving host home services.

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

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16321. Personal Emergency Response System (PERS)

A. Personal Emergency Response System (PERS) is a system connected to the participant's telephone that incorporates an electronic device which enables the participant to secure help in an emergency. The device can be worn as a portable "help" button and when activated, a response center is contacted.

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

1. ...

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

3. ...

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

D. Service Exclusions

1. Separate payment will not be made for shared living services.

E. Provider Qualifications

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

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

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

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

Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16323. Prevocational Services

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

1. - 2.b....

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

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

a. - c. ...

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

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

a. Repealed.

D. Service Limits

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

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

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

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

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

d. no rounding up of hours is allowed.

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

3.a. - 5.a. Repealed.

E. Service Exclusions

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

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

a. community living supports;

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

c. respite care services—out of home.

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

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

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

5. Transportation-community access shall not be used to transport ROW participants to any prevocational services.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16325. Professional Services

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

1. - 8.a. Repealed.

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

1. occupational therapist;

2. physical therapist;

3. speech therapist;

4. registered dietician;

5. social worker; and

6. psychologist.

C. Professional services may be utilized to:

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

a. - b. Repealed.

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

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

a. Repealed.

4. provide consultative services and recommendations;

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

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

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

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

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

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

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

D. Service Exclusions

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

a. Repealed.

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

a. - d. Repealed.

E. Provider Qualifications

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

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

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

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

2. Provider agency enrollment of professional services.

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

i. a Medicare certified free-standing rehabilitation center;

ii. a licensed home health agency;

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

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

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

i. employing the professionals; or

ii. contracting with the professionals.

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

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

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

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

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

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

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

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

a. volunteer experience; or

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16327. Respite Care Services—Out of Home

A. Respite care services—out of home are supports and services provided for the relief of those unpaid caregivers who normally provide care to participants who are unable to care for themselves. These services are furnished on a short-term basis in a licensed respite care center.

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

a. ...

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

B. Service Limits

1. Respite care services are limited to 720 hours per participant per POC year.

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

C. Service Exclusions

1. ...

2. Respite care services—Out of Home may not be billed for participants receiving the following services:

a. shared living;

b. companion care; or

c. host home.

d. Repealed.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16329. Shared Living Services

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

1. A shared living services provider delivers supports which include:

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

2. - 3. Repealed.

B. An ICF/DD may elect to permanently relinquish its ICF/DD license and all of its Medicaid Facility Need Review approved beds from the total number of Certificate of Need (CON) beds for that home and convert it into a shared living waiver home or in combination with other ROW residential options as deemed appropriate in the approved conversion agreement.

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

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

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

C. Shared Living Options

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

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

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

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

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

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

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

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

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

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

D. Service Exclusions

1. ...

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

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

a. - d. Repealed.

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

5. Transportation-community access services cannot be billed or provided for participants receiving shared living services, as this is a component of shared living services.

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

- a. community living supports;
- b. respite care services;
- c. companion care;
- d. host home; or
- e. personal emergency response system.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16331. Specialized Medical Equipment and Supplies

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16333. Support Coordination

A. Support coordination services are provided to all ROW participants to assist them in gaining access to needed waiver services, Medicaid State Plan services, as well as needed medical, social, educational and other services,

regardless of the funding source for the services. Support coordinators provide information and assistance to waiver participants by directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the participant's POC.

B. Support coordinators are responsible for providing assistance to participants who choose the self-direction option with their review of the Self-Direction Employer Handbook and for being available to these participants for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements for targeted case management services as set forth in LAC 50:XV.Chapter 105 and the Medicaid Targeted Case Management Manual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16335. Supported Employment

A. Supported employment provides assistance in an integrated work setting to assist in the achievement and attainment of work related skills and includes on-going support to maintain employment.

1. - 3. Repealed.

B. Supported Employment services include:

1. ...

2. services that assist a participant to develop and operate a micro-enterprise;

a. this service consists of:

i. assisting the participant to identify potential business opportunities;

ii. ...

iii. identification of the supports that are necessary in order for the participant to operate the business; and

iv. ...

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The workers with disabilities may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business;

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor); and

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

C. Service Limits

1. The required minimum number of service hours per day per participant is as follows for:

a. individual placement services, the minimum is one hour;

b. services that assist a participant to develop and operate a micro-enterprise, the minimum is one hour;

c. an enclave, the minimum is 2.5 hours; and

d. a mobile work crew, the minimum is 2.5 hours.

2. Two half-day units may be billed if the participant spends a minimum of five hours at the service site.

3. Participants may receive more than one vocational or rehabilitative service per day as long as the service and billing requirements for each service are met.

4. Transportation to and from the service site is offered and billable as a component of the support employment service; however, transportation is payable only when a supported employment service is provided on the same day.

D. Service Exclusions

1. ...

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. - 3.c....

4. Any time less than 2.5 hours for enclaves and mobile crews is not billable or payable.

5. ...

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

6. - 6.c. ...

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

8. No rounding up of hours is allowed.

E. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a Community Rehabilitation Program or a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16337. Transportation-Community Access

A. Transportation-community access services enable participants to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, community inclusion and to support self-directed employees benefits as outlined in the participant's POC. Transportation-community access services shall be offered as documented in the participant's approved POC.

1. The participant must be present to receive this service.

2. Whenever possible, the participant must utilize the following resources for transportation:

a. - b. ...

B. Service Limits

1. Community access trips are limited to three per day and must be arranged for geographic efficiency.

2. Greater than three trips per day require approval from the department or its designee.

a. Repealed.

C. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

a. shared living services; or

b. community living services.

3. Transportation-community access will not be used to transport participants to day habilitation, pre-vocational, or supported employment services.

D. Provider Qualifications. Friends and family members who furnish transportation-community access services to waiver participants must be enrolled as Medicaid Friends and Family Transportation providers.

1. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain:

a. the state minimum automobile liability insurance coverage;

b. a current state inspection sticker; and

c. a current valid driver's license.

2. No special inspection by the Medicaid agency will be conducted.

a. - b. Repealed.

3. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the signed statement of the individual enrolling for payment that all three requirements are met.

a. The statement must also have the signature of two witnesses.

4. Family and friends transportation providers are limited to transporting up to three specific waiver participants.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

E.1. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Chapter 165. Self-Direction Initiative

§16501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver participant to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver participants choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the participant or authorized representative include:

1. - 2. ...

a. Participants must adhere to the health and welfare safeguards identified by the support team, including:

i. ...

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver participants;

3. ...

a. This annual budget is determined by the recommended service hours listed in the participant's POC to meet his needs.

b. The participant's individual budget includes a potential amount of dollars within which the participant, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. **Voluntary Termination.** The waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. **Involuntary Termination.** The department may terminate the self-direction service option for a participant and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service option;

b. the participant is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three payment cycles in the period of a year, the participant or authorized representative:

i. ...

ii. fails to follow the Personal Purchasing Plan and the POC;

C.2.d.iii. - D. ...

E. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the participant and the primary Companion Care provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Chapter 167. Provider Participation

§16701. General Provisions

A. ...

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department;

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual;

3. comply with all of the state laws and regulations for conducting business in Louisiana, and when applicable, with the state requirements for designation as a non-profit organization; and

4. comply with all of the training requirements for providers of waiver services.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver participant and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the participant is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her POC.

D. If transportation is provided as part of a waiver service, the provider must comply with all of the state laws and regulations applicable to vehicles and drivers.

E. All services rendered shall be prior approved and in accordance with the POC.

F. Providers, including direct care staff, cannot live in the same residence as the participant, except host home contractors and companion care workers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16703. Staffing Restrictions and Requirements

A. Payments shall not be made to persons who are legally responsible for the care of the waiver participants which include:

1. parents of minor children;
2. spouses for each other;
3. legal guardians for adults or children with developmental disabilities; or
4. parents for their adult child with developmental disabilities, regardless of the legal status of the adult child.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the participant.

1. Relatives must also comply with the following requirements:

a. become an employee of the participant's chosen waiver provider agency;

b. become a Medicaid enrolled provider agency; or

c. if the self-direction option is selected, relatives must:

i. become an employee of the self-direction participant; and

ii. have a Medicaid provider agreement executed by the fiscal agent as authorized by the Medicaid agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. - 3.e. ...

f. registered dietician;

4. support coordination; or

5. supported employment:

a. individual placement; and

b. micro-enterprise.

6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. environmental accessibility adaptations; and

a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates;

2. assistive technology/specialized medical equipment and supplies.

3. Repealed.

C. The following services are reimbursed at a per diem rate:

1. ...

2. companion cares; and

3. shared living services;

a. per diem rates are established based on the number of individuals sharing the living service module for both shared living non-conversion and shared living conversion services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

1. day habilitation;
2. pre-vocational; and
3. supported employment:
 - a. mobile crew; and
 - b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for Residential Options Waiver services shall be reduced by two percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaption services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§16903. Direct Support Staff Wages

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher:

1. community living supports;
2. respite services-out of home;
3. shared living;
4. day habilitation;
5. prevocational services; and
6. supported employment.
7. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

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

Bruce D. Greenstein
Secretary

1008#107

DECLARATION OF EMERGENCY

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver—Reimbursement Rate Reduction
(LAC 50:XXI.6101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 10).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for Supports Waiver services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XXI.6101 as a result of the promulgation of the October 20, 2010 final Rule governing the Supports Waiver. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the August 1, 2010 Emergency Rule

governing the reimbursement methodology for Supports Waiver services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement Methodology

§6101. Reimbursement Methodology

A. - K.1. ...

L. Effective for dates of service on or after August 1, 2010, the reimbursement rates for Supports Waiver services shall be reduced by 2 percent of the rates on file as of July 31, 2010.

1. Support coordination services and personal emergency response system services shall be excluded from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), amended LR 36:

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

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

Bruce D. Greenstein
Secretary

1011#079

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Reimbursement Methodology
(LAC 50:V.Chapter 7, 953, 955, 959, and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 7 and amends §§953,955,959 and 967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule which established the provisions governing a prospective reimbursement methodology for inpatient hospital services (*Louisiana Register*, Volume 20, Number 6). These provisions included the establishment of general and specialized peer group per diem rates, level of care criteria and staffing requirements for certain resource intensive inpatient services and an appeals procedure for adjustment of rate components. The department subsequently established a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients. As a result of a budgetary shortfall in state fiscal year 2010, the department also reduced the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 11).

As a result of a continuing budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 8). The August 1, 2010 Emergency Rule also amended the provisions governing the appeals procedure that address the criteria for qualifying loss.

Taking the proposed per diem rate reductions into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services and children’s specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:V.953, §955, §959 and §967 as a result of the promulgation of the November 20, 2010 final Rule governing inpatient hospital services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 7. Prospective Reimbursement

Subchapter A. Appeals Procedure

§701. Request for Administrative Review

A. Any hospital seeking an adjustment to its rate, shall submit a written request for administrative review to the Medicaid director (hereafter referred to as director) within

30 days after receipt of the letter notifying the hospital of its rates.

1. The receipt of the letter notifying the hospital of its rates shall be deemed to be 5 days from the date of the letter.

2. The time period for requesting an administrative review may be extended upon written agreement between the department and the hospital.

B. The department will acknowledge receipt of the written request within 30 days after actual receipt. Additional documentation may be requested from the hospital as may be necessary for the director to render a decision. The director shall issue a written decision upon the hospital's request for a rate adjustment within 90 days after receipt of all additional documentation or information requested.

C. Any hospital seeking an adjustment to its rate, must specify all of the following:

1. the nature of the adjustment sought;
2. the amount of the adjustment sought; and
3. the reasons or factors that the hospital believes justify an adjustment.

D. Any request for an adjustment must include an analysis demonstrating the extent to which the hospital is incurring or expects to incur a qualifying loss in providing covered services to Medicaid and indigent patients.

1. For purposes of these provisions, qualifying loss shall mean that amount by which the hospital's allowable costs (excluding disproportionate share payment adjustments) exceed the Medicaid reimbursement implemented pursuant to these provisions.

2. "Cost" when used in the context of allowable shall mean a hospital's costs incurred in providing covered inpatient services to Medicaid and indigent patients, as calculated in the relevant definitions governing cost reporting.

E. The hospital will not be required to present an analysis of its qualifying loss where the basis for its appeal is limited to a claim that:

1. the rate-setting methodology or criteria for classifying hospitals or hospital claims under the State Plan were incorrectly applied;

2. that incorrect or incomplete data or erroneous calculations were used in establishment of the hospital rates; or

3. the hospital had incurred additional costs because of a catastrophe that meets certain conditions.

F. Except in cases where the basis for the hospital's appeal is limited to a claim that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied, or that the incorrect or incomplete data or erroneous calculations were in the establishment of the hospital's rate, the department will not award additional reimbursement to a hospital, unless the hospital demonstrates that the reimbursement it receives based on its prospective rate is 70 percent or less of the allowable costs it incurs in providing Medicaid patients care and services that conform to the applicable state and federal laws of quality and safety standards.

1. The department will not increase a provider's rate to more than 105 percent of the peer group rate.

G. In cases where the rate appeal relates to an unresolved dispute between the hospital and its Medicare fiscal

intermediary as to any cost reported in the hospital's base year cost report, the director will resolve such disputes for purposes of deciding the request for administrative review.

H. The following matters will not be subject to appeal:

1. the use of peer grouped rates;
2. the use of teaching, non-teaching and bed-size as criteria for hospital peer groups;

3. the use of approved graduate medical education and intern and resident full time equivalents as criteria for major teaching status;

4. the use of fiscal year 1991 medical education costs to establish a hospital-specific medical education component of each teaching hospital's prospective rate;

5. the application of inflationary adjustments contingent on funding appropriated by the legislature;

6. the criteria used to establish the levels of neonatal intensive care;

7. the criteria used to establish the levels of pediatric intensive care;

8. the methodology used to calculate the boarder baby rates for nursery;

9. the use of hospital specific costs for transplant per diem limits;

10. the criteria used to identify specialty hospital peer groups; and

11. the criteria used to establish the level of burn care.

I. The hospital shall bear the burden of proof in establishing facts and circumstances necessary to support a rate adjustment. Any costs that the provider cites as a basis for relief under this provision must be calculable and auditable.

J. The department may award additional reimbursement to a hospital that demonstrates by clear and convincing evidence that:

1. A qualifying loss has occurred and the hospitals current prospective rate jeopardized the hospital's long-term financial viability; and

2. the Medicaid population served by the hospital has no reasonable access to other inpatient hospitals for the services that the hospital provides and that the hospital contends are under reimbursed; or

3. Alternatively, demonstrates that its uninsured care hospital costs exceeds 5 percent of its total hospital costs, and a minimum of \$9,000,000 in uninsured care hospital cost in the preceding 12 month time period and the hospital's uninsured care costs has increased at least 35 percent during a consecutive six month time period during the hospital's latest cost reporting period.

a. For purposes of these provisions, an uninsured patient is defined as a patient that is not eligible for Medicare or Medicaid and does not have insurance.

b. For purposes of these provisions, uninsured care costs are defined as uninsured care charges multiplied by the cost to charge ratios by revenue code per the last filed cost report, net of payments received from uninsured patients.

i. The increase in uninsured care costs must be a direct result of a permanent or long term (no less than six months) documented change in services that occurred at a state owned and operated hospital located less than eight miles from the impacted hospital.

ii. For the purpose of this Rule, if a hospital has multiple locations of service, each location shall measure

uninsured care costs separately and qualify each location as an individual hospital. Rate adjustments awarded under this provision will be determined by the secretary of the department and shall not exceed 5 percent of the applicable per diem rate.

K. In determining whether to award additional reimbursement to a hospital that has made the showing required, the director shall consider one or more of the following factors and may take any of these actions.

1. The director shall consider whether the hospital has demonstrated that its unreimbursed costs are generated by factors generally not shared by other hospitals in the hospital's peer group. Such factors may include, but are not limited to extraordinary circumstances beyond the control of the hospital and improvements required to comply with licensing or accrediting standards. Where it appears from the evidence presented that the hospital's costs are controllable through good management practices or cost containment measures or that the hospital has through advertisement to the general public promoted the use of high costs services that could be provided in a more cost effective manner, the director may deny the request for rate adjustment.

2. The director may consider, and may require the hospital to provide financial data, including but not limited to financial ratio data indicative of the hospital's performance quality in particular areas of hospital operation.

3. The director shall consider whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis. In making such a determination, the director may require the hospital to provide audited cost data or other quantitative data including, but not limited to:

- a. occupancy statistics;
- b. average hourly wages paid;
- c. nursing salaries per adjusted patient day;
- d. average length of stay;
- e. cost per ancillary procedure;
- f. average cost per meal served;
- g. average cost per pound of laundry;
- h. average cost per pharmacy prescription;
- i. housekeeping costs per square foot;
- j. medical records costs per admission;
- k. full-time equivalent employees per occupied bed;
- l. age of receivables;
- m. bad debt percentage;
- n. inventory turnover rate; and
- o. information about actions that the hospital has taken to contain costs.

4. The director may also require that an onsite operational review/audit of the hospital be conducted by the Department of its designee.

L. In awarding relief under this provision, the director shall:

1. Make any necessary adjustments so as to correctly apply the rate-setting methodology, to the hospital submitting the appeal, or to correct calculations, data errors or omissions; or

2. increase one or more of the hospital's rates by an amount that can reasonably be expected to ensure continuing access to sufficient inpatient hospital services of adequate quality for Medicaid patients served by the hospital.

M. The following decisions by the director shall not result in any change in the peer group rates:

1. the decision to:

- a. recognize omitted, additional or increased costs incurred by any hospital;
- b. adjust the hospital rates; or
- c. otherwise award additional reimbursement to any hospital.

N. Hospitals that qualify under this provision must document their continuing eligibility at the beginning of each subsequent state fiscal year. Rate adjustments granted under this provision shall be effective from the first day of the rate period to which the hospital's appeal relates. However, no retroactive adjustments will be made to the rate or rates that were paid during any prior rate period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§703. Administrative Appeal and Judicial Review

A. If the director's decision is adverse to the hospital, the hospital may appeal the director's decision to the Bureau of Appeals or its successor. The appeal must be lodged within 30 days of receipt of the written decision of the director. The receipt of the decision of the director shall be deemed to be five days from the date of the decision. The administrative appeal shall be conducted in accordance with the Louisiana Administrative Procedure Act (APA). The Bureau of Appeals shall submit a recommended decision to the secretary of the department. The secretary will issue the final decision of the department.

B. Judicial review of the secretary's decision shall be in accordance with the APA and shall be filed in the nineteenth Judicial District Court.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - O.1. ...

P. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2531 (November 2010), LR 36:

§955. Long Term Hospitals

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to long term hospitals

shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 36:

§959. Inpatient Psychiatric Hospital Services

A. - H. ...

I. Effective for dates of service on or after August 1, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 36:

§967. Children's Specialty Hospitals

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, the per diem rates as calculated per §967.A.-C above shall be reduced by 4.6 percent. Final payment shall be the lesser of 90.63 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 90.63 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, amended LR 36:2562 (November 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#080

DECLARATION OF EMERGENCY

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

**Inpatient Hospital Services—Small Rural Hospitals
Upper Payment Limit (LAC 50:V.1125 and 1127)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 and 1127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient acute care services and psychiatric services (*Louisiana Register*, Volume 35, Number 5).

Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 11. Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§1125. Small Rural Hospitals

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement for inpatient acute care services rendered by small rural hospitals shall be up to the Medicare upper payment limits for inpatient hospital services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§1127. Inpatient Psychiatric Hospital Services

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement paid for psychiatric services rendered by distinct part psychiatric units in small rural hospitals shall be up to the Medicare inpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#094

DECLARATION OF EMERGENCY

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

**Inpatient Hospital Services—State Hospitals
Supplemental Payments (LAC 50:V.551)**

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.551 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June of 1983 that established the reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 6). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles utilizing a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 29, 1982. In October 1984, the department established separate per diem limitations for neonatal and pediatric intensive care

and burn units using the same base period as the target rate per discharge calculation (*Louisiana Register*, Volume 10, Number 10). In October 1992, the department promulgated a Rule which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services (*Louisiana Register*, Volume 18, Number 10). The department subsequently amended the reimbursement methodology for inpatient hospital services to establish a prospective payment methodology for non-state hospitals (*Louisiana Register*, Volume 20, Number 6). The per discharge and per diem limitations in state acute care hospitals were rebased by a Rule promulgated in December of 2003 (*Louisiana Register*, Volume 29, Number 12). The Bureau subsequently amended the reimbursement methodology for inpatient services provided in state acute hospitals (*Louisiana Register*, Volume 32, Number 2).

The department now proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to state-owned acute care hospitals, and to promulgate these provisions in a codified format for inclusion in the *Louisiana Administrative Code*. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2010-2011.

Effective October 16, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by state-owned acute care hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 5. State Hospitals

Subchapter B. Reimbursement Methodology

§551. Acute Care Hospitals

A. Effective for dates of service on or after October 16, 2010, a quarterly supplemental payment up to the Medicare upper payment limits will be issued to qualifying state-owned hospitals for inpatient acute care services rendered.

B. Qualifying Criteria

1. State-owned acute care hospitals located in DHH Administrative Region 8 (Monroe) will receive a quarterly supplemental payment.

2. Medicaid rates to non-qualifying state hospitals shall be 60 percent of allowable Medicaid costs.

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

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

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

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

Bruce D. Greenstein
Secretary

1011#005

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for Persons with
Developmental Disabilities
Non-State Facilities—Reimbursement Methodology
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*, Volume 36, Number 7). As a result of a budgetary shortfall in state fiscal year 2011, the department determined that it was necessary to amend the provisions governing the reimbursement methodology for non-state ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state ICFs/DD to restore the per diem rates paid to private providers who have downsized large facilities to less than 35 beds and incurred unusually high capital costs as a result of the downsizing (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to protect the health and welfare of Medicaid recipients and to insure continued provider participation in the Medicaid Program.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

**Subpart 3. Intermediate Care Facilities for Persons with
Developmental Disabilities**

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - J. ...

K. Effective for dates of service on or after August 1, 2010, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

L. Effective for dates of service on or after August 1, 2010, the per diem rates for ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be restored to the rates in effect on January 1, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 36:

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

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

Bruce D. Greenstein
Secretary

1011#095

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for Persons with
Developmental Disabilities
Public Facilities—Reimbursement Methodology
(LAC 50:VII.32965-32969)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32965-32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S.

49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for state-operated intermediate care facilities for persons with developmental disabilities (ICFs/DD) and established payments using a formula that established per diem rates at the Medicare upper payment limit for these services (*Louisiana Register*, Volume 29, Number 11). Upon submission of the corresponding State Plan amendment to the Centers for Medicare and Medicaid Services for review and approval, the department determined that it was also necessary to establish provisions in the Medicaid State Plan governing the reimbursement methodology for quasi-public ICFs/DD. The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for public ICFs/DD to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32965. State-Owned and Operated Facilities

A. Medicaid payments to state-owned and operated intermediate care facilities for persons with developmental disabilities are based on the Medicare formula for determining the routine service cost limits as follows:

1. calculate each state-owned and operated ICF/DD's per diem routine costs in a base year;
2. calculate 112 percent of the average per diem routine costs; and
3. inflate 112 percent of the per diem routine costs using the skilled nursing facility (SNF) market basket index of inflation.

B. Each state-owned and operated facility's capital and ancillary costs will be paid by Medicaid on a "pass-through" basis.

C. The sum of the calculations for routine service costs and the capital and ancillary costs "pass-through" shall be the per diem rate for each state-owned and operated ICF/DD. The base year cost reports to be used for the initial calculations shall be the cost reports for the fiscal year ended June 30, 2002.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§32967. Quasi-Public Facilities

A. Medicaid payment to quasi-public facilities is a facility-specific prospective rate based on budgeted costs. Providers shall be required to submit a projected budget for the state fiscal year beginning July 1.

B. The payment rates for quasi-public facilities shall be determined as follows:

1. determine each ICF/DD's per diem for the base year beginning July 1;
2. calculate the inflation factor using an average CPI index applied to each facility's per diem for the base year to determine the inflated per diem;
3. calculate the median per diem for the facilities' base year;
4. calculate the facility's routine cost per diem for the SFY beginning July 1 by using the lowest of the budgeted, inflated or median per diem rates plus any additional allowances; and
5. calculate the final approved per diem rate for each facility by adding routine costs plus any "pass through" amounts for ancillary services, provider fees, and grant expenses.

C. Providers may request a final rate adjustment subject to submission of supportive documentation and approval by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§32969. Transitional Rates for Public Facilities

A. Effective August 1, 2010, the department shall establish a transitional Medicaid reimbursement rate of \$302.08 per day per individual for a public ICF/DD community home that is transitioning to a private facility, provided that the community home meets the following criteria. The community home:

1. shall have a fully executed Cooperative Endeavor Agreement (CEA) with the Office for Citizens with Developmental Disabilities for the private operation of the facility;
2. shall have a high concentration of medically fragile individuals being served, as determined by the department; and

a. For purposes of these provisions, a medically fragile individual shall refer to an individual who has a medically complex condition characterized by multiple, significant medical problems that require extended care.

3. incurs or will incur higher existing costs not currently captured in the private ICF/DD rate methodology.

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

C. The transitional Medicaid reimbursement rate is all-inclusive and incorporates the following cost components:

1. direct care staffing;
2. medical/nursing staff, up to 23 hours per day;
3. medical supplies;
4. transportation;

5. administrative; and
6. the provider fee.

D. If the community home meets the criteria in §32969.C and the individuals served require that the community home has a licensed nurse at the facility 24 hours per day, seven days per week, the community home may apply for a supplement to the transitional rate. The supplement to the rate shall not exceed \$25.33 per day per individual.

E. The total transitional Medicaid reimbursement rate, including the supplement, shall not exceed \$327.41 per day per individual.

F. The transitional rate and supplement shall not be subject to the following:

1. inflationary factors or adjustments;
2. rebasing;
3. budgetary reductions; or
4. other rate adjustments.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

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

Bruce D. Greenstein
Secretary

1011#096

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for Persons with Developmental Disabilities—Reimbursement Rate Reduction
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the

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

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*; Volume 36, Number 7).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) intermediate care facility services for persons with developmental disabilities under the State Plan are available at least to the extent that they are available to the general population in the state.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for intermediate care facilities for persons with developmental disabilities to reduce the per diem rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - J. ...

K. Effective for dates of service on or after August 1, 2010, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 36:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

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

Bruce D. Greenstein
Secretary

1011#097

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Laboratory and Radiology Services
Reimbursement Rate Reduction
(LAC 50:XIX.4329 and 4333-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 and repeals LAC 50:XIX.4333 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 11).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). In addition, the provisions contained in this Chapter governing the reimbursement for outpatient hospital laboratory services were repealed as these provisions have been amended and repromulgated in LAC 50:V.Chapter 57. The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XIX.4329 and §§4334-4337 as a result of the promulgation of the November 20, 2010 final Rule governing laboratory and radiology services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule

governing the reimbursement methodology for laboratory and radiology services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIX. Other Services

Subpart 3. Laboratory and Radiology

Chapter 43. Billing and Reimbursement

Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

A. - H. ...

I. Effective for dates of service on or after August 1, 2010, the reimbursement rates for laboratory services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:

§4333. Outpatient Hospital Laboratory Services Reimbursement

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 Service Financing (for inclusion in the LAC) LR 28:1026 (May 2002), amended LR 29:1096 (July 2003), repealed LR 36:

§4334. Radiology Services

A. - G. ...

H. Effective for dates of service on or after August 1, 2010, the reimbursement rates for radiology services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in 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 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:

§4335. Portable Radiology Services

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rates for portable radiology services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:

§4337. Radiation Therapy Centers

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in 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 35:1898 (September 2009), amended LR 36:1248 (June 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#081

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
Reimbursement Rate Reduction (LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 11).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC

50:XXVII.573 as a result of the promulgation of the November 20, 2010 final Rule governing non-emergency medical transportation services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for non-emergency medical transportation services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§573. Non-Emergency, Non-Ambulance Transportation

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 4.5 percent of the rates in effect on July 31, 2010.

1. Friends and family providers are excluded from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2565 (November 2010), amended 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#082

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program
Termination of Parent/Family Intervention (Intensive)
Services and Continued Treatment Clarifications
(LAC 50:XV.335, 501-505 and 901)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals LAC 50:XV.335 and amends LAC 50:XV.501-505 and §901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is

directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for the Mental Health Rehabilitation (MHR) Program to reduce the reimbursement rates paid for mental health rehabilitation services (*Louisiana Register*, Volume 36, Number 11).

As a result of a budgetary shortfall in state fiscal year 2011, department promulgated an Emergency Rule which terminated the coverage of Parent/Family Intervention (Intensive) (PFII) services in the MHR Program and amended the provisions governing medical necessity for MHR services in order to establish continued treatment criteria (*Louisiana Register*, Volume 36, Number 8). Recipients who currently receive PFII services shall be transitioned to comparable services available in the MHR Program. The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XV.901 as a result of the promulgation of the November 20, 2010 final Rule governing mental health rehabilitation services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for mental health rehabilitation services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Subchapter C. Optional Services

§335. Parent/Family Intervention (Intensive)

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 31:1085 (May 2005), amended LR 32:2067 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2758 (December 2009), repealed LR 36:

Chapter 5. Medical Necessity Criteria

§501. General Provisions

A. - C. ...

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care. MHR providers shall rate recipients on the

CALOCUS/LOCUS at 90 day intervals, or at an interval otherwise specified by the bureau, and these scores and supporting documentation must be submitted to the bureau or its designee upon request. Ongoing services require authorization which may occur every 90 days or at any interval requested by the bureau or its designee, based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

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 31:1086 (May 2005) amended LR 32:2067 (November 2006), LR 34:1914 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§503. Adult Criteria for Services

A. - A.3.d.Note. ...

B. Criteria for Continued Treatment. Continuation of MHR treatment is medically necessary for individuals who meet all of the following criteria:

1. clinical evidence indicates a persistence of the problems that necessitated the provision of MHR services;
2. clinical evidence indicates that a less intensive level of care would result in exacerbation of the symptoms of the individual's mental disorder and clinical deterioration;
3. the ISRP has been developed, implemented and updated based on the individual recipient's clinical condition and response to treatment, as well as the strengths and availability of natural supports, with realistic goals and objectives clearly stated;
4. the recipient is actively engaged in treatment as evidenced by regular participation in services as scheduled;
5. progress is evident that the individual's disorder can be expected to improve significantly through medically necessary, appropriate therapy and that the individual is able to benefit from the therapy provided; and
6. there is clinical evidence of symptom improvement. If there has been no improvement, the ISRP may be reviewed and the frequency, amount or duration of services may be adjusted to a clinically appropriate level as determined by the bureau.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amended LR 32:2068 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§505. Child/Adolescent Criteria for Services

A. - A.3.d. ...

B. Criteria for Continued Treatment. Continuation of MHR treatment is medically necessary for children/youth who meet all of the following criteria:

1. clinical evidence indicates a persistence of the problems that necessitated the provision of MHR services;
2. clinical evidence indicates that a less intensive level of care would result in exacerbation of the symptoms of the child's mental or behavioral disorder and clinical deterioration;
3. the ISRP has been developed, implemented and updated based on the individual child's clinical condition

and response to treatment, as well as the strengths and availability of natural supports, with realistic goals and objectives clearly stated;

4. the recipient and family are actively engaged in treatment as evidenced by regular participation in services as scheduled;

5. progress is evident that the child's mental or behavioral disorder can be expected to improve significantly through medically necessary, appropriate therapy and that the child is able to benefit from the therapy provided; and

6. there is clinical evidence of symptom improvement. If there has been no improvement, the ISRP may be reviewed and the frequency, amount or duration of services may be adjusted to a clinically appropriate level as determined by the bureau.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 9. Reimbursement

§901. Reimbursement Methodology

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, Medicaid reimbursement shall be terminated for parent/family intervention (intensive) services.

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

HISTORICAL NOTE: Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:2565 (November 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#083

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Multi-Systemic Therapy
Reimbursement Rate Reduction (LAC 50:XV.25701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as

directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing multi-systemic therapy (MST) to reduce the reimbursement rates and to establish prior authorization requirements (*Louisiana Register*, Volume 36, Number 11).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for multi-systemic therapy services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XV.25701 as a result of the promulgation of the November 20, 2010 final Rule governing MST services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for multi-systemic therapy services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 17. Multi-Systemic Therapy

Chapter 257. Reimbursement

§25701. Reimbursement Methodology

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 2.63 percent of the rates on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in 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 35:247 (February 2009), amended LR 36:1250 (June 2010), LR 36:2566 (November 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

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

Bruce D. Greenstein
Secretary

1011#084

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services—Non-Rural, Non-State
Hospitals and Children’s Specialty Hospitals
Reimbursement Rate Reduction
(LAC:V.5109, 5313, 5317, 5513,
5517, 5713, 5719, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.5109 and amends §5313, §5317, §5513, §5517, §5713, §5719, §6115 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which revised the reimbursement methodology for outpatient services rendered by children’s specialty hospitals (*Louisiana Register*, Volume 35, Number 9). In January 2010, the department established a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). As a result of a budgetary shortfall in state fiscal year 2010, the department amended the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children’s specialty hospitals (*Louisiana Register*, Volume 36, Number 9). This Rule also incorporated the provisions of the September 1, 2009 Emergency Rule, with the exception of §5109, and the January 1, 2010 Emergency Rule.

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children’s specialty hospitals (*Louisiana*

Register, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to incorporate the provisions in §5109 of the September 1, 2009 Emergency Rule and to revise the formatting as a result of the promulgation of the September 20, 2010 final Rule governing outpatient hospital services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Taking the proposed reductions into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) outpatient hospital services and children’s specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing outpatient hospital services rendered by non-rural, non-state hospitals and children’s specialty hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 51. General Provisions

§5109. Children’s Specialty Hospitals

A. In order to receive Medicaid reimbursement for outpatient services as a children’s specialty hospital, the acute care hospital must meet the following criteria:

1. be recognized by Medicare as a prospective payment system (PPS) exempt children’s specialty hospital;
2. does not qualify for Medicare disproportionate share hospital payments; and
3. have a Medicaid inpatient days utilization rate greater than the mean plus two standard deviations of the Medicaid utilization rates for all hospitals in the state receiving Medicaid payments.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5313. Non-Rural, Non-State Hospitals

A. - D. ...

D.1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 36:

§5317. Children’s Specialty Hospitals

A. - B.1. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children’s specialty hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Final reimbursement shall be 87.91 percent of the allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 36:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5513. Non-Rural, Non-State Hospitals

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 36:

§5517. Children’s Specialty Hospitals

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children’s specialty hospitals for outpatient hospital clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 36:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5713. Non-Rural, Non-State Hospitals

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010),

amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 36:

§5719. Children’s Specialty Hospitals

A. - B. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 36:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6115. Non-Rural, Non-State Hospitals

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010. Final reimbursement shall be at 71.13 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), amended LR 36:2043 (September 2010), LR 36:

§6119. Children’s Specialty Hospitals

A. - B.1. ...

C. Effective for dates of service on or after August 1, 2010, the reimbursement fees paid to children’s specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

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

Bruce D. Greenstein
Secretary

1011#085

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Small Rural Hospitals—Upper Payment Limit
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, §§5511, 5711, 5911, and 6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for outpatient hospital services (*Louisiana Register*, Volume 35, Number 5).

Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse outpatient hospital services up to the Medicare outpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

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

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient

hospital surgery services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

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

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital clinic services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

A. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient clinical diagnostic laboratory services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

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

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for rehabilitation services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6113. Small Rural Hospitals

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

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

Bruce D. Greenstein
Secretary

1011#098

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Personal Care Services—Long-Term Reimbursement Rate Reduction (LAC 50:XV.12917)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the reimbursement methodology for long-term personal care services (LT-PCS) to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 6).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for long-term personal care services to further

reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 21, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long-Term Care

§12917. Reimbursement Methodology

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#099

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pregnant Women Extended Services Dental Services—Reimbursement Rate Reduction (LAC 50:XV.16107)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to

ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services to reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for dental services to further reduce the reimbursement rates for services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule to revise the formatting of LAC 50:XV.16107 as a result of the promulgation of the September 20, 2010 final Rule governing the Pregnant Women Extended Services Dental Program. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2010 Emergency Rule governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 13. Pregnant Women Extended Services

Chapter 161. Dental Services

§16107. Reimbursement

A. - D.3.q. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 69 percent for the comprehensive periodontal evaluation exam;
2. 65 percent for the following diagnostic services:
 - a. intraoral-periapical first film;
 - b. intraoral-periapical, each additional film; and
 - c. panoramic film and prophylaxis, adult; and
3. 58 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:
 - a. intraoral, occlusal film;

- b. bitewings, two films;
- c. amalgam (one, two or three surfaces) primary or permanent;
- d. amalgam (four or more surfaces);
- e. resin-based composite (one, two or three surfaces), anterior;
- f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
- g. resin-based composite crown, anterior;
- h. resin-based composite (one, two, three, four or more surfaces), posterior;
- i. prefabricated stainless steel crown, primary or permanent tooth;
- j. prefabricated resin crown;
- k. periodontal scaling and root planning (four or more teeth per quadrant);
- l. full mouth debridement to enable comprehensive evaluation and diagnosis;
- m. extraction, coronal remnants-deciduous tooth;
- n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
- o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
- p. removal of impacted tooth, soft tissue; and
- q. removal of impacted tooth, partially bony.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1902 (September 2009), amended LR 36:2044 (September 2010), 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, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Bruce D. Greenstein
Secretary

1011#086

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
Corrections Services**

Board of Parole (LAC 22:XI.103, 503, 511, and 1301)

The Board of Parole is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Louisiana Board of Parole.

The Emergency Rule implements several Acts of the 2010 Regular Session as follows:

Act No. 469 provides for membership of the board; specifically an ex officio member. The ex officio member shall not be a voting member nor shall he be counted or permitted to be counted for purposes of members necessary to take board action or to establish quorum.

Act No. 566 allows the Board to grant parole by 2/3 vote of a three-member panel or if the number exceeds a three member panel, a majority vote of those present if all of the following conditions are met:

(1) the offender has not been convicted of a crime of violence or a sex crime;

(2) the offender has not committed any disciplinary offenses in the 12 consecutive months prior to the parole eligibility date;

(3) the offender has completed the mandatory minimum of 100 hours of pre-release programming;

(4) the offender has completed substance abuse treatment as applicable;

(5) the offender has obtained a GED credential, unless the offender is deemed incapable of obtaining a GED credential, then the offender must complete at least one of the following: a literacy program, an adult basic education program or a job skills training program;

(6) the offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the Secretary of the Department of Public Safety and Corrections.

Act No. 792 allows an offender to earn good behavior credit while on parole.

Act No. 961 amends the method by which one appointment to the Parole Board is made relative to victim's rights advocacy organizations.

The Emergency Rule is necessary to implement the changes to the Louisiana Board of Parole's Rules to allow the Louisiana Board of Parole to immediately start using a 2/3 vote at the hearings of offenders who qualify under this section, to add an ex officio member to the board membership, to provide that offenders may earn credit for good behavior while on parole and to provide for appointments to the Parole Board on or after August 15, 2010. Implementation of the changes could possibly result in a cost savings to the State if the offender is released from physical custody of the Louisiana Department of Public Safety and Corrections. A delay in promulgation of the rules would have an adverse impact on the offenders who fall under the new conditions.

This Declaration of Emergency is effective November 20, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Board of Parole

Chapter 1. Administration

§103. Composition of the Board

A.1. The board shall be composed of seven members appointed by the governor and one ex-officio member. Of the seven members appointed by the Governor, one shall be the chairman of the board.

a. The warden, or in his absence the deputy warden, of the correctional facility in which the offender is

incarcerated shall be an ex officio member of the board. When the offender is housed in a local correctional facility and the warden or deputy warden of that facility is not able to attend the offender's parole hearing, the warden, or in his absence the deputy warden, of the facility where the offender's parole hearing is held may serve as an ex officio member. The ex officio member shall not be a voting member nor shall he be counted or permitted to be counted for purposes of the number of members necessary to take board action or the number of members necessary to establish quorum. In all other respects, the ex officio member shall have all duties, authority, requirements and benefits of any other board member.

2. ...

3. One member shall be appointed from a list of names submitted by any victim's rights advocacy organization which is recognized as a nonprofit with the Internal Revenue Service, incorporated or organized in the state of Louisiana and in good standing and does not engage in political activity, with each organization submitting a list of three names. However, no person nominated by any victim's rights advocacy organization shall be appointed to serve as a member of the board who has previously been confirmed by the senate and has served as a member of the board.

4. Each member shall, except the ex officio member, devote full time to the duties of the office and shall not engage in any other business or profession or hold any other public office.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended LR 37:

Chapter 5. Meetings and Hearing of the Board of Parole

§503. Selection of Three-Member Panels

A. The board shall meet in a minimum of three-member panels, except as otherwise provided in these rules.

B. The chairman of the board shall randomly assign all three-member panels. Each panel shall appoint the chairperson of that three-member panel.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq. and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended LR 37:

§511. Public Hearings

A. - B.2. ...

C.1. A unanimous vote is required to grant parole or to recommend work release regardless of the number of board members at the parole hearing, except as provided for in Subparagraph C.1.a. of this Subsection.

a. The board may grant parole with two votes of a three-member panel, or, if the number exceeds a three-member panel, a majority vote of those present if all of the following conditions are met:

i. the offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which

would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S.15:541, regardless of the date of conviction.

ii. the offender has not committed any disciplinary offenses in the twelve consecutive months prior to the parole eligibility date.

iii. the offender has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with R.S. 15:827.1.

iv. the offender has completed substance abuse treatment as applicable.

v. the offender has obtained a GED credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability. If the offender is deemed incapable of obtaining a GED credential, the offender must complete at least one of the following:

- (a). a literacy program;
- (b). an adult basic education program; or
- (c). a job skills training program;

vi. the offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

b. Notwithstanding any other provision of law in this section, no person convicted of a crime of violence against any peace officer as defined in R.S. 14.30(B), shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the board are present and all members present vote to grant parole.

C.2. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq. and RS. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended LR 37:

Chapter 13. Time Served

§1301. Time Must Be Served if Revoked

A.1. An offender returned to incarceration for a parole violation that does not include a new sentence for a felony offense will be returned to serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits and any credit for time served for good behavior while on parole.

2. ...

B. An offender returned to incarceration as a parole violator who has received a new sentence for a felony offense while on parole shall serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits and any credit for time served for good behavior while on parole. The new sentence shall be served consecutively to the previous sentence unless a concurrent term of imprisonment is expressly directed by the court.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., R.S. 15:540 et seq. and R.S. 15:571.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended LR 37:

C. A. Lowe, Jr.
Chairman

1011#022

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Disciplinary Rules and Procedures for Adult Offenders (LAC 22:I.341 and 363)

The Department of Public Safety and Corrections is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Department of Public Safety and Corrections.

The Emergency Rule implements Acts of the 2010 Regular Session as follows.

Act No. 379 enacts a new law which prohibits fire-raising in a correctional facility.

Act No. 505 amends the definition of contraband in a correctional facility.

The Emergency Rule is necessary to implement changes to the Department of Public Safety and Corrections' Offender Rule Book which are effective August 15, 2010. A delay in promulgation of the rules would have an adverse impact on the Department's primary mission which is to provide for staff and offender safety by maintaining an organized and disciplined system of operations which enhance the stability of correctional facility operations.

This Declaration of Emergency is effective November 20, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act 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

Subchapter B. Disciplinary Rules and Procedures for Adult Offenders

§351. Correcting Disciplinary Reports

A. - B.NOTE. ...

C. Evidence. The disciplinary board shall carefully evaluate all evidence presented or stipulated. In situations where the disciplinary report is based solely on information from a confidential informant or from an offender whose identity is known, there must be other evidence to corroborate the violation. That evidence may include, but is not limited to, witness statements from another confidential informant who has not been unreliable in the past and has legitimate knowledge of the present incident(s), the record

(investigative report) or other evidence. If requested, the accusing employee must be summoned to testify about the reliability and credibility of the confidential informant when the report is based solely on information from a confidential informant. (In order to accomplish this, the informant must have been reliable in the past and/or have legitimate knowledge of the present incident(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin V. Conner*, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR27:417 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008), amended LR 37:

§363. Disciplinary Rules

A. ...

B. Contraband (Schedule B). No offender shall have under his immediate control any illicit drugs, any product that could be used to adulterate a urine sample, unauthorized medication, alcoholic beverage, yeast, tattoo machine, tattoo paraphernalia, syringe, any type weapon, cellular phone or component hardware or other electronic communications device, whether operational or not, (including but not limited to beepers, pagers, subscriber identity module (SIM) cards, portable memory chips, batteries for these devices, chargers, global satellite system equipment), or any other item not permitted by department regulation or institutional posted policy to be received or possessed or any other item detrimental to the security of the facility. Money is contraband. Any item not being used for the purpose for which it was intended will be considered contraband if it is being used in a manner that is clearly detrimental to the security of the facility. Possession and/or use of lighted cigarettes or other smoking materials are deemed to be contraband in non-smoking areas. To smuggle or attempt to smuggle prohibited items into or out of the facility will be in violation of this rule.

B.1. - X.20. ...

21. Starting, causing, assisting in the creation of any fire, heat or spark of any nature by any means or methods, or attempting to start a fire and/or attempting to heat substances utilizing electrical/mechanical devices or any other means, other than in the performance of an approved work assignment;

22 - 23....

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995), *Cassels v. Stalder*, 342 F. Supp. 2d 555.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:419 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 31:1099 (May 2005), LR 34:2201 (October 2008), amended LR 37:

James M. Le Blanc
Secretary

1011#021

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Electronic Filing Mandate for Reports and Returns Related to the Sports Facility Assistance Fund (LAC 61:III.1527)

Under the authority of R.S. 47:1520 and 1511 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1527 to mandate the electronic filing of any report or return related to the Sports Facility Assistance Fund.

The Emergency Rule is necessary to allow the Department of Revenue to require electronic filing of these reports and returns for the 2010 taxable year. Without this Rule, all professional athletic teams and professional athletes that participate in athletic events within the state of Louisiana and are therefore required to file certain reports and returns will not know which method to use in order to file these reports and returns.

This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective on January 1, 2011 and shall remain in effect for the maximum period allowed under the act.

Title 61 REVENUE

Chapter 15. Mandatory Electronic Filing of Tax Returns and Payments

§1527. Electronic Filing Mandate for Reports and Returns Related to the Sports Facility Assistance Fund

A. R.S. 47:1520(A)(1)(e) allows the secretary to require electronic filing of any return or report filed by a professional athletic team or a professional athlete which is required to be filed by the Department of Revenue for the administration of the Sports Facility Assistance Fund.

B. Effective for the 2010 tax year filings and all tax year thereafter, all reports and returns filed by a professional athletic team or a professional athlete shall be filed electronically with the Department of Revenue using the electronic format provided by the department.

1. The returns and reports to be filed electronically include, but are not limited to, the following:

- a. L-1 with the team roster attached;
- b. L-3 reconciliation with attached, completed W-2s containing all federal information;
- c. IT 540B-NRA for nonresident athletes;
- d. IT 540 for resident athletes.

2. The team rosters attached to the L-1 should include the following information:

- a. team or franchise name;
- b. team or franchise account number;
- c. type of game or sporting event;
- d. sporting event or event locations;
- e. practice date if applicable;
- f. sporting event or game date;

- g. the names of each player and staff member who traveled to the sporting game or event in Louisiana;
- h. the social security numbers of each player and staff member;
- i. the addresses of each player and staff member;
- j. the job description of each player and staff member;
- k. the quarter salary of each player and staff member;
- l. total duty as defined in LAC 61:I.1304(I)(2);
- m. Louisiana duty days which includes days of all practices, meetings and games;
- n. the Louisiana wages of each athlete and staff member;
- o. the Louisiana withholding tax of each athlete and staff member; and
- p. the total roster Louisiana withholding tax.

C. Failure to comply with this electronic filing requirement will result in the assessment of a penalty \$1,000 per failure.

D. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other causes set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1520 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36:

Cynthia Bridges
Secretary

1011#024

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Crab Fishery Opening

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, which allows the Department of Wildlife and Fisheries and Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, oyster seasons and finfish seasons and R.S. 56:6.1 which provides the secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found or existing in the waters of the state, and a declaration of emergency adopted by the Wildlife and Fisheries Commission on November 4, 2010 which grants authority to the Secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the Secretary hereby opens commercial crab fishing in that portion of state inside and outside territorial waters seaward of a line extending one-quarter mile or more from the shoreline beginning at 29 degrees 12 minutes 35 seconds north latitude 89 degrees 01 minutes 05 seconds west longitude; thence south to 29 degrees 11 minutes 35 seconds north latitude 89 degrees 01

minutes 10 seconds west longitude; thence west southwest to 29 degrees 11 minutes 10 seconds north latitude 89 degrees 02 minutes 00 seconds west longitude; thence west southwest to 29 degrees 11 minutes 00 seconds north latitude 89 degrees 02 minutes 25 seconds west longitude; thence south southwest to 29 degrees 08 minutes 55 seconds north latitude 89 degrees 06 minutes 15 seconds west longitude; thence east southeast to 29 degrees 08 minutes 15 seconds north latitude 89 degrees 02 minutes 10 seconds west longitude; thence south southwest to 29 degrees 04 minutes 50 seconds north latitude 89 degrees 04 minutes 10 seconds west longitude; thence north northwest to 29 degrees 06 minutes 00 seconds north latitude 89 degrees 06 minutes 00 seconds west longitude; thence south southwest to 28 degrees 59 minutes 35 seconds north latitude 89 degrees 08 minutes 00 seconds west longitude; thence south southwest to 28 degrees 59 minutes 15 seconds north latitude 89 degrees 08 minutes 15 seconds west longitude; thence south southwest to 28 degrees 58 minutes 20 seconds north latitude 89 degrees 10 minutes 00 seconds west longitude; thence north northwest to 29 degrees 02 minutes 40 seconds north latitude 89 degrees 16 minutes 20 seconds west longitude; thence south southwest to 28 degrees 54 minutes 40 seconds north latitude 89 degrees 25 minutes 00 seconds west longitude including those waters within North Pass west of 89 degrees 01 minutes 05 seconds west longitude, Pass a Loutre west of 89 degrees 02 minutes 00 seconds west longitude, Northeast Pass west of 89 degrees 02 minutes 10 seconds west longitude, Southeast Pass west of 89 degrees 04 minutes 10 seconds west longitude and South Pass west of 89 degrees 08 minutes 00 seconds west longitude and Southwest Pass east of 89 degrees 25 minutes 00 seconds west longitude and excluding that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 12 minutes 35 seconds north latitude 89 degrees 01 minutes 05 seconds west longitude, 2) 29 degrees 11 minutes 35 seconds north latitude 89 degrees 01 minutes 10 seconds west longitude, 3) 29 degrees 11 minutes 10 seconds north latitude 89 degrees 02 minutes 00 seconds west longitude, 4) 29 degrees 11 minutes 35 seconds north latitude 89 degrees 02 minutes 55 seconds west longitude effective November 8, 2010.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to fish and other aquatic life. The secretary has determined that these portions of state inside and outside waters shall open to the commercial harvest of crabs November 8, 2010.

Robert J. Barham
Secretary

1011#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Fisheries Opening in Portions of the Mississippi River Delta

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:6.1 which provides the Secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found or existing in the waters of the state, and a declaration of emergency adopted by the Wildlife and Fisheries Commission on October 7, 2010 which grants authority to the secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the secretary hereby opens to commercial fishing except for the harvest of crabs and oysters that portion of state inside and outside territorial waters south of the northern shore of Pass a Loutre and 29 degrees 12 minutes 40 seconds north latitude seaward of a line extending one-quarter mile or more from the shoreline beginning at 29 degrees 12 minutes 35 seconds north latitude 89 degrees 01 minutes 05 seconds west longitude; thence south to 29 degrees 11 minutes 35 seconds north latitude 89 degrees 01 minutes 10 seconds west longitude; thence west southwest to 29 degrees 11 minutes 10 seconds north latitude 89 degrees 02 minutes 00 seconds west longitude; thence west southwest to 29 degrees 11 minutes 00 seconds north latitude 89 degrees 02 minutes 25 seconds west longitude; thence south southwest to 29 degrees 08 minutes 55 seconds north latitude 89 degrees 06 minutes 15 seconds west longitude; thence east southeast to 29 degrees 08 minutes 15 seconds north latitude 89 degrees 02 minutes 10 seconds west longitude; thence south southwest to 29 degrees 04 minutes 50 seconds north latitude 89 degrees 04 minutes 10 seconds west longitude; thence west northwest to 29 degrees 06 minutes 00 seconds north latitude 89 degrees 06 minutes 00 seconds west longitude; thence south southwest to 28 degrees 59 minutes 35 seconds north latitude 89 degrees 08 minutes 00 seconds west longitude; thence south southwest to 28 degrees 59 minutes 15 seconds north latitude 89 degrees 08 minutes 15 seconds west longitude; thence south southwest to 28 degrees 58 minutes 20 seconds north latitude 89 degrees 10 minutes 00 seconds west longitude; thence north northwest to 29 degrees 02 minutes 40 seconds north latitude 89 degrees 16 minutes 20 seconds west longitude; thence south southwest to 28 degrees 55 minutes 10 seconds north latitude 89 degrees 25 minutes 00 seconds west longitude; thence south to 28 degrees 54 minutes 40 seconds north latitude 89 degrees 25 minutes 00 seconds west longitude including those waters within North Pass, Pass a Loutre, Northeast Pass, Southeast Pass, South Pass and Southwest Pass effective October 28, 2010.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and

are continuing to be made to minimize the potential threats to fish and other aquatic life. The secretary has determined that these portions of state inside and outside waters shall open to commercial fishing except for the harvest of crabs and oysters October 28, 2010.

Robert J. Barham
Secretary

1011#009

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Greater Amberjack Closure

The commercial season for the harvest of greater amberjack in Louisiana state waters will close effective 12:01 a.m. on October 28, 2010. The secretary has been informed that the commercial season for greater amberjack in the Federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m. on October 28, 2010, and will remain closed until 12:01 a.m. January 1, 2011.

In accordance with the provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use seasonal rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in its resolution of January 7, 2010 to modify opening and closing dates of 2010 commercial reef fish seasons in Louisiana state waters when he is informed by the Regional Director of NOAA Fisheries that the seasons have been closed in adjacent Federal waters, and that NOAA Fisheries requests that the season be modified in Louisiana state waters, the secretary hereby declares:

The commercial fisheries for greater amberjack in Louisiana waters will close at 12:01 a.m. on October 28, 2010, and remain closed until 12:01 a.m., January 1, 2011. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell greater amberjack whether within or without Louisiana waters. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing greater amberjack taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by NOAA Fisheries that the commercial greater amberjack season in Federal waters of the Gulf of Mexico will both close at 12:01 a.m. on October 28, 2010, and the season will remain closed until 12:01 a.m. January 1, 2011. Having compatible season regulations in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of the species in the long term.

Robert J. Barham
Secretary

1011#007

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season Delay

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, and under the authority of R.S. 56:433, R.S. 56:435.1 and R.S. 56:435.1.1(D) notice is hereby given that the Wildlife and Fisheries Commission hereby declare that the 2010/2011 oyster season opening in the following areas shall be delayed until further notice:

1. The primary public oyster seed grounds east of the Mississippi River, as described in Louisiana Administrative Code (LAC) 76:VII.511 and LAC 76:VII.513, including the Lake Machias/Fortuna Sacking-Only Area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and the Sacking-Only Area in the American Bay area which shall be that portion of the public grounds within Bay Long west of a line running generally north/south from a point at 29 degrees 31 minutes 13.78 seconds N latitude, 89 degrees 34 minutes 9.79 seconds W longitude to a point at 29 degrees 29 minutes 40.67 seconds N latitude, 89 degrees 34 minutes and 8.48 seconds W longitude.

2. The Hackberry Bay Public Oyster Seed Reservation as described in R.S. 56:434.E.

All other 2010/2011 oyster season details as outlined by the August 5, 2010 Declaration of Emergency passed by the Wildlife and Fisheries Commission shall remain in effect at this time.

This oyster season delay is necessary to protect and conserve oyster resources in these areas for long-term sustainability. Significant spat catch has been documented in portions of these areas by the Department of Wildlife and Fisheries during recent biological sampling. Additionally, sampling revealed late-summer oyster mortalities which further decreased a much-reduced oyster stock assessment in portions of these areas. Due to low resource availability and the presence of significant spat catches, an oyster season delay is ordered as a conservation measure to protect oyster resources in these areas.

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

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

Stephen J. Oats
Chairman

1011#030

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational and Commercial Fisheries Closure

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes all commercial fishing, effective immediately November 4, 2010, in the following area:

That portion of state and territorial waters bounded by the following coordinates: 1) 29 degrees 12 minutes 35 seconds north latitude 89 degrees 01 minutes 05 seconds west longitude, 2) 29 degrees 11 minutes 35 seconds north latitude 89 degrees 01 minutes 10 seconds west longitude, 3) 29 degrees 11 minutes 10 seconds north latitude 89 degrees 02 minutes 00 seconds west longitude, 4) 29 degrees 11 minutes 35 seconds north latitude 89 degrees 02 minutes 55 seconds west longitude and that portion of state inside and outside territorial waters south of the southern shore of Pass a Loutre and 29 degrees 11 minutes 25 seconds north latitude westward to 89 degrees 25 minutes 00 seconds west longitude and the eastern shore of Southwest Pass of the Mississippi River and south of 29 degrees 08 minutes 35 seconds north latitude inside of a line extending seaward one-quarter mile or more from the shoreline beginning at 29 degrees 11 minutes 25 seconds north latitude 89 degrees 03 minutes 30 seconds west longitude; thence east southeast to 29 degrees 11 minutes 00 seconds north latitude 89 degrees 02 minutes 25 seconds west longitude; thence south southwest to 29 degrees 08 minutes 55 seconds north latitude 89 degrees 06 minutes 15 seconds west longitude; thence east southeast to 29 degrees 08 minutes 15 seconds north latitude 89 degrees 02 minutes 10 seconds west longitude; thence south southwest to 29 degrees 04 minutes 50 seconds north latitude 89 degrees 04 minutes 10 seconds west longitude; thence north northwest to 29 degrees 06 minutes 00 seconds north latitude 89 degrees 06 minutes 00 seconds west longitude; thence south southwest to 28 degrees 59 minutes 35 seconds north latitude 89 degrees 08 minutes 00 seconds west longitude; thence south southwest to 28 degrees 59 minutes 15 seconds north latitude 89 degrees 08 minutes 15 seconds west longitude; thence south southwest to 28 degrees 58 minutes 20 seconds north latitude 89 degrees 10 minutes 00 seconds west longitude; thence north northwest to 29 degrees 02 minutes 40 seconds north latitude 89 degrees 16 minutes 20 seconds west longitude; thence south southwest to 28 degrees 54 minutes 40 seconds north latitude 89 degrees 25 minutes 00 seconds west longitude excluding those waters within Pass a Loutre west of 89 degrees 02 minutes 00 seconds west longitude, Northeast Pass west of 89 degrees 02 minutes 10 seconds west longitude, Southeast Pass west of 89 degrees 04 minutes 10 seconds west longitude and South Pass west of 89 degrees 08 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 26 minutes

00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 21 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 10 seconds north latitude 89 degrees 57 minutes 30 seconds west longitude.

The Wildlife and Fisheries Commission also closes all commercial crab fishing, effective immediately November 4, 2010, in that portion of state inside waters south of the northern shore of Pass a Loutre and the Mississippi River Channel at 29 degrees 09 minutes 00 seconds north latitude westward to the western shore of Southwest Pass of the Mississippi River, and that portion of state outside territorial waters south of 29 degrees 12 minutes 40 seconds north latitude westward to 89 degrees 25 minutes 00 seconds west longitude.

Recreational fishing is open in all state inside and outside territorial waters, except in the following areas, where only recreational angling and charter boat angling is allowed: that portion of state inside waters north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 21 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 10 seconds north latitude 89 degrees 57 minutes 30 seconds west longitude.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to fish and other aquatic life.

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Stephen J. Oats
Chairman

1011#029

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational and Commercial Fisheries Opening—Barataria Basin

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:6.1 which provides the Secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found or existing in the waters of the state, and a declaration of emergency adopted by the Wildlife and Fisheries Commission on October 7, 2010 which grants authority to the secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the secretary hereby opens to recreational and commercial fishing within the Barataria Basin that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 15 minutes 00 seconds north latitude 89 degrees 32 minutes 30 seconds west longitude, 2) 29 degrees 13 minutes 40 seconds north latitude 89 degrees 33 minutes 00 seconds west longitude, 3) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 4) 29 degrees 20 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 26 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside territorial waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west longitude westward to 90 degrees 07 minutes 00 seconds west longitude, effective October 14, 2010.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and are continuing to be made to minimize the potential threats to fish and other aquatic life. The secretary has determined that these portions of state inside and outside waters shall open to recreational and commercial fishing except for the harvest of oysters October 14, 2010.

Robert J. Barham
Secretary

1011#001

Rules

RULE

Department of Agriculture and Forestry Board of Animal Health

Trichomoniasis (LAC 7:XXI.339)

In accordance with the Administrative Procedures Act, (R.S. 49:950 et seq.) and with the enabling statutes, R.S. 3:2093, 3:2095, and 3:2097, the Louisiana Board of Animal Health has amended the attached regulations to provide for the testing and reporting of cattle for trichomoniasis, movement and disposition of bulls and cows that test positive, the quarantine of cattle relative to trichomoniasis, and to provide for related matters.

Trichomoniasis is a venereal disease of cattle brought about by *Tritrichomonas foetus*, a protozoal parasite, which may cause early embryonic death of the fetus or late term abortion. Bulls carry the parasite, pass it on to cows during breeding, and the parasite may be transmitted from the cow to her calf during birthing. The parasite is almost impossible to detect in cows and is difficult to detect in bulls. The cost of testing a bull is \$100, but the financial losses caused by trichomoniasis are substantial. Infected herds have a decrease in the number of calves being born, sometimes as much as a 55 percent decrease. The Louisiana cattle industry has approximately 420,000 breeding age cows and 25,600 bulls. Based on this number of cows the calving rate is approximately 85 percent, for a total of 544,000 calves a year. A breeding cow will sell, on average, for approximately \$1,200 and a breeding bull will sell, on average for approximately \$2,000. A calf will sell, on average, for \$500. A cow or bull sold for slaughter will bring, on average, \$500. If Louisiana's cattle become infected statewide with trichomoniasis it is conservatively estimated that 50 percent of the cows and bulls will be infected and that the calving rate will decrease to a 50 percent birthing rate. Based on this estimate the Louisiana cattle industry would lose \$112,000,000 from unborn calves, \$22,400,000 from the sale of infected breeding cows for slaughter rather than as a breeder, and \$19,200,000 from the sale of infected bulls for slaughter, rather than as a breeding bull. The cost for replacing the infected cows and bulls with cows and bulls capable of breeding immediately would be \$38,400,000 for replacement cows and \$25,600,000 for replacement bulls.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 3. Cattle

§339. Trichomoniasis Testing and Movement Requirements for Cattle

A. Every bull moved into this state and every bull within this state which is sold, exchanged, leased, rented, sold, or otherwise transferred in ownership or possession (hereafter collectively referred to as "transferred") from one person to another shall be accompanied by a test result showing that the bull is free from Trichomoniasis (hereafter referred to as

"negative test result" or "testing negative") except for the following bulls.

1. Exhibition and rodeo bulls that are temporarily in the state only for the purpose of the event and will be leaving the state immediately after the event.

2. Bulls going direct to slaughter or being sold to go direct to slaughter.

3. Virgin bulls accompanied by a certification of virgin status signed by the owner of the bull, or the owner's representative or an accredited veterinarian and including the bull's individual identification.

4. Bulls being transported through this state in interstate commerce unless offloaded and comingled with female cattle already in this state that are not going direct to slaughter.

B. Every bull required to be accompanied by a negative test result shall be tested no later than 30 days prior to being moved into the state or the date of transfer, except for bulls that are in a trichomoniasis-free certification program or a semen certification program, recognized by the state veterinarian.

C. Every bull moved into this state and every bull within this state which is transferred from one person to another, except for the bulls listed in Subparagraph 1-4 of Subsection A of this Section, shall be identified by one or more of the following means:

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

D. The requirements for testing a bull for trichomoniasis are as follows.

1. All test samples shall be drawn by an accredited veterinarian.

2. The testing of samples shall be through the use of a test approved by the state veterinarian or by USDA APHIS VS that is performed at an official laboratory or by an accredited veterinarian qualified to test for trichomoniasis.

3. Test results that show that the tested animal has trichomoniasis (hereafter referred to as "positive test results" or "testing positive") shall immediately cause the tested animal to be classified as trichomoniasis infected and subject to the restrictions set out in this Section.

4. An additional test to confirm the presence of trichomoniasis may be requested in the event of an initial positive test result, but the request for the confirmatory test must be made to the state veterinarian within 5 business days of notification of the positive test result.

a. If the confirming test comes back negative then the tested animal is considered negative for trichomoniasis and may be moved as such.

b. If the confirming test comes back positive then the tested animal shall be subject to the restrictions set out in this Section.

5. A bull being tested for trichomoniasis shall be kept separate from female cattle at all times during the entire test period from the taking of samples until receipt of the results of the initial test results. A bull testing negative on the initial test may be comingled with female cattle upon receipt of the test results while a bull testing positive shall be immediately subject to the restriction on trichomoniasis infected bulls set out in this Section.

6. All test results for trichomoniasis, whether negative or positive, shall be reported to the state veterinarian within 24 hours after receipt of the results.

7. When a positive test result is received the treating veterinarian shall consult with the state veterinarian on the first business day after receipt of the test results to determine a plan of action regarding the animal testing positive.

E. Bulls that are required to be tested for trichomoniasis prior to being moved into this state or prior to being transferred from one person to another but which have not been tested shall be kept separate from breedable-type cattle until tested and a negative result is obtained.

F. Bulls, except for virgin bulls, that are not required to be tested for trichomoniasis prior to being moved into this state or prior to being transferred from one person to another shall, at all times, be kept separate from female cattle until tested and a negative result is obtained. However, a bull being moved direct to slaughter or sold to go direct to slaughter may be comingled with breedable-type cattle also being moved direct to slaughter or being sold to go direct to slaughter.

G. Bulls testing positive for trichomoniasis are subject to the following restrictions.

1. No known trichomoniasis infected bull shall be moved into or within this state or transferred within this state from one person to another, unless the bull is going direct to slaughter or being sold to go direct to slaughter.

2. No known trichomoniasis infected bull, whether being moved into or within this state, shall be used for breeding purposes and shall be kept separate from female cattle, from the time the first positive test result is received.

3. A trichomoniasis infected bull shall be moved direct to slaughter, or sold to go direct to slaughter within 30 days from receipt of the positive results of the original test or the results of the confirming test, whichever is later.

4. A trichomoniasis infected bull may be moved only after a VS 1-27 permit is issued by the testing veterinarian or the state veterinarian or his representative. The VS 1-27 permit shall accompany the bull upon movement of the animal.

H. If a trichomoniasis infected bull has been in a herd with female cattle then the infected bull and the other bulls in the herd are subject to the following requirements.

1. The trichomoniasis infected bull shall be immediately separated from the herd and all other bulls in the herd and shall be moved or transferred only as allowed by this Section.

2. If there is any other bull or bulls in the herd then all other such bulls shall be immediately separated from, and kept separate from all female cattle.

3. Each such bull shall be tested for trichomoniasis as soon as possible. Test samples shall not be pooled.

4. A bull testing negative shall be immediately removed from all other bulls that have not been tested or for which the test results have not been received and shall be considered to be a negative bull for all purposes.

5. A bull testing positive shall immediately be classified as a Trichomoniasis infected bull and shall be subject to the restrictions imposed in this Section on such bulls.

6. An additional test to confirm the presence of trichomoniasis may be requested in the event of an initial positive test result, but the request for the confirmatory test must be made to the state veterinarian within 5 business days of notification of the positive test result.

a. If the confirming test comes back negative then the bull shall be considered negative for trichomoniasis.

b. If the confirming test comes back positive then the bull shall be considered to be infected with trichomoniasis and subject to the restrictions imposed in this Section on such bulls.

I. A trichomoniasis infected herd is a herd known to contain or have contained a trichomoniasis infected bull or cow. If a virgin bull or bull that has tested negative for trichomoniasis is comingled with female cattle from a trichomoniasis infected herd then the virgin bull or bull with negative test results shall be tested for and found to be free of trichomoniasis before being moved, placed into another herd, or transferred from one person to another.

J. A cow is not required to be tested for trichomoniasis before being moved into this state or transferred from one person to another but if a cow is tested then the same procedure set out in this Section for testing a bull shall apply to the testing of a cow.

K. A cow testing positive for trichomoniasis shall be subject to the following restrictions:

1. A cow testing positive for trichomoniasis shall not be moved into this state, except to go direct to slaughter or to be sold to go direct to slaughter.

2. A cow within this state that has tested positive for trichomoniasis shall be immediately separated from, and kept separate from all bulls.

a. The cow shall be moved direct to slaughter or sold to go direct to slaughter within 30 days from receipt of the positive result of the original test or the confirming test, whichever is later, unless placed under a quarantine program approved by the state veterinarian.

b. If the cow is quarantined then it may not be moved from quarantine until the quarantine is released in writing by the state veterinarian. The cow may be released from quarantine only if the cow is subsequently tested and found to be free from trichomoniasis or if the cow is to be moved direct to slaughter or to be sold to go direct to slaughter.

3. A trichomoniasis infected cow may be moved only after a VS 1-27 permit is issued by the testing veterinarian or the state veterinarian or his representative. The VS 1-27 permit shall accompany the cow upon movement of the animal.

L. Quarantine Facilities

1. A livestock owner or lessor, livestock dealer, and a public livestock market facility may, with the written

approval of the state veterinarian, establish a quarantine facility to hold bulls being moved into this state or being sold in this state until they can be tested for trichomoniasis.

2. The quarantine facility shall be inspected and approved by the state veterinarian or his representative prior to being placed into use.

3. The fencing or railing of the quarantine facility must be of material that will keep a bull from being able to breed with a cow located in an adjacent pen or pasture and of sufficient strength to keep a bull from escaping the quarantine facility.

4. A bull in a quarantine facility testing positive for trichomoniasis shall be immediately separated from, and kept separate from, all female cattle and shall be subject to the restrictions imposed by this Section on a trichomoniasis infected bull.

M. The state veterinarian may grant a written exception or variance to the provisions of this Section, with such conditions as the state veterinarian may impose, if such action is necessary to provide for unforeseen situations or circumstances. Any such exception or variance shall balance the need to protect cattle from trichomoniasis with the need to allow cattle to move in commerce.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Board of Animal Health, LR 35:1466 (August 2009), amended LR 36:2518 (November 2010).

Mike Strain, DVM
Commissioner

1011#066

RULE

Department of Agriculture and Forestry Horticulture Commission

Landscape Irrigation Contractors Insurance Waiver (LAC 7:XXIX.117 and 119)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3801 and 3:3808, the Horticulture Commission, has amended LAC 7:XXIX.117 to allow the waiver of the insurance requirement for licensed landscape irrigation contractors who only provide consulting or associated services in regard to landscape irrigation systems or work on such systems.

LAC 7:XXIX.119.A has been amended to make a technical correction in the legal citation contained therein. Paragraph (A) was promulgated in 1982 and referred to statutes previously found in Part I, entitled "Agricultural Poisons" of Chapter 12 of Title 3 of the Revised Statutes. In 1983 Part I of Chapter 12 was repealed and the subject matter was transferred to Chapter 20 of Title 3, which is the Louisiana Pesticide Law. This amendment merely provides the correct citation to the applicable statutory law.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 1. Horticulture

§117. Professional and Occupational Standards and Requirements

A - H.5. ...

I. Landscape Irrigation Contractor

1. Before the commission issues a landscape irrigation contractor license the person to be licensed shall first furnish to the commission a certificate of insurance, written by an insurance company authorized to do business in Louisiana, covering the public liability of the applicant, as a licensee, for personal injuries and property damages. The insurance policy shall provide for not less than \$25,000 per personal injuries and not less than \$50,000 for property damages, both limits applicable to each separate accident. The certificate of insurance must provide for 30 days' written notice to the commission prior to cancellation. The commission may, however, waive the requirement for the stated insurance coverage for any licensed landscape irrigation contractor who does not physically work on landscape irrigation systems or accept responsibility for work on landscape irrigation systems but only provides consultation or other associated services with respect to landscape irrigation systems or the work performed on such systems.

2. - 5.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801, and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185, (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), LR 27:1832 (November 2001), LR 31:1054 (May 2005), LR 32:78 (January 2006), LR 32:1010 (June 2006), LR 33:1854 (September 2007), LR 35:1225 (July 2009), LR 36:2520 (November 2010).

§119. Prohibition

A. No licensee or permittee of the commission may apply pesticides to any properties which are not owned, rented, or leased by the licensee or permittee or persons engaged in any regulated profession or occupation unless such licensee or permittee, or persons engaged in any regulated profession or occupation is properly licensed or certified by the department in accordance with the Louisiana Pesticide Law (R.S. 3:3201 et seq.).

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:186 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 29:1460 (August 2003), LR 36:2520 (November 2010).

Mike Strain, DVM
Commissioner

1011#067

RULE

**Department of Children and Family Services
Child Welfare Section
and
Economic Stability and Self-Sufficiency Section**

Daycare Services—Residential Licensing
(LAC 67:III.7303,7359; V.6706 and 6955)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Child and Family Services (DCFS), has amended rules in the *Louisiana Administrative Code* (LAC) Title 67, Part III, Subpart 21, Chapter 73, Child Day Care Licensing, and LAC Title 67, Part V, Subpart 8, Chapters 67-69 Residential Licensing pursuant to the general rule-making authority of the Department under La. R.S. 46:51 and the specific rule-making authority over child care facilities and child placing agencies granted by the Child Care Facility and Child-Placing Agency Licensing Act, La. R.S. 46:1401-1426.

State licensing regulations for child care facilities and child placing agencies provide for a disqualification period for licensees who have had a prior license revoked for failure to comply with state laws and regulations governing facilities providing out-of-home care for children.

The amendments to Title 67, Part III, Subpart 21, Chapter 73, Child Day Care Licensing, and LAC Title 67, Part V, Subpart 8, Chapters 67-69 propose to clarify the definition of the term "Affiliate."

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

**Subchapter A. Licensing Class "A" Regulations for
Child Care Centers**

§7303. Procedures

A. - G.1....

* * *

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any pending application by the same provider shall be treated as an application for a new facility for purposes of this section and shall be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. - c. ...

d. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended LR 36:333 (February 2010), LR 36:832 (April 2010), amended by the Department of Children and Family Services, Economic and Self-Sufficiency Section LR 36:2521 (November 2010).

§7359. Procedures

A. - I.1. ...

* * *

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any pending application by the same provider shall be treated as an application for a new facility for purposes of this section and shall be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. - c. ...

d. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended LR 36:335 (February 2010), LR 36:833 (April 2010), amended by the Department of Children and Family Services, Economic and Self-Sufficiency Section LR 36:2521 (November 2010).

Part V. Community Services

Subpart 8. Residential Licensing

Chapter 67. Maternity Homes

§6703. Definition

A. - B.1. ...

* * *

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any pending application by the same provider shall be treated as an application for a new facility for purposes of this Section

and shall be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. - c. ...

d. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

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 35:1570 (August 2009), amended LR 36:799, 835 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section LR 36:2521 (November 2010).

§6955. Procedures Child Residential Care

A. - F.I. ...

* * *

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any pending application by the same provider shall be treated as an application for a new facility for purposes of this Section and shall be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the secretary or their designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. - c. ...

d. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

G. ...

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 LR 36:331 (February 2010), LR 36:836, 842 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section LR 36:2522 (November 2010).

Ruth Johnson
Secretary

1011#129

RULE

Department of Children and Family Services Child Welfare Section

Legal Representation in Child Protection Cases
(LAC 67:V.5701, 5703, 5705, 5901 and 5903)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Department of Children and Family Services (DCFS), Child Welfare Section, has repealed the LAC 67:V, Subpart 7, Chapter 57, Billing Policies and Fee Review Procedures, and promulgated LAC 67:V, Subpart 7, Chapter 59, relative to the provision of Legal Representation in Child Protection Cases.

These changes were necessitated by full implementation of the new statewide system of legal representation for children and indigent parents in child protection cases consistent with the expedited implementation plan unanimously approved by the Task Force on Legal Representation in Child Protection Cases.

As of July 1, 2010, state funding for legal representation in child protection cases was confined to the new system. The Mental Health Advocacy Service/Child Advocacy Program (MHAS/CAP) receives state funds to represent children in child protection proceedings in the following jurisdictions: 1st JDC, 14th JDC, 16th JDC, 19th JDC, 21st JDC, 22nd JDC (except Slidell City Court), 25th JDC, 38th JDC and Orleans Parish Juvenile Court. The Supreme Court will receive state funds for administration by the Louisiana Bar Foundation to Legal Services of North Louisiana, Acadiana Legal Services, Capital Area Legal Services, and Southeast Louisiana Legal Services for representation of children in child protection proceedings in jurisdictions not served by MHAS/CAP. The Louisiana Public Defender Board receives state funds to provide for representation of indigent parents through local defender offices statewide and will retain all children's cases to which they were formerly appointed. The state funds are used only to pay for attorneys hired or contracted by MHAS/CAP, LPDB, or the Legal Services Corporations, not for ad hoc attorney representation.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 7. Payment of Legal Fees in Child Protection Cases

Chapter 57. Billing Policies and Fee Review Procedures

§5701. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:112 (January 2006), repealed by Department of Children and Family Services, Child Welfare Section LR 36:2522 (November 2010).

§5703. Billing policies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:112 (January 2006), repealed by Department of Children and Family Services, Child Welfare Section LR 36:2522 (November 2010).

§5705. Fee review procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:112 (January 2006), repealed by Department of Children and Family Services, Child Welfare Section LR 36:2523 (November 2010).

Chapter 59. Legal Representation of Children and Indigent Parents Pursuant to La. R.S. 46:460.21

§5901. Implementation of New Statewide System of Legal Representation of Children and Indigent Parents

A. Full implementation of the new statewide system of legal representation of children and indigent parents in child protection cases is effective July 1, 2010.

B. Pursuant to implementation of the new statewide system consistent with the expedited implementation plan unanimously approved by the Task Force on Legal Representation in Child Protection Cases, the department will not pay for *ad hoc* legal representation of children or indigent parents for services provided after June 30, 2010 or services in new cases during the January 1 – June 30, 2010 transition period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Child Welfare Section LR 36:2523 (November 2010).

§5903. DSS Final Payment to ad hoc Attorneys Appointed Prior to January 1, 2010

A. Subject to available funds pursuant to R.S. 46:460.21, the department will pay properly documented and authorized requests for payment of services of *ad hoc* attorneys who were appointed to represent children and/or indigent parents prior to January 1, 2010 and delivered services through June 30, 2010. The department will not pay for legal representation services delivered to children or indigent parents for *ad hoc* appointment made in new cases on or after January 1, 2010. Attorneys shall follow the former billing procedures when submitting requests for payment. To be considered for payment, attorneys must submit properly documented and authorized requests for payment to the department by July 16, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Child Welfare Section LR 36:2523 (November 2010).

Ruth Johnson
Secretary

1011#128

RULE

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

Child Care Assistance Program (CCAP), Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Supplemental Nutrition Assistance Program (SNAP)

(LAC 67:III. 201, 1223, 1229, 1257, 1501, 1701, 1703, 1709, 1711, 1713, 1911, 1913, 1915, 1917, 1919, 1921, 1923, 1927, 1931, 1932, 1934, 1935, 1938, 1940, 1941, 1945, 1949, 1951, 1953, 1961, 1967, 1969, 1975, 1977, 1978, 1980, 1981, 1983, 1985, 1987, 1988, 1991, 1993, 1995, 1997, 1998, 1999, 2003, 2005, 2007, 2013, 2103, 2105, 2107, 2113, 2117, 5102, 5104, 5106, 5107, 5111, 5113, 5329, 5347, and 5501)

The Department of Children and Family Services (DCFS), has amended the *Louisiana Administrative Code* (LAC), Title 67, Part III. Office of Family Support. Adoption is pursuant to the authority granted to the department by the Food and Nutrition Act of 2008, in accordance with federal regulations for the Supplemental Nutrition Assistance Program (SNAP) in 7 CFR, Department of Defense Appropriations Act of 2010 (Section 8120, P.L.111-118), Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant and the Child Care and Development Fund (CCDF).

LAC 67:III. Subpart 3. Food Stamp Program is being changed to LAC 67:III. Subpart 3. Supplemental Nutrition Assistance Program (SNAP).

LAC 67: III. Sections 201, 1257, 1701, 1703, 1709, 1711, 1713, 1911, 1913, 1915, 1917, 1919, 1921, 1923, 1927, 1935, 1938, 1940, 1941, 1945, 1951, 1953, 1961, 1967, 1969, 1975, 1977, 1978, 1981, 1980, 1981, 1985, 1988, 1991, 1993, 1997, 1998, 2003, 2005, 2007, 2013, 2103, 2105, 2107, 2113, 2117, 5104, and 5347 has been amended to change the name of the program and other requirements and language clarifications related to SNAP. The name of the Food Stamp Program was changed as part of the Food and Nutrition Act of 2008. States were encouraged to change their program name.

LAC 67:III. Sections 1229, 1949, 1980, 1983, 1987, and 5329 has been amended to implement broad based-categorical eligibility which will make most if not all households categorically eligible for SNAP benefits while amending countable income and resources. This is a result of the Mississippi Canyon 252 Well Incident.

LAC 67:III. Sections 1223, 1931, 1934, and 1995 has been amended to change alien eligibility criteria to include an Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status. Section 1932 has been repealed to remove the time limitations for certain aliens. This is per a directive from the Department of Agriculture, Food and Nutrition Service (FNS) and 7 CFR Part 273 Food Stamp Program: Eligibility and Certification Provisions of the Farm and Rural Investment Act of 2002; Final Rule, Section 273.4.

LAC 67:III. Section 1999 has been amended to remove the requirement to send a Notice of Adverse Action when mail is returned by the Post Office as undeliverable. This is per a directive from the Department of Agriculture, Food and Nutrition Services, regarding Simplified Reporting requirements.

LAC 67:III. Sections 1501, 5106, 5107, 5111 and 5113 has been amended to change the Intentional Program Violation (IPV) disqualification time periods for clients participating in the Family Independence Temporary Assistance Program (FITAP) and the Child Care Assistance Program (CCAP) to match the IPV disqualification time periods in SNAP. This amendment will align IPV disqualification time periods in FITAP, CCAP, and SNAP which will provide consistency, thus making it easier for staff to apply IPV disqualification periods and for participants to understand these penalties. Provider eligibility requirements and disqualification time periods has been amended.

LAC 67:III. Section 5102 has been amended to redefine a Household Designee (HD) where a responsible household member or authorized representative will also be allowed to drop off or pick up a child from an authorized CCAP Provider.

LAC 67:III. Section 5111 is being repealed because the language is being included in Section 5106.

LAC 67:III. Section 5501 has been added to further clarify TANF Initiatives.

These amendments are necessary to align with the Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant; Department of Agriculture, Food and Nutrition Service (FNS); and the Child Care and Development Fund (CCDF).

Title 67

SOCIAL SERVICES

Part III. Family Services

Subpart 1. General Administrative Procedures

Chapter 2. Voter Registration Services

§201. Voter Registration by Mail

A. The Department of Children and Family Services (DCFS) as administrator of the Supplemental Nutrition Assistance Program (SNAP) and the Family Independence Temporary Assistance Program is a designated voter registration agency.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116 and P.L. 103-31, amended in accordance with P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 21:273 (March 1995), amended LR 21:958 (September 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2524 (November 2010).

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1223. Citizenship

A. - A.10. ...

11. an Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 111-118, Section 8120).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:1599 (July 2002), LR 32:1911 (October 2006), Economic Stability and Self-Sufficiency Section, LR 36:2524 (November 2010).

§1229. Income

A. - A.31. ...

32. any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident in the Gulf of Mexico on April 20, 2010.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2, (j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:1616 (September 2006), LR 32:1912 (October 2006), LR 34:2678 (December 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2524 (November 2010).

§1257. Reporting Requirements

A. Effective February 1, 2004, a FITAP household that is not included in a SNAP semi-annual reporting household shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A FITAP household that is included in a SNAP semi-annual reporting household is subject to the semi-annual household reporting requirements in accordance with §2013 and must report if the only eligible child moves out of the home.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231 et seq. 7 CFR Part 273, 42 U.S.C. 608, et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:522 (March 2002), amended LR 30:1486 (July 2004), LR 32:264 (February 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2524 (November 2010).

Chapter 15. General Program Administration

Subchapter A. Fraud

§1501. Fraud Control Program

A. - B.3. ...

C. If an individual who is a member of a family applying for or receiving FITAP is found by a federal or state court or by an administrative hearing to have intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts, or committed any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity, for the purpose of establishing or maintaining the family's eligibility for aid or of increasing or preventing a reduction in benefits, then that individual's needs shall not be taken into account in making the eligibility or benefits determination. That individual shall be disqualified for a

period of 12 months for the first offense, 24 months for the second offense, and permanently for the third offense.

D. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 100-203 and CFR 235, P.L. 104-193, amended in accordance with P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 14:439 (July 1988), amended by the Department of Social Services, Office of Family Support, LR 20:1019 (September 1994), LR 23:449 (April 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2524 (November 2010).

Subpart 3. Supplemental Nutrition Assistance Program (SNAP)

Chapter 17. Administration

Subchapter A. General Provisions

§1701. Authority

A. The Supplemental Nutrition Assistance Program (SNAP) is administered under the authority of applicable federal and state laws.

AUTHORITY NOTE: Promulgated in accordance with applicable Sections of 7 CFR and R.S. 36:474, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), amended LR 24:108 (January 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2525 (November 2010).

Subchapter B. General Administrative Requirements

§1703. Supplemental Nutrition Assistance Program (SNAP) Manual

A. Rules and regulations regarding the implementation of the Food and Nutrition Act of 2008 (P.L. 110-246) have been adopted effective January 1, 2010.

B. The Office of the State Register has determined that publication of these rules would be unduly cumbersome and exercised its privilege to omit them from the *Louisiana Register*, as per R.S. 49:954.1(C). The new Supplemental Nutrition Assistance Program (SNAP) Manual may be obtained from the Department of Children and Family Services, Post Office Box 94065, Baton Rouge, Louisiana 70804. Also, copies of the SNAP Manual are available for public inspection at each parish office and on the DCFS website at www.dcf.louisiana.gov.

AUTHORITY NOTE: Promulgated in accordance with F.R. 43:47846 et seq. and R.S. 49:954.1(C), 7 CFR 271 et seq., P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 4:511 (December 1978), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2525 (November 2010).

§1709. Purchasing Prepared Meals

A. Effective May 1, 1987 homeless Supplemental Nutrition Assistance Program (SNAP) recipients (including newly eligible residents of temporary shelters for the homeless) may use their SNAP benefits to purchase prepared meals served by an authorized public or nonprofit establishment that feeds homeless people.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 274, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), amended by the Department of Children and

Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2525 (November 2010).

§1711. Disabled People in Group Living Arrangements

A. All individuals residing in group living arrangements who meet the Food and Nutrition Act of 2008 definition of *disabled* (as defined in Section 3(r) of the Food and Nutrition Act) are eligible to receive SNAP benefits to purchase their prepared meals.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.2, 273.1(e)(1)(iii), 278.1(f), P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2525 (November 2010).

Subchapter C. Disaster Supplemental Nutrition Assistance Program (DSNAP)

§1713. Emergency Food Assistance Program for Disaster Victims

A. Under the authority of Food and Nutrition Act of 2008 and 7 CFR Part 280, the Department of Children and Family Services does hereby establish an Emergency Food Assistance Program for Victims of Disaster.

B. This program provides emergency Disaster Supplemental Nutrition Assistance Program (DSNAP) benefits to households in an area which has been included in a disaster declaration. The Secretary of the U.S. Department of Agriculture (USDA), or his designee, determines the areas to be included in such a declaration, the temporary eligibility standards, grant amounts, and duration of the program.

C. In order for a parish or community to be eligible for inclusion in a DSNAP declaration, the following criteria must be met.

1. Normal commercial channels for food distribution were disrupted by the disaster.

2. Normal food distribution channels were restored.

3. The normal, ongoing Supplemental Nutrition Assistance Program is unable to expeditiously handle the volume of households affected by the disaster.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 280 and Section 5(h)(1) of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:213 (February 1993), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2525 (November 2010).

Chapter 19. Certification of Eligible Households

Subchapter B. Application Processing

§1911. Households Eligible for Expedited Service

A. Expedited service is defined as the providing of Supplemental Nutrition Assistance Program (SNAP) benefits no later than seven calendar days from the application date.

B. Households entitled to receive benefits under the SNAP Program's expedited service procedure are defined as follows:

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 52:36390 et seq., 7 CFR 273.2, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended LR 14:150 (March 1988), amended by the Department of Social Services, Office of Family Support, LR

23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2525 (November 2010).

§1913. Determination of Eligibility of Migrant or Seasonal Farmworkers

A. Two provisions of the Drought Relief Act changed SNAP's procedures pertaining to the determination of eligibility and benefit levels for migrant or seasonal farmworkers. This is effective for applications received as of September 1, 1988 or allotments issued for the month of September, 1988.

1. Proration of Initial Month's Benefits. The first provision affects the proration of benefits after a break in participation in SNAP. This provision requires that migrant and seasonal farmworkers receive the full allotment for a month of application when the household has participated in the program within 30 days prior to the date of application. Thus, unless the household's break in participation exceeds 30 days, the migrant or seasonal farm worker household is eligible for a full month's allotment, rather than a prorated allotment, in the month of application.

A.2. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 14:871 (December 1988), amended by the Department of Social Services, Office of Family Support, LR 24:1782 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2526 (November 2010).

§1915. Homeless SNAP Household

A. The definition of "homeless SNAP household" is being replaced by the definition of a "homeless individual."

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., F.R. 52:36390 et seq., 7 CFR 273.2, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, amended LR 13:437 (August 1987), LR 14:87 (February 1988), amended by the Department of Social Services, Office of Family Support LR 23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2526 (November 2010).

§1917. Homeless Meal Provider

A. A *homeless meal provider* is a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter) approved by the department, that feeds homeless SNAP households. To be eligible to accept SNAP benefits, a meal provider must also be authorized by Food and Nutrition Services (FNS) after the department approves it.

B. ...

C. Only those SNAP households determined to be homeless shall be permitted to use SNAP benefits to purchase prepared meals served by authorized homeless meal providers. To ensure that the use of SNAP benefits for prepared meals is restricted to homeless persons, homeless meal providers shall establish that person's right to use SNAP benefits to purchase meals.

D. Applicant meal providers must apply for approval at the departmental office in their parish. An approval review at the provider's establishment will be conducted by the regional agency representative. After approval has been

granted by the department, the provider must then make application to an FNS field office to receive authorization to accept SNAP benefits.

E. Homeless meal providers may accept SNAP benefits as authorized retail redemption points after authorization from the department and FNS. The provider will receive settlement from the Federal Treasury as an electronic deposit directly to the provider's account at a financial institution. Homeless meal providers that redeem SNAP benefits in excess of \$100 per month will be provided equipment that will allow acceptance, redemption and settlement of program funds electronically. Others may participate by using manual vouchers.

F. The use of SNAP benefits to purchase meals from homeless meal providers is voluntary on the part of SNAP recipients. SNAP recipients must continue to be given the option of using cash if payment for a meal is required. In addition, if others have the option of eating free or making a monetary donation, homeless SNAP recipients must be given the same option (eat free, or donate money or SNAP benefits). The amount requested from homeless SNAP recipients using SNAP benefits to purchase meals may not exceed the average cost to the homeless meal provider of the food contained in a meal served to the patrons of the meal provider. If a homeless recipient voluntarily pays more than the average cost of food contained in a meal served, such payment may be accepted by the meal provider.

G. Homeless meal providers will not be permitted to serve as "authorized representative" for homeless SNAP households.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), amended by the Department of Social Services, Office of Family Support, LR 24:1782 (September 1998), LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2526 (November 2010).

§1919. Certification of Information

A. Effective August 1, 1986, one adult member in all applicant households must certify in writing under penalty of perjury, the truth of the information contained in the application for the household's allotment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953(B), 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:768 (November 1986), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2526 (November 2010).

§1921. SSI and Supplemental Nutrition Assistance Program (SNAP) Application by Residents of Public Institutions

A. Effective May 1, 1989 residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383) shall be permitted to apply for SNAP benefits at the same time they apply for SSI.

B. When a resident of an institution is jointly applying for SSI and SNAP prior to leaving the institution, the filing date of the application to be recorded by the department on

the application is the date of release of the applicant from the institution.

C. The department shall make an eligibility determination and issue SNAP benefits to a resident of a public institution who applies jointly for SSI and SNAP within 30 days (or five days if expedited processing is appropriate) following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for SNAP and SSI prior to release shall also begin on the date of the applicant's release from the institution. SSA shall notify the department of the date of release of the applicant from the institution.

D. If, for any reason, the department is not notified on a timely basis of the applicant's release date, the department shall restore benefits to such applicant back to the date of release.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:4249 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:497 (June 1989), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2526 (November 2010).

§1923. Verification

A. Effective April 1, 1987, in addition to federally required verification, the department may mandate verification of any other factor which affects household eligibility or allotment level, including household size.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2527 (November 2010).

§1927. Disclosure of Information

A. Effective February 1, 1985, use or disclosure of information obtained from SNAP applicant households, exclusively for SNAP, shall be restricted to the following persons:

1. persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act or regulations, other federal assistance programs, or federally assisted state programs which provide assistance, on a means-tested basis, to low income individuals;

2. ...

3. local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food and Nutrition Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 49:48677 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security LR 11:349 (April 1985), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2527 (November 2010).

Subchapter D. Citizenship and Alien Status

§1931. Qualified Aliens

A. - A.10. ...

11. An Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 25:710 (April 1999), LR 28:1600 (July 2002), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2527 (November 2010).

§1932. Time Limitations for Certain Aliens

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 28:1600 (July 2002), LR 29:606 (April 2003), LR 30:493 (March 2004), repealed by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2527 (November 2010).

§1934. Alien Eligibility Criteria

A. The following qualified aliens are eligible for benefits:

1. refugees admitted under §207 of the Immigration and Nationality Act (INA);

2. asylees admitted under §208 of the INA; and

3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date [April 1, 1997] of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of P.L. 104-208);

4. *Cuban* and *Haitian* entrants as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as contained in §101(e) of P.L. 100-202 and amended by the 9th provision under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, P.L. 100-461, as amended;

6. an alien who is the victim of a severe form of trafficking in persons;

7. veterans who have met the minimum active-duty service requirements of Section 5303 A(d) of Title 38, United States Code, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, United States Code, and unmarried dependent children;

8. active-duty personnel (other than active duty for training) and their spouses, or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, United States Code, and unmarried dependent children;

9. aliens who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act or can be credited with such qualifying quarters;

10. effective October 1, 2002, individuals who are lawfully residing in the United States and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997;

11. individuals who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older;

12. effective October 1, 2003, individuals who are lawfully residing in the United States and are under 18 years of age;

13. effective April 1, 2003, individuals who have been lawful, permanent residents or otherwise qualified aliens for at least five years beginning on the date the immigrant was designated as a qualified alien by the Immigration and Naturalization Service;

14. an Iraqi or Afghan immigrant who has been granted Special Immigrant VISA (SIV) status.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, P.L. 107-171, and P.L. 111-118.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2527 (November 2010).

Subchapter E. Students

§1935. Student Provisions (Effective March 1, 2006)

A. An individual enrolled at least half-time (as defined by the institution) in an institution of higher education is considered a student. A student is ineligible to receive SNAP benefits unless the individual meets at least one of the following conditions:

1. - 9.b....

c. a SNAP employment and training program (LaJET);

A.9.d. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.5., P.L. 107-171, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 24:1783 (September 1998), LR 32:1616 (September 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010).

Subchapter G. Work Requirements

§1938. Work Registration Requirements

A. - A.1.f. ...

2. If it is determined that an individual other than the head of the household has violated the work requirements without good cause, that individual shall be ineligible to participate in SNAP as follows:

A.2.a. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010).

§1940. Work Participation Requirements for Able-Bodied Adults Without Dependents [Effective 10/1/97 by ER]

A. Individuals are ineligible to continue to receive SNAP benefits if, during the preceding 36-month period they received SNAP benefits for at least three months (consecutive or otherwise) while that individual did not either:

1. work an average of 20 hours per week;

A.2. - B.2. ...

3. a parent of a household member under age 18, even if the household member who is under age 18 does not receive SNAP benefits;

4. residing in a household where a household member is under age 18, even if the household member who is under age 18 does not receive SNAP benefits;

5. - 6. ...

C. - C.1.b. ...

c. participates in and complies with a workfare program (under Section 20 of the Food and Nutrition Act of 2008 or a comparable state or local program) for 80 hours or more.

C.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, 7 CFR 273.24, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:81 (January 1997), amended LR 34:885 (May 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010).

§1941. Work Requirements of the SNAP Household

A. - B. ...

C. Employment and Training (E and T) Programs

1. The department submitted an Employment and Training Program Plan to the United States Department of Agriculture, Food and Nutrition Service (FNS) Dallas Regional Office and the FNS Office of Alexandria, Virginia. A copy of the plan is available for public inspection at the Supplemental Nutrition Assistance Program Office, 627 North Fourth Street, Baton Rouge, Louisiana 70802.

C.2 - C.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.7 (c) (2), P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:394 (July 1987), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:96 (February 1989), amended by the Department of Social Services, Office of Family Support, LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 23:81 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010).

Subchapter H. Resource Eligibility Standards

§1945. Resource Test

A. Effective June 1, 1983, households in which all members receive Family Independence Temporary Assistance (FITAP) and whose income meets the gross income eligibility standards will be considered to have satisfied SNAP's resource test. However, the households must continue to meet all other SNAP eligibility standards, including the net income standards.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55907 et seq., 7 CFR 273.8, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010).

§1949. Exclusions from Resources

A. All resources other than those listed in Section 1947 of this Title shall be excluded from countable resources.

B. All of the resources of individuals who are included in a household that is categorically eligible are excluded.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:187 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003), LR 32:646 (April 2006), LR 34:2679 (December 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2529 (November 2010).

Subchapter I. Income and Deductions

§1951. Strikers

A. For SNAP purposes, a striker is defined as anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee engaged in a lockout, however, is not deemed to be a striker.

B. ...

C. Effective March 1, 1983, households with striking members shall be ineligible to participate in SNAP unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. However, such a household shall not receive an increased allotment as the result of a decrease in the income of the striking member(s) of the household. Eligibility shall be determined by considering the day prior to the strike as if it were the day of application and assume the strike did not occur. Eligibility at time of application shall be determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of nonstriking members during the month of application. To determine benefits, deduction shall be calculated for the month of application as for any other household. Whether the striker's pre-striker earnings are used or his current income is used, the earnings deduction shall be allowed if appropriate.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:52328 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:62 (February 1983), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2529 (November 2010).

§1953. Income Eligibility Standards

A. The income eligibility standards for SNAP shall be as follows:

1. ...

2. Net Income. For households which contain a member who is 60 years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV of the Social Security Act, the net income eligibility standards for SNAP shall be as follows: The income eligibility standards for the contiguous 48 states and the District of Columbia, Guam, Puerto Rico and the Virgin Islands shall be the Office of Management and Budget's (OMB) nonfarm income poverty guideline for the 48 states and the District of Columbia.

3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2529 (November 2010).

§1961. Adjustment of Standard Deduction

A. Effective October 1, 2002, the standard deduction shall be set at 8.31 percent of the poverty level based on household size of up to six persons. The standard deduction will be adjusted in accordance with directives from the United States Department of Agriculture, Food and Nutrition Service.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2529 (November 2010).

§1967. Setting the Standard Utility Allowance and Basic Utility Allowance

A. Effective October 1, 1985, and each October 1 thereafter, the annualized standard utility allowance in the Supplemental Nutrition Assistance Program shall be adjusted to reflect changes in the cost of utilities.

B. The department will conduct an annual statewide survey of utility companies to determine the average monthly cost of utilities. This methodology is subject to approval by the United States Department of Agriculture Food and Nutrition Service. The standard allowance developed shall also be submitted to USDA FNS for approval.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9(d)(6), P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:864 (September 1985), repromulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2529 (November 2010).

§1969. Standard Telephone Allowance

A. Effective May 1, 2002, all SNAP households whose only utility cost is a telephone shall use a mandatory standard telephone allowance of \$24. Each October 1 thereafter, the mandatory standard telephone allowance shall

be adjusted to reflect changes in the cost of basic telephone services.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9(d)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1079 (November 1985), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2529 (November 2010).

§1975. Earned Income Tax Credits (EITC)

A. Advance payment of EITC will not be counted as income for SNAP purposes. However, the amount will be counted toward the household's resources just as EITC payments made as tax refunds are.

B. Exclude EITC as resources for 12 months from receipt if the recipient is participating in SNAP when the EITC is received and continuously participates for the 12 months following receipt.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 and P.L. 103-66, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:393 (May 1989), amended by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010).

§1977. Cash Charitable Contributions

A. Effective immediately, cash charitable contributions based on need, which are received from private nonprofit charitable organizations, not in excess of \$300 total per federal fiscal year quarter, shall be excluded as SNAP household income.

B. ...

C. Affected households which were denied benefits because the household's eligibility or benefit calculation during the second federal fiscal year quarter of 1988 (but not prior to February 1, 1988) did not include this income exclusion shall be entitled to restored benefits, if otherwise eligible, at the time of recertification, whenever the household requests a review of its case, or when the department otherwise becomes aware that a review of a particular case is needed. Restored benefits shall be paid to February 1, 1988, or the date of the SNAP application, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with F.R. 53:22291 et seq., 7 CFR 273.9, P.L. 11-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Eligibility Determinations, LR 14:708 (October 1988), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010).

§1978. Income Decreased for Failure to Comply With Another Program

A. Effective November 27, 1996, an increase in SNAP benefits is prohibited when a household's benefit from another federal, state or local means-tested assistance program is decreased (reduced, suspended or terminated) due to failure to comply with a requirement of the program that imposed the benefit decrease.

B. The procedures for determining SNAP benefits when there is such a decrease in income are as follows.

1. When a recipient's benefits under a federal, state, or local means-tested program (such as but not limited to SSI

or FITAP) is decreased due to noncompliance, SNAP identifies that portion of the decrease which is a penalty.

2. The department calculates the SNAP benefits using the benefit amount which would be issued by that program if a penalty had not decreased the recipient's benefit.

AUTHORITY NOTE: Promulgated in accordance with F.R. 61:19155 et seq., 7 CFR 272.1, 273.9 and 273.11, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:1141 (November 1996), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010).

§1980. Income Exclusions

A. In addition to those income exclusions previously adopted and codified in Chapter 19, Certification of Eligible Households, the following income types will be excluded from countable income for the Supplemental Nutrition Assistance Program:

1. - 42. ...

43. any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident in the Gulf of Mexico on April 20, 2010.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171, P.L. 108-447, CFR 273.2, (j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended LR 23:82 (January 1997), LR 29:607 (April 2003), LR 31:2956 (November 2005), LR 32:1616 (September 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010).

§1981. Child Support Deduction

A. Legally obligated child support payments to, or for, an individual living outside of the household must be included in the deductions from the total monthly income when a budget for SNAP eligibility is determined. Households that fail or refuse to obtain necessary verification of their legal obligation or of their child support payments will have their eligibility and benefit level determined without consideration of a child support deduction.

AUTHORITY NOTE: Promulgated in accordance with F.R. 59:63265 et seq., 7 CFR 271, 273, 275, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 21:958 (September 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010).

§1983. Income Deductions and Resource Limits

A. In determining eligibility and benefit levels, the household is allowed deductions for certain costs.

1. ...

2. For fiscal year 2002 and each subsequent fiscal year, the maximum shelter deduction will be computed based on the amount for the preceding fiscal year, adjusted to reflect changes in the Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding November 30.

3. - 3.a. ...

B. The resource limit for a household is \$2,000, and effective October 1, 2002, the resource limit for a household that includes at least one elderly or disabled member is

\$3,000 for households and individuals who are not categorically eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171, Act 58, 2003 Reg. Session, P.L. 108-447, CFR 273.2, (j), P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:423 (July 1986), amended LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2530 (November 2010).

Subchapter J. Determining Household Eligibility and Benefit Levels

§1985. Determining Eligibility

A. Effective March 1, 1983, the Supplemental Nutrition Assistance Program's State Manual has been revised to reflect these mandated changes.

1. - 3. ...

4. Households participating or applying for participation in SNAP shall provide the agency with the Social Security Number (SSN) of each household member, or apply for one through the agency before certification as a condition of eligibility. The member that has applied for an SSN shall be allowed to participate for 30 days from the first day of the first full month of participation while awaiting receipt of the SSN. If the household member(s) can show good cause why an SSN has not been obtained in a timely manner, they shall be allowed to participate for an additional 30 days. In determining if good cause exists for failure to comply with this requirement, the department shall consider information from the household member, the Social Security Administration, and its own information. Documentary evidence or collateral information that the household has applied for the number or made every effort to supply SSA with the necessary information shall be considered good cause for not complying with this requirement.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:53309 et seq., 7 CFR 271, 272, 273.10, 274, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2531 (November 2010).

§1987. Categorical Eligibility for Certain Recipients

A. Households Considered Categorically Eligible

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Program, and households in which all members are recipients of SSI, shall be considered categorically eligible for SNAP.

2. - 4.b....

c. any member of the household is ineligible because of a drug related felony.

5. The following persons shall not be considered a member of a household when determining categorical eligibility:

a. an ineligible alien;

- b. an ineligible student;
- c. an institutionalized person;
- d. an individual who is disqualified for failure to comply with the work registration requirements;
- e. an individual who is disqualified for failure to provide or apply for a social security number;
- f. an individual who is on strike.

A.6. - 7. ...

8. Categorically eligible households must meet all SNAP eligibility factors except as outlined above.

9. Changes reported by categorically-eligible SNAP households shall be handled according to established procedures except in the areas of resources or other categorical eligibility factors.

10. ...

B. Application Processing

1. Households in which all members are applying for public assistance shall continue to be processed according to joint processing procedures. Until a determination is made on the public assistance application, the household's SNAP eligibility and benefit level shall be based on SNAP eligibility criteria. However, the local office shall postpone denying a potentially categorically-eligible household until the thirtieth day in case the household is determined eligible to receive public assistance benefits.

2. - 4. ...

5. If eligibility for public assistance is determined within the 30-day SNAP processing time, benefits shall be provided back to the date of application. If eligibility for public assistance is determined after the SNAP application is denied, benefits for the initial month shall be prorated from the effective date of the public assistance certification or the date of the SNAP application, whichever is later.

C. Certified households which become categorically eligible due to receipt of SSI benefits shall be eligible for the medical and uncapped shelter deductions from the beginning of the period for which the SSI benefits are authorized or the date of the SNAP application, whichever is later. These additional benefits shall be provided through restoration.

D. For SNAP purposes, Refugee Cash Assistance (RCA) benefits are not considered public assistance and, therefore, an RCA household is not categorically eligible.

E. Households considered broad-based categorically eligible for Supplemental Nutrition Assistance Program (SNAP) benefits are households who receive a non-cash TANF/MOE funded benefit or service.

1. A household shall not be considered broad-based categorically eligible if:

- a. any member of that household is disqualified for an intentional program violation;
- b. the household is disqualified for failure to comply with the work registration requirements;
- c. any member of the household is ineligible because of a drug related felony.

2. The following persons shall not be considered a member of a household when determining broad-based categorical eligibility:

- a. an ineligible alien;
- b. an ineligible student;
- c. an institutionalized person;
- d. an individual who is disqualified for failure to comply with the work registration requirements;

e. an individual who is disqualified for failure to provide or apply for a social security number;

f. an individual who is on strike.

3. Households which are broad-based categorically eligible are considered to have met the resource eligibility factor without additional verification.

4. Broad-based categorically eligible households must meet all Supplemental Nutrition Assistance Program eligibility factors except as outlined above.

5. Benefits for broad-based categorically eligible households shall be based on net income as for any other household.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274, F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2, (j), P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2531 (November 2010).

§1988. Eligibility Disqualification of Certain Recipients

A. ...

B. Effective May 7, 1998 an individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act, 21 U.S.C. 802[6]) shall be disqualified from receiving SNAP benefits for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall apply to an offense which occurred after August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:233.1, P.L.105-33, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 23:590 (May 1997), LR 23:1710 (December 1997), LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010).

§1991. Initial Month's Benefits

A. *Effective 10/1/96 by ER* Initial month means either the first month for which an allotment is issued to a household, or the first month for which an allotment is issued to a household following any period during which the household was not certified for participation in SNAP.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.10, P.L. 103-66, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), LR 23:83 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010).

§1993. Replacement of Benefits

A. Replacement issuances shall be provided only if a household timely reports a loss (food purchased with SNAP benefits has been destroyed in a household misfortune) and executes the proper affidavit. Replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:6989 et seq., 7 CFR 273.10, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), amended by the Department of Social Services, Office of Family Support, LR 19:783 (June 1993), LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010).

Subchapter K. Action on Households with Special Circumstances

§1995. Sponsored Aliens

A. The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, the alien parent of a battered child, or effective October 1, 2003, any alien under 18 years of age, or an indigent alien that the state agency has determined is unable to obtain food and shelter, taking into account the alien's own income plus, any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s).

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P.L. 104-208, P.L. 105-33, and P.L. 107-171, and 7CFR 273.4 (c)(3)(iv).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:355 (February 1998), LR 30:493 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010).

§1997. Drug and Alcohol Treatment Centers

A. Residents of publicly operated community mental health centers which provide the same type of residential programs for alcoholic or drug rehabilitation as private, nonprofit institutions will be considered individual households and, if eligible, may participate in SNAP.

B. Drug addicts or alcoholics and their children who are residents in an approved public or private, drug or alcohol treatment center program may participate in SNAP.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:6511 et seq., 7 CFR 273.11, P.L. 103-66, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:367 (June 1986), amended by the Department of Social Services, Office of Family Support, LR 21:189 (February 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010).

Subchapter L. Reporting Changes

§1998. Reporting Requirements

A. Effective November 2009, all SNAP households are included in simplified reporting with the exception of households participating in the Louisiana Combined Application Project (LaCAP).

B. Simplified reporting households are required to report only:

1. changes in the household's gross monthly income which result in the household's income exceeding 130 percent of the monthly poverty income guideline for the household size; and

2. changes in work hours of able-bodied adults without dependents (ABAWDs) who are subject to the time limit set forth in Section 1940 if the change results in the ABAWD working an average of less than 20 hours per week.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1486 (July 2004), amended LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010).

Subchapter M. Notice of Adverse Action

§1999. Reduction or Termination of Benefits

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the household at the time of action in the following situations.

1. The agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or ended because of the disqualification.

2. Benefits are reduced or terminated at the end of the certification period when the client timely reapplies.

3. The client has been certified in another state and that fact has been established.

4. The client signs a statement requesting closure or reduction in benefits and waives the right to advance notice.

5. Benefits are reduced or terminated effective the month following the simplified report month as a result of changes reported through the simplified reporting process.

6. The agency receives a written report signed by the head of the household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility.

7. Mass changes.

8. Based on reliable information, the agency determines that the household has moved or will be moving out of the state prior to the next monthly issuance.

9. The household applied for cash assistance and SNAP at the same time and has been getting SNAP benefits while waiting for approval of the cash assistance grant.

10. The client was a certified resident in a drug or alcohol treatment center or a group living arrangement which loses its state certification or FNS disqualifies it as a retailer.

11. A household certified under expedited processing rules provides postponed verification which reduces or terminates benefits.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 7 CFR 273.12(a)(1)(vii), P.L. 110-246

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 32: 2270 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010).

Subchapter N. Recertification

§2003. Recertification of Supplemental Security Income Households

A. Supplemental security income households which have received a SNAP notice of expiration shall be entitled to make a timely application for SNAP recertification at the SSA office.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010).

Subchapter P. Recovery of Over-Issued SNAP Benefits

§2005. Claims Against Households

A. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 48:6837 et seq., P.L.97-35,97-253,101-624 §1746, and 102-237 §911, 7 CFR 272,273, 276 and 277, P.L.103-66, P.L.104-193, P.L. 104-134, 7CFR 3 Subpart B., P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:899 (August 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 23:1710 (December 1997), LR 24:2326 (December 1998), LR 27:1017 (July 2001), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010).

§2007. Penalties

A. The Supplemental Nutrition Assistance Program (SNAP) shall maintain provisions relating to the disqualification penalties for intentional program violations. These provisions are aimed at deterring SNAP abuse and improving recovery of overpayments.

B. The basis for disqualification includes the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any state SNAP statute, and the use of SNAP benefits in certain illegal purchases. The program will not increase the benefits to the household of a disqualified person because of the disqualification.

1. ...

2. Individuals will be disqualified for two years for a first finding by a court that the individual used or received SNAP benefits in a transaction involving the sale of a controlled substance, and permanently for a second such finding. Permanent disqualification will also result for the first finding by a court that an individual used or received SNAP benefits in a transaction involving the sale of firearms, ammunition or explosives with SNAP benefits.

3. An individual convicted of trafficking SNAP benefits of \$500 or more shall be permanently disqualified.

4. ...

C. A loss of benefits penalty shall be imposed on those SNAP recipients who fail to report earned income in a timely manner. When determining the amount of benefits the household should have received, the department shall not apply the 20 percent earned income deduction to the income of the household which did not timely report. By doing this, the household that benefited from the failure to timely report is penalized since the amount it has to repay in overissuance will be increased. This provision shall be applied to allotments issued for October 1996 and all allotments issued for subsequent months.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B, and FR 65:41752 et seq., P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 14:150 (March 1988), amended by the Department of Social Services, Office of Family Support, LR 23:84 (January 1997), LR 27:1017 (July 2001), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010).

Subchapter R. Simplified Reporting

§2013. Simplified Reporting

A. Effective November 2009, all SNAP households are included in simplified reporting with the exception of households participating in the Louisiana Combined Application Project (LaCAP).

B. Households subject to simplified reporting will be required to report only:

1. - 2. ...

C. Households included in Simplified Reporting will be assigned a certification period of 12 months.

D. All households in simplified reporting are required to:

1. timely provide a completed simplified report form and all necessary verification; and

2. report current household circumstances.

E. Failure to provide a complete Simplified Report form and verification will result in case closure.

F. ...

G. Any change in benefits as a result of simplified reporting will be effective the month following the month in which the Simplified Report was required.

H. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:867 (June 2001), amended LR 28:103 (January 2002), LR 29:607 (April 2003), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010).

Chapter 21. Louisiana Combined Application Project (LaCAP)

Subchapter A. Household Concept

§2103. Household Definition

A. - A.2. ...

3. is not institutionalized, or otherwise ineligible for SNAP due to immigration status, an Intentional Program Violation, or drug conviction; and

4. lives alone or declares to purchase and prepare food separately from others in a shared living situation.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010).

§2105. Application Process

A. The department shall make an eligibility determination and issue SNAP benefits within 30 days following the date of application for LaCAP.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2(g), 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010).

§2107. Benefits

A. Participants will receive one of four standard amounts of SNAP benefits based on the household's total combined shelter (housing and utilities) costs.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010).

§2113. Household Options

A. Households may choose to opt out of LaCAP at any time and participate in regular SNAP, if otherwise eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2272 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010).

§2117. Recovery of Overissued Benefits

A. Establishment of claims, penalties, and collection methods for LaCAP households shall be handled in accordance with procedures outlined in Chapter 19, Subchapter P, Recovery of Over-Issued Supplemental Nutrition Assistance Program Benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.B., 7 CFR 273.18, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2272 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010).

Subpart 12. Child Care Assistance Program
Chapter 51. Child Care Assistance Program
Subchapter A. Administration, Conditions of Eligibility,
and Funding

§5102. Definitions

* * *

Household Designee (HD)—an adult who is designated (in writing) by the CCAP Head of Household, other responsible household member, or authorized representative to drop off and/or pick up the child or children from an authorized CCAP provider. Each household designee may be finger imaged for identity purposes. In the case of an in-home provider, a household designee is the person to whom the provider may release the child or children when the provider leaves the home.

* * *

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:1464 (August 2006), LR 36:845 (April 2010), LR 36:1278 (June 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2535 (November 2010).

§5104. Reporting Requirements Effective February 1, 2004

A. A low income child care household that is not included in a Supplemental Nutrition Assistance Program Simplified Reporting household shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A low income child care household that is included in a SNAP simplified reporting household is subject to the simplified reporting requirements in accordance with LAC 67:III.2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:845 (April 2010), LR 36:1278 (June 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2535 (November 2010).

§5106. Ineligible Payments

A. All ineligible benefits are subject to action to recover such benefits.

B. When a participant is suspected of Intentional Program Violation (IPV), appropriate referral and forms

shall be submitted to the Fraud and Recovery Section. The Fraud and Recovery Section may then:

1. refer the case for prosecution; or
2. refer the case to the Appeals Bureau for a Disqualification Hearing if the participant does not sign the Waiver of Right to an Administrative Hearing and the facts of the case do not warrant civil or criminal prosecution through the appropriate court systems; or the case was previously referred for prosecution and was declined by the appropriate legal authority; or the case was previously referred for prosecution and no action was taken within a reasonable period of time and the referral was formally withdrawn by Fraud and Recovery.

C. If IPV is established, Fraud and Recovery will send a notice to the person to be disqualified and a copy of the notice to the parish office. The parish office will take action to disqualify for the appropriate situations:

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

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2535 (November 2010).

Subchapter B. Child Care Providers

§5107. Child Care Providers

A. - B.4. ...

C. An FCDCH provider must be registered and active in the CCAP Provider Directory before payments can be made to that provider.

1. To be eligible for participation, in CCAP, an FCDCH provider must meet registration requirements as provided in R.S. 46:1441 et seq., complete and sign an FCDCH provider agreement, complete a CCAP application for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements, including:

C.1.a. - E.6. ...

F. Under no circumstance can the following be an eligible CCAP provider:

F.1. - G.1.a. ...

b. an FCDCH provider fails to pass inspection by the Fire Marshal;

c. - f. ...

g. any action which results in disqualification as described in LAC 67: III. Section 5113.

1.h. - 2. ...

H.1. Quality incentive bonuses are available to:

a. effective May 1, 2004, eligible CCAP providers who provide special care for children with special needs. This special needs care includes but it is not limited to specialized facilities/equipment, lower staff ratio, and specially trained staff. The amount of these Special Care Needs Incentive payments will be in accordance with §5109.B.1.b and §5109.B.2.b;

b. eligible child care centers that employ a teacher who attends specified infant/toddler training on a first-come, first-serve basis, on a limited basis due to one-time American Recovery and Reinvestment ACT (ARRA) funding. A maximum of 10 centers per region are eligible to receive a \$2000 grant for infant/toddler materials and

equipment. However, if all applications have been received and one region has less than 10 qualified or interested centers and another region has additional qualified centers that wish to participate, resources may be moved to allow full participation and benefit from the ARRA funding. The center must meet requirements and participation targets to receive the grant. Centers must apply and meet the requirements to be eligible. Eligibility will be determined by the Division of Child Care and Early Childhood Education;

c. eligible teachers who work for an eligible center as described in LAC 67: 5107.H.1.b. and elect to attend this specialized infant/toddler training. Up to four infant/toddler teachers employed by the eligible center may attend. Teachers can receive wage supplements up to \$1500 for participation but must meet requirements and participation targets to receive wage supplements. Teachers must apply and meet the requirements to be eligible. Eligibility will be determined by the Division of Child Care and Early Childhood Education.

H.2. - I.3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:845 (April 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR:36:2535 (November 2010).

§5111. Ineligible Payments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000), amended LR 30:496 (March 2004), LR 31:2266 (September 2005), repealed by Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2536 (November 2010).

§5113. Disqualification Periods for CCAP Providers

A. A child care provider shall be disqualified from receiving CCAP payments if the agency determines that certain acts or violations have been committed by that provider. CCAP disqualifications shall apply as follows.

1. A criminal background check (CBC) shows that a provider has been convicted of or pled no contest to any defense in another jurisdiction whose elements would constitute an enumerated offense under in R.S.15:587.1(C) if committed within Louisiana, shall result in permanent disqualification. If a CBC shows that a person living in or working in an FCDCH or a person working in a Class A, Class E center, or child care center licensed by the Department of Defense (Class M) shows the person has been convicted of or pled no contest to any offense enumerated in R.S.15:587.1(C), or has been convicted or pled no contest to any offense in another jurisdiction whose elements would

constitute an enumerated offense under R.S. 15:587.1(C) if committed within Louisiana, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class E, or Class M center. For purposes of this Section a conviction under La C.Cr.P. Arnts 893 or 894, or equivalent provisions of another jurisdiction, shall constitute a conviction.

2. A Category 1 validated complaint of child abuse or neglect on the provider shall result in permanent disqualification. If the Category 1 validated complaint is for a person living in or working in an FCDCH or for a person working in a Class A, Class E, or Class M center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class E, or Class M center. The following types of validated complaints of child abuse or neglect are considered to be Category 1 complaints: bone fracture, factitious disorder by proxy/Munchausen by proxy syndrome, poisoning or noxious substance ingestion, suffocation, whiplash/shaken infant syndrome, HIV/AIDS and hepatitis, prostitution, sexual intercourse (vaginal or anal), failure to thrive (non-organic), central nervous system damage/brain damage/skull fracture, internal injury, subdural hematoma, torture, wounds, oral sex, sexual exploitation/pornography, sexually transmitted disease, malnutrition/starvation, death/abuse, death/neglect, perpetrators who have an adjudication of a child in need of care, perpetrators with a voluntary or involuntary Termination of Parental Rights (TPR) judgment, sexual enticement, simulated intercourse, abandonment, burns, eye injury, minor head/facial injuries, tying or confinement, passive abuse, exploitation, sexual manipulation or fondling, emotional maltreatment, bruises/cuts/welts/scratches, dislocations or sprains, human bites, mouth/dental trauma, medical neglect, drug/alcohol abuse, dependency, and lack of supervision as described in §5113A.4. These types of validated complaints of child abuse or neglect are defined by the department.

3. A Category 2 validated complaint of child abuse or neglect on the provider shall result in the disqualification periods described below. If the Category 2 validated complaint is for a person living in or working in an FCDCH or working in a Class A, Class E, or Class M center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class E, or Class M center, or until the disqualification period described below ends, whichever is sooner. The following types of validated complaints of child abuse or neglect are considered to be Category 2 complaints: inadequate clothing, inadequate food, inadequate shelter, and lack of supervision as described in §5113.A.4. These types of validated complaints of child abuse or neglect are defined by the department. The disqualification periods for Category 2 validated complaints are as follows:

- a. six months for first validated complaint;
- b. 12 months for second validated complaint;
- c. 24 months for third and subsequent validated complaints.

4. A validated complaint of child abuse or neglect due to lack of supervision shall be deemed by the agency as either a Category 1 or a Category 2 complaint, based on the severity of the complaint and the circumstances that existed at the time of the complaint.

5. An Intentional Program Violation (IPV) is any act by a CCAP provider that consists of intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding relevant facts. A provider who has committed an IPV will be subject to the following disqualification periods:

- a. 12 months for the first violation;
- b. 24 months for the second violation; and
- c. permanently for the third violations

6. Non-fraudulent violations of the terms of the CCAP Provider Agreement, shall result in the following disqualification periods:

- a. three months for first violation;
- b. six months for second violation; and
- c. 12 months for third and subsequent violations.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:2208 (October 2008), amended LR 36:556 (March 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2536 (November 2010).

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

Subchapter B. Conditions of Eligibility

§5329. Income

A. - A.31. ...

32. any payments other than wages received as a result of the Mississippi Canyon Well Incident in the Gulf of Mexico on April 20, 2010.

B. - D. ...

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

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

§5347. Reporting Changes

A. Effective February 1, 2004, a KCSP household that is not included in a SNAP Simplified Reporting household shall report any change that affects eligibility. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A KCSP household that is included in a Simplified Reporting household is subject to the simplified household reporting requirements in accordance with LAC 67:III.2013 and must report if the only child moves out of the home.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231 et seq., 7 CFR Part 273, 42 U.S.C., et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2565 (December 2002), amended LR 30:1487 (July 2004), LR 32:264 (February 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2537 (November 2010).

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

Chapter 55. TANF Initiatives

§5501. Introduction to the TANF Initiatives

A. The programs known collectively as the TANF Initiatives provide benefits in the form of services to needy families, defined as families who have earned income at or below 200 percent of the federal poverty level, or a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Supplemental Nutrition Assistance Program (SNAP) benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), or free or reduced school lunch.

B. Not all TANF Initiatives require a family to be "needy" as defined above in order to receive services. There are initiatives that target children, parents, or caretaker relatives of minor children and require only that the person be in need of the services provided by the initiative.

C. The goals of the TANF Initiatives are:

1. to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
3. to prevent and reduce the incidence of out-of-wedlock pregnancies; and
4. to encourage the formation and maintenance of two-parent families.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2537 (November 2010).

Ruth Johnson
Secretary

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RULE

**Department of Culture, Recreation and Tourism
State Library of Louisiana**

State Library (LAC 25:VII.Chapters 1-53)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 44:718(D), that the State Library of Louisiana has amended the content of Chapters 1, 3, 5, 13, 23, 31, 43, 45, 51 and 53 to reflect agency and departmental name changes as well as changes in procedures within the agency.

Title 25

CULTURAL RESOURCES

Part VII. State Library

Subpart 1. Readers' Services

Chapter 1. Eligible Public

§101. Use of Library

A. Any citizen or any public, school, academic, special, or state institutional library is eligible to use without charge

the library materials and services of the State Library of Louisiana, as provided in these rules.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9 and R.S. 25:16.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2537 (November 2010).

§103. Information and Loan

A. Any citizen may use library materials and receive information and reference service at the State Library.

B. Any citizen registered for library service with his local public library shall borrow State Library printed materials through his local library. Exceptions to this rule are:

1. if the State Library receives telephone or written authorization from a patron's parish library including facsimile or electronic mail, he may borrow direct with the materials being charged to the parish library.

C. Students and faculty in institutions of higher learning, and residents and staff of other state institutions may, within the library regulation of such institutions, borrow State Library printed materials through those libraries.

D. Elementary and secondary school libraries may borrow State Library materials through their local public libraries.

E. Information, reference, and loan services of the State Library are available direct to:

1. state elected and appointed officials and state employees including those who are retired;
2. accredited members of the Louisiana public information media;
3. officers and employees of agencies listed in the Louisiana State Government Directory;
4. students and faculty members of the Louisiana State University Graduate School of Library and Information Science;
5. all public, academic, special, and state institutional libraries whether in or outside of the state;
6. State Library of Louisiana Board of Commissioners.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9 and R.S. 25:16.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2538 (November 2010).

§107. Blind and Physically Handicapped

A. Any Louisiana resident who cannot use standard printed materials because of temporary or permanent visual impairment or physical handicap may use directly the special library materials and services of the State Library's Talking Books and Braille Library. Eligibility based on this qualification required by the federal government must be certified by a professional in the medical, social work, or educational field.

B. This service is also extended to schools, hospitals, nursing homes and other agencies having one or more eligible handicapped persons in their care.

C. Eligible Louisiana residents temporarily out of state (for not longer than three months) may continue to be served at their destination point. For longer periods, it is recommended that temporary service be applied for from the

library for the blind and physically handicapped regularly serving the area of their temporary residence. United States citizens who move either temporarily or permanently overseas (including Puerto Rico, Guam and the Canal Zone) will be referred to the Library of Congress, Division for the Blind and Physically Handicapped, for service.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9 and R.S. 25:16.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2538 (November 2010).

Chapter 3. Library Materials

§301. Information and Loan of Materials

A. Library materials available for use in the State Library or on loan and the conditions for use are:

1. books, pamphlets, documents, audio-visual materials;

a. all may be used in the State Library;

b. all are available for loan except volumes of expensive reference sets, the current editions of heavily used reference books, certain other reference books when needed pages can be Xeroxed, genealogy books, rare books, and books in fragile condition;

c. the normal loan period for materials is 28 days. Materials with reserves are loaned for 21 days. Materials may be renewed twice for a total loan period of 84 days. Renewals will not be made on materials with reserves;

2. magazines:

a. all may be used in the State Library and all may circulate except the current issue and those in fragile condition in which case a photocopy of the desired article may be made;

b. loan periods and extensions are the same as for books above;

3. newspapers. Newspapers in print may be used in the library. Although newspapers do not circulate photocopies can be provided at \$0.10 per exposure;

4. microfilm. All microfilm which include among other items Louisiana newspapers, Louisiana census records, some parish records such as marriage, succession, and probate may be used in the State Library. Microfilm reader-printers are available for patrons' use. Rolls that are in duplicate circulate for two weeks only with a limitation of five rolls to patron per loan;

5. maps. All maps may be used in the State Library. Maps that are in duplicate circulate for 28 days;

6. photographs and art works. All photographic art works may be used in the State Library, but do not circulate;

7. slides. All slides may be used in the State Library;

8. vertical file material. All vertical file materials (clipped and mounted newspapers and magazine articles, current and retrospective) may be used in the library;

B. Fines and fees for library materials are:

Fine for Overdue Materials	\$.10 per day per item up to a maximum of \$10.00 per item
Replacement Cost for Lost Materials	Replacement cost plus \$25.00 processing fee

1. The State Library offers a 3-day grace period on overdue items. On the fourth day, the fine is charged for every day the item is late, including the grace period,

weekends and holidays. The State Library offers an after-hours deposit box for returning items when the library is closed. Items retrieved from this box will be assumed to have been returned on the last day the library was open.

2. If an item has been published in the past five years, the retail price of the item plus the processing fee will be considered replacement cost and invoiced to the user when it is three months overdue. If an item was published six or more years ago, then the current replacement cost will be charged. If an item is out-of-print, the average out-of-print cost will be charged.

3. If an item is returned within the same fiscal year in which it was lost and paid, then the user is entitled to a full refund of the charges. No refund is available after the end of the fiscal year.

C. Meeting Rooms. The primary purpose of the meeting rooms within the State Library is for library programs and training. When not in use, meeting rooms may be available to other entities. Fees are outlined below:

Room	Maximum Seating	CRT Use	Other Governmental Agency Use	Private Use
Seminar Center (1 st Floor)	100	\$0	\$200 per day \$125 per half day	\$500 per day \$300 per half day
Capitol View Room (5 th floor)	15 tables; 30 classroom style	\$0	\$200 per day \$125 per half day	\$500 per day \$300 per half day
Room 221 (2 nd Floor)	15	\$0	\$100 per day \$65 per half day	\$200 per day \$125 per half day
Rooms 128, 132 (1 st Floor)	8	\$0	\$75 per day \$40 per half day	\$125 per day \$75 per half day

1. Additional charges:
a. \$200 cleaning deposit for any event at which food is served (may be waived for governmental agency use) (refundable);

- b. \$25 per instance for use of library laptop;
- c. \$25 for use of library LCD projector and screen;
- d. \$25 for use of flip chart (includes one pad of paper) and markers.

2. Users of the meeting room must abide by the State Library meeting room policy (i.e., user cannot charge admission, cannot sell anything, etc.). Meeting rooms are only available during the normal business hours of the State Library.

3. Priority for use of library meeting facilities is as follows:

- a. State Library activities;
- b. other library-related activities and organizations;
- c. CRT agencies;
- d. other governmental agencies;
- e. non-governmental agencies or individuals (may only reserve it 30 days in advance).

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library of Louisiana, LR 36:2538 (November 2010).

§305. Blind and Physically Handicapped Materials

A. Library materials available include books and magazines recorded on discs, open-reel magnetic tapes, and cassettes; and books and magazines printed in large type and embossed in Braille. Most of these materials are provided by

the Library of Congress through its national books for the blind and handicapped program.

B. Library materials are delivered to borrowers' homes and agencies by parcel post, and must be returned to the State Library by parcel post. All postage service is free. Users may borrow direct from the State Library if they wish.

C. The loan period is one month for individuals, the school year for schools. Renewals are granted depending on the demand for specific titles.

D. The number of books per loan is determined by the patrons themselves, the speed with which they read and return books, their needs, and their storage facilities. Agencies may arrange for deposit collections.

E. Especially designed talking book machines cassette and digital players are provided on loan from the State Library or Talking Book and Braille Library. Patrons must provide their own open-reel tape playing equipment.

F. Repair and maintenance of equipment is arranged by the official equipment lending agency which is the Talking Books and Braille Library.

G. Application forms for use and information about the service are available from the State Library, any Louisiana public library, and the Talking Books and Braille Library, or any of its area offices. Applications may be filed with any of the above.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2539 (November 2010).

Chapter 5. Services

§501. Information and Loan Services

A. Services include:

- 1. filling requests for information; for specific titles, by specific authors, and for material on a particular subject;
- 2. verifying and locating books and/or other materials not in the State Library collection for direct borrowing by the requesting library;
- 3. making referrals to other sources;
- 4. selecting books, periodicals, and other materials for purchase to meet demand, and to develop the collection;
- 5. making or ordering photo copies, or microform prints, for all authorized users and borrowers;
- 6. compiling bibliographies;
- 7. instructing patrons in the use of the State Library.

B. Limitations on services include:

- 1. not performing genealogical research;
- 2. assisting but not providing extensive research for students;
- 3. assisting, but not searching indexes where available to patrons;
- 4. not borrowing books on genealogy, juvenile books, popular fiction, best-selling nonfiction likely to be in current demand, medical or legal texts (except for a member of the medical or legal professions);
- 5. not borrowing from an academic institution for a student of that institution.

C. Charges for Service. Services are free except for photocopying and microform prints. The charge for this service is \$0.10 per exposure; a minimum of \$1 is charged for mail orders.

D. Use of Gumbo Digital Images are subject to fees as listed below:

Entity	Use	Price per Image
Individual	Personal/Educational	\$10
Non-profit	Editorial	\$20
	Film/video/advertising	\$50
Commercial	Editorial	\$50
	Film/video/advertising	\$100

NOTE: Rates and fees will be less than local commercial pricing and may be adjusted as needed to keep up with general business practices. In addition, the state librarian may make exceptions to fees as deemed necessary. The existing price structure as well as the Request for Permission to use is on our website.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2539 (November 2010).

§505. Blind and Physically Handicapped Services

A. Services include:

1. lending library materials from the Talking Books and Braille Library collection;
2. making every effort to locate outside the state any title the patron may request;
3. making selections from lists of requests submitted by the patron. Catalogs of the collection are sent to the patron upon registration, and periodically thereafter;
4. making selections for patron on request based on his personal interests and on information provided in his online profile;
5. purchasing, or producing by volunteers, after evaluation of the request, materials for college or vocational use and titles of Louisiana or regional interest;
6. sending names of patrons to the American Foundation for the Blind to assure patrons' receipt of official publications;
7. sending on request for addition to mailing lists names of patrons to publishers of magazines available without charge.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2540 (November 2010).

§507. Patrons' Right to Privacy

A. State Library employees shall not divulge information regarding the materials used by any patron nor shall they identify the users of particular library materials without the consent of the individuals concerned. Such privileged client information will only be made available by the State Library on order from a court of competent jurisdiction.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, repromulgated by Department of Culture, Recreation and Tourism, Office of the State Library, LR 28:1576 (July 2002), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2540 (November 2010).

Subpart 2. Library Technical Services

Chapter 13. Louisiana Union Catalog

§1301. Louisiana Union Catalog Program Functions

A. The Louisiana Union Catalog Program provides a continually updated electronic file listing and description of all library materials by publicly funded public and academic libraries.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2540 (November 2010).

§1303. Incorporation of Titles Submitted by Libraries

A. Responsibility for the currency and accuracy of holdings information in the electronic databases is charged to each individual library.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2540 (November 2010).

§1305. Bibliographic and Location Information

A. Bibliographic and location information contained in the central electronic file is available to anyone on request.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:451 and R.S. 25:453.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2540 (November 2010).

Subpart 3. Library Development

Chapter 23. Regional Library Systems

§2305. Definitions of Conditions for Qualifying for a Library System Grant

Designated as a System—parishes grouped geographically in natural trade areas for library cooperation.

Director of the System—the chief administrative officer.

Expenditures for Service—expenditures for personnel, library materials, binding and supplies, purchase, repair or replacement of furnishings and equipment, and costs necessary for the maintenance of the plant. It does not include capital expenditures which result in the acquisition of or addition to fixed assets, e.g., building sites, new buildings and building additions, equipment (including initial book stock), furnishings for new or expanded buildings. It excludes income in kind (free rent and utilities, staff members paid by another agency, the value of volunteer staff time, gift books and gift subscriptions to periodicals). If funds are saved over a period of years for replacement of equipment (or for the purchase of new equipment), the amount saved during the year under consideration may be counted in the expenditures for service for that year; however, when the total amount is spent during one year (example: for purchase of a bookmobile) only the amount budgeted for that year may be counted in expenditures for service.

Library Center—the administrative unit to house the staff required to administer the system, to accommodate the services performed, and to provide an in-depth collection of library materials to permit ready access by the total citizenry of the system.

Library System—a group of libraries within a defined geographical area working together for the improvement of library service for all residents of the area.

Membership in the System—participation in the plan of service developed by the executive council which is made up of the administrative librarians of the member libraries of the system.

Resources—all types of library materials including books, periodicals, films, recordings, microfilm, etc.

AUTHORITY NOTE: Adopted in accordance with R.S. 25:9, R.S. 25:14 and R.S. 25:15.

HISTORICAL NOTE: Filed by the Louisiana State Library at the Office of the State Register, December 11, 1974, amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2540 (November 2010).

Subpart 4. State Aid to Public Libraries Grant

Chapter 31. Disbursement of State Aid Grants

§3101. Definitions

A. The following terms have the respective meanings ascribed to them, except in those instances where the context clearly indicates a different meaning.

Audiovisual Materials—educational materials directed at both the senses of hearing and sight, and includes motion pictures, videocassette, audiocassettes, CDs, DVDs, sound and silent filmstrips, slide sets, recordings, microprint, and art works used in library collections.

Consolidated Library System—a library system, established by the governing bodies or authorities of two or more parishes as provided in R.S. 25:211, which crosses parish lines and is governed by a single board of trustees, administered by a single head librarian, and within which all of the service outlets are branches of a single institution.

District Library—a library established by state law, for a defined district within a parish, to serve residents of the district.

Free Basic Library Service—standard library service including the use of the principal circulating collection of the library standard reference/information services and electronic materials without charge.

Municipal Library—a library, established by one or more municipal governing authorities as provided by law to serve all residents of the municipality or municipalities and which may or may not serve additional persons.

Nonconsolidated Library System—a library system which is composed of two or more autonomous member libraries, each having its own board of trustees, controlled by representatives of member libraries, and operated from a designated library center under the supervision of a system director, and which receives special financial support from local, regional or state appropriations to provide more comprehensive library service in the geographical area served by the system.

Parish Library—a library, established by a parish governing authority, as provided by law to serve all residents of the parish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:107 (March 1980), amended LR 13:392 (July 1987), LR 24:2232 (December 1998), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2541 (November 2010).

§3103. Submission of Applications

A. The state librarian shall establish a program of supplemental grants to libraries for the purchase of technology enhancement, technological information resources, books, audiovisual materials, newspapers, and periodicals in accordance with the provisions of this Part. The state librarian may establish rules and regulations for implementation of this program in accordance with the

Administrative Procedure Act. Grants may be made from funds appropriated to the State Library for allocation to libraries as provided herein.

B. Any parish library which serves all residents of the parish, any municipal library which serves all residents of a parish which does not have a parish library, any consolidated library system, and any district library shall be entitled to apply annually to the state librarian to receive supplemental grants in accordance with the provisions of this Part.

C. Applications to receive supplemental grants shall be submitted with the written approval of the Library Board of Control.

D. Grants shall be made by the state librarian on the basis of annual applications for grants submitted to the state librarian. Applications for state fiscal year must be made by November 1 of the same state fiscal year. Exceptions for extending expenditures to the next fiscal year may be granted by the state librarian.

E. Applications shall contain such information as may be requested by the state librarian to establish the eligibility of the library under the provisions of this Part and rules and regulations promulgated by the state librarian. Applications shall also contain a proposal for expenditure of funds for which application is made.

F. Funds granted under the provisions of this Part shall be expended only for the purchase of technology enhancement, technological information resources, books, audiovisual materials, newspapers, and periodicals. Exceptions for expenditures on items other than those listed above may be granted by the state librarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:108 (March 1980), amended LR 24:2232 (December 1998), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2541 (November 2010).

§3105. Eligibility

A. Each library or consolidated library system represented by the applicant must be legally established according to Louisiana Revised Statutes Title 25, Section 211, except for the New Orleans Public Library which was established prior to the enactment of Title 25.

B. Each library or consolidated library system must agree to serve all patrons with free basic library service with no denial of service by reason of race, color, national origin, religion, sex, age, marital status, or political affiliation.

C. Each library or consolidated library system shall show evidence of working toward the standards for public library service in Louisiana as adopted by the Louisiana Library Association.

D. Each library or consolidated library system participating in the program of supplemental grants shall endorse and comply with the interlibrary loan code adopted by the Louisiana Library Association to assure the interlibrary availability of materials purchased from funds granted herein.

E. A parish library which serves all residents of the parish, a municipal library which serves all residents of a parish which does not have a parish library, and a consolidated library system shall be eligible to apply to receive supplemental grants if other conditions of eligibility are met.

F. If eligibility to receive state grants under the rules is lost for any reason, the following conditions must be met to re-establish eligibility.

1. The state librarian will be notified that the library or consolidated library system will be ineligible to participate in the program of supplemental grants by submission of the annual report which when filed by July 1 will indicate the inability to "maintain effort". Said library or consolidated library system shall not be declared ineligible until after the receipt of their annual report.

2. The library or consolidated library system which has been declared ineligible in writing by the state librarian shall not receive state aid funds for the succeeding state fiscal year (July 1-June 30).

3. The ineligible library or consolidated library system shall continue to make annual application to the State Library to be filed for the next succeeding year so when circumstances permit participation in the supplemental grants program the library or consolidated system will have an application on file and will be eligible.

4. When an ineligible library or consolidated library system submits evidence in the form of the annual report of a return to the required level of maintenance of effort for the expenditure on library materials and total income received from local sources for the stipulated period of time, that library or consolidated library system will be declared eligible for participation in this program. Payments will begin with the state's next fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:108 (March 1980), amended LR 13:392 (July 1987), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2541 (November 2010).

§3113. Appeal Process

A. If a public library, consolidated library system, or district library is denied the grant for technology materials and/or library materials, the avenue to appeal this decision will be first the state librarian, next, to the secretary of the Department of Culture, Recreation and Tourism, and finally, to the lieutenant governor of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:14.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 6:109 (March 1980), amended LR 13:392 (July 1987), LR 24:2232 (December 1998), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2542 (November 2010).

Subpart 5. Public Document Depository System

Chapter 43. Deposit of Publications

§4303. Public Documents Required to be Deposited

A. The public documents required to be deposited are those defined in R.S. 25:121.1.

1. Electronic documents denotes any discrete public document published in a static electronic or digital format. Excluded from the definition of public documents are correspondence, interoffice or intra-office memoranda, records of an archival nature; interactive, non-discrete, constantly changing electronic items such as Web sites,

databases, ASP (active server pages), or software programs.

2. Public document means informational matter, regardless of format, method of reproduction, source, or copyright, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency, including material published with federal funds or by sub-state planning districts. This definition incorporates publications released by private bodies such as research and consultant firms under a contract with and/or under the supervision of any state agency. Further, this definition specifically includes journals, laws or bills, statutes, codes, rules, regulations; newsletters, bulletins, state plans, brochures, periodicals or magazines; minutes of meetings of boards and commissions, transcripts of public hearings; reports, directories, statistical compendiums, bibliographies, pamphlets, lists, books; charts, maps, surveys; other printed matter; microfilm, microfiche, audiovisuals; electronic documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122(B).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:187 (April 1982), amended LR 28:1577 (July 2002), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2542 (November 2010).

Chapter 45. Depository Library System

§4501. Statutory Depositories

A. The State Library of Louisiana and Louisiana State University Library at Baton Rouge are legally designated complete depository libraries. They shall be the historical depository libraries, shall receive two copies of all public documents received by the recorder for distribution, and shall retain permanently one copy of each. The State Library of Louisiana is responsible for archiving and providing permanent public access to documents it receives that are issued solely in electronic formats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122(B).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:188 (April 1982), amended LR 28:1577 (July 2002), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2542 (November 2010).

§4507. Termination of Depository Contract

A. Termination of the contract between the State Library of Louisiana and the depository shall be by written notice six months in advance of the proposed date of termination. The state documents received shall be retained by the depository until the normal retention date, unless otherwise advised by the recorder of documents.

B. Failure of a depository to abide by the depository law, rules and regulations and guidelines shall result in termination of depository contract by the state librarian upon six months written notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:122(B).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 8:188 (April 1982), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2542 (November 2010).

Subpart 6. Board of Library Examiners

RULE

Chapter 51. Certification

**Department of Economic Development
Office of the Secretary**

§5103. Candidate Requirements

**Ports of Louisiana Tax Credits: Investor Tax Credit Program
(LAC 13:I.Chapter 39)**

A. Requirements to be met by candidates for executive certificates are:

1. a baccalaureate degree;
2. professional education, culminating in a Masters Degree in Library and Information Science representing a minimum of five years of study beyond secondary school level. This degree must have been granted by a library school accredited by the American Library Association;
3. three years executive experience in a public library of recognized standing, after receiving the library science degree.

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. 36:104 hereby adopts the following Rules of the Ports of Louisiana Tax Credits: Investor Tax Credit Program as LAC 13:I.Chapter 39.

B. Candidates for temporary certificates must have all of the above qualifications except the years of executive experience. Such certificates are issued by the board only as emergency measures. It is expected that individuals holding temporary certificates will qualify for executive certificates within three years.

C. Candidates must attain a grade of at least 75 in the examination to be granted a certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:222-223.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 11:250 (March 1985), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2543 (November 2010).

Chapter 53. Examination

§5301. Examination Criteria

A. The examination covers the following aspects of public library service:

1. library organization and administration;
2. library budgets and financial operation;
3. standards for library service;
4. Louisiana laws pertaining to libraries and library administration;
5. current status of library development in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:222-223.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 11:250 (March 1985), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2543 (November 2010).

§5305. Application

A. Application blanks for permission to take the examination may be obtained from the State Board of Library Examiners, State Library of Louisiana, Box 131, Baton Rouge, LA 70821.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:222-223.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Library, LR 11:250 (March 1985), amended by the Department of Culture, Recreation and Tourism, State Library, LR 36:2543 (November 2010).

Rebecca Hamilton
State Librarian

1011#040

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 39. Ports of Louisiana Tax Credits

Subchapter A. Investor Tax Credit

§3901. Purpose and Definitions

A. Purpose

1. The primary purpose of this Subchapter is to encourage private investment in public port facilities in Louisiana. The development, improvement, expansion, and maintenance of the state's ports and port infrastructure facilities, is essential to Louisiana's economic health and the ability of business and industry associated with the maritime industry to compete cost effectively on a regional, national, and global scale.

B. Definitions

Applicant—investing company or proposing entity submitting application for certification of project/expenditures/tax credits

Application Date—the date an application for preliminary certification of a project is received by LED.

Capital Costs—

a. all costs and expenses incurred by an investing company.

i. in connection with acquisition, construction, installation, and equipping of a qualifying project;

ii. during the period commencing with the date on which the acquisition, construction, installation, and equipping commences and ending on the date on which the *qualifying project* is placed in service.

b. *Capital costs* shall include, but are not limited to:

i. costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and to contractors, subcontractors, builders, and materialmen;

ii. the costs of acquiring land or rights in land and any cost incidental thereto, including recording fees;

iii. the costs of contract bonds and of insurance of any kind that may be required or necessary during the acquisition, construction, or installation of a qualifying project;

iv. the costs of architectural and engineering services, including test borings, surveys, estimates, plans, and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as for the performance of all the duties required by or consequent upon

the acquisition, construction, and installation of a qualifying project;

v. the costs associated with installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, installation of utilities, including water, sewerage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the property;

vi. costs otherwise defined as capital costs incurred by the investing company where the investing company is the lessee under a lease that contains a term of not less than five years and is characterized as a capital lease for federal income tax purposes;

vii. all other costs of a nature comparable to those described, including but not limited to all project costs required to be capitalized for federal income tax purposes pursuant to the provisions of 26 U.S.C. §263(A).

c. *Capital costs* shall not include property owned or leased by the investing company or a related party before the commencement of the acquisition, construction, installation, or equipping of the qualified project unless such property was physically located outside the state for a period of at least one year prior to the date on which the qualifying project was placed in service.

COA—the Commissioner of Administration of the State of Louisiana

DOTD—the Louisiana Department of Transportation and Development.

Estimated Start Date—the estimated date on which the acquisition, construction, installation, or equipping of the qualifying project was commenced or is expected to commence.

Investing Company—any corporation, partnership, limited liability company, proprietorship, trust, or other business entity, regardless of form, making a qualified investment.

Investors—shareholders, partners, members, owners, or beneficiaries of an investing company.

JLCB—the Joint Legislative Committee on the Budget.

LED—the Louisiana Department of Economic Development.

LDR—the Louisiana Department of Revenue.

Port Activity—any trade or business described in the 1997 North American Industry Classification System (NAICS) within Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling), when the trade or business is conducted on premises in which a public port has an ownership, leasehold, or other possessory interest and such premises are used as part of the operations of a public port, including the above trades and businesses as they may hereafter be reclassified in any subsequent publication of the NAICS or similar classification system developed in conjunction with the United States Department of Commerce and Office of Management and Budget.

Project—any land, building, or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in

existence, located or to be located in a public port of the state.

Proposing Entity—The public port, upon whose property, a qualifying project is to be undertaken.

Public Port—any deep-water port commission or port, harbor and terminal district as defined in Article VI, Section 44 of the Constitution of Louisiana, and any other port, harbor, and terminal district established under Title 34 of the Louisiana Revised Statutes of 1950.

Qualified Investment—the financial undertaking by an investing company of a qualifying project.

Qualifying Expenditures—Expenditures in the state, after the application date, for capital costs of a qualifying project.

Qualifying Project—a project sponsored or undertaken by a public port and an investing company.

a. with a capital cost of not less than five million dollars, and

b. at which the predominant trade or business activity conducted will constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port or harbor activity.

State—the State of Louisiana.

SBC—the Louisiana State Bond Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2543 (November 2010).

§3903. Preliminary Certification

A. Preliminary certification of the project is the initial step in the tax credit process. An application for preliminary certification as a qualifying project must be submitted to LED prior to the start of the project.

B. The application for preliminary certification shall include the following information:

1. a detailed project description;

2. a preliminary budget including the following information

a. the estimated capital costs; and

b. the estimated Louisiana payroll;

3. the estimated start date and the estimated completion date;

4. an explanation of why the proposed project is a qualifying project;

5. the names of each investing company or the name or names of the investors to become entitled to the tax credit;

6. a copy of the cooperative endeavor agreement between the investing company and the public port in whose geographic jurisdiction the proposed qualifying project is to be located indicating cooperation and support among all of the parties;

7. any additional information required by LED;

8. project plans, specifications, contracts, purchase orders and other appropriate design and/or expenditure documentation; if the foregoing information is not made available to DOTD during preliminary certification, then the project owner/sponsor must provide these items to DOTD prior to project construction.

C. An application fee shall be submitted with the application based on the following:

1. 0.2 percent (.002) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$200 and the maximum application fee is \$5,000 for a single project;

D. LED shall review the application and determine whether the project is a qualifying project, taking into consideration, the following factors;

1. the impact of the project on the immediate and long-term objectives of the tax credit provided for such investment;

2. the impact of the project on the employment of Louisiana residents;

3. the impact of the project on the overall economy of the State;

4. the availability of similar infrastructure or facilities within fifty miles of the proposed project;

5. the economic impact of the project on similar, existing private or public projects within 50 miles of the proposed qualifying project;

6. LED may require the investing company to conduct a public meeting, in the project location area to obtain additional information regarding the impact of the proposed project.

E. If LED determines that the project is a qualifying project, LED shall issue a preliminary certification of the qualifying project which shall include.

1. a unique identifying number for each project;

2. the estimated total amount of tax credits that will be issued;

3. the estimated amount of tax credits to be taken at five percent per year;

F. The preliminary certification shall be valid only for a period of thirty months, from the date of approval by the JLCB and SBC, during which time the qualifying project must be completed or the preliminary certification shall expire;

1. if a project is project to take longer than 30 months, the applicant may request an extension of the preliminary certification by providing sufficient justification;

2. an extension of the preliminary certification requested after approval by the JLCB and SBC will require a new certification of sufficient revenue as provided in §3905.

G. LED shall send the preliminary certification to the proposing entity, the investing company, the LDR and the COA. LED shall send the preliminary certification and a copy of the application to DOTD.

H. LED shall prepare, and send to the COA with the preliminary certification, an economic analysis of the qualifying project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2544 (November 2010).

§3905. Certification of Sufficient Revenue

A. After receipt of the LED preliminary certification and economic impact analysis, the COA shall review the project and determine whether a certification of sufficient revenue may be issued.

1. COA may issue a certification if he finds that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits as a result of either:

a. increased port activity because of grant; or

b. otherwise.

2. The COA's certification shall state the amount of tax credits for which sufficient revenues are determined.

3. The COA's certification shall be submitted to the JLCB and the SBC for approval.

4. If the COA's certification is approved by both the JLCB and the SBC, it shall be delivered to the Secretary of LED

5. The certification of the COA shall be valid for a period of 30 months after it is approved by the JLCB and SBC, unless an extension is requested as provided in §3903.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2545 (November 2010).

§3907. Certification of Qualifying Expenditures

A. After approval of the certification of sufficient revenue, the applicant may submit a request to LED for certification of qualifying expenditures as follows:

1. The applicant must submit a cost report to LED prepared by an independent certified public accountant and prepared in accordance with generally accepted accounting principles.

2. DOTD shall inspect the site and verify that the capital costs expenditures were made by verifying that the project components identified in the detailed project description are complete and in place

3. LED may require an additional audit by an LED-selected CPA, the cost of which shall be reimbursed by applicant.

4. LED shall determine and certify qualifying expenditures.

5. Qualifying expenditures shall be certified by LED no more than twice for a project, unless the applicant reimburses LED for the cost of additional certifications.

B. A request for the certification of qualifying expenditures must be filed no later than six months after the project becomes operational.

C. Except as provided in paragraph §3907.C.1., LED shall not certify as qualifying expenditures any expenditures incurred prior to the application date.

1. LED may certify expenditures incurred prior to the application date if:

a. the expenditures are directly related to performance of due diligence for the qualifying project; and

b. the expenditures are capital costs as defined in §3901.

D. LED and DOTD shall have reasonable access to the project site (or location of the fabrication) during and upon completion of activities related to project construction or installation, for the purpose of conducting periodic inspections during project construction or a final inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2545 (November 2010).

§3909. Certification of tax credits

A. LED may issue a certification of tax credits to the Applicant only after all of the following have occurred:

1. LED has certified the project as a qualifying project.

2. COA has issued a certification of sufficient revenue, which has been approved by both JLCB and SBC.

3. LED has certified qualifying expenditures.

6. The applicant has reimbursed any audit and additional certification costs.

B. LED shall issue to the applicant a tax credit certification letter, stating:

1. the dollar amount of tax credits certified, which shall not exceed the qualifying expenditures or the amount of tax credits certified by the COA, whichever is less ; and

2. the amount of tax credit to be taken each year, which shall be five percent of the total tax credit per year.

C. tax credits shall not be carried back to any tax year prior to the year capital cost expenditures are incurred, but may be claimed beginning either the tax year the expenditures are incurred or the tax year in which the expenditures were certified, for a period of 20 years.

D. Tax credits are earned by investors when expenditures are made by investing company.

E. LED shall send the tax credit certification letter to the investing company and to LDR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

§3911. Claiming Tax Credits

A. All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Subsection on their corporation income tax return.

B. Individuals, estates, and trusts shall claim any credit allowed under this Subsection on their income tax return.

C. Entities not taxed as corporations shall claim any credit allowed under this Subsection on the returns of the partners or members as follows.

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

2. Individual partners or members shall claim their share of the credit on their individual income tax returns.

3. Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

D. If the tax credit allowed exceeds the amount of taxes due for the tax period, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed 10 years.

E. The investing company shall attach the tax certification letter to their return when claiming the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

§3913. Recapture and Recovery of Tax Credits

A. Recapture

1. If LED finds that funds for which an investing company received tax credits were not expended as qualifying expenditures, LED shall notify the investing company and reissue the tax certification letter to LDR within 15 days of the discovery. The investing company's state income tax liability for such taxable period shall be increased by an amount necessary for the recapture of the tax credits allowed. LED may delegate its audit authority to LDR.

B. Recovery

1. Credits previously granted to a taxpayer, but later disallowed, may be recovered by LDR through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the credits were earned

2. Interest may be assessed and collected, but only at a rate of three percentage points above the rate provided in R.S. 39:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

§3915. Termination of Program

A. No investor tax credits shall be granted after January 1, 2015. Audited cost reports must be submitted no later than October 1, 2014 to allow sufficient time for certification of the tax credits by December 31, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

Subchapter B. Import Export Cargo Credit (Reserved)

Kristy G. McKearn
Undersecretary

1011#122

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Requirements to Add a Non-NCLB Secondary (Grades 6-12) Specialty Content Area (LAC 28:CXXXI.613)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §613, Requirements to Add a Non-NCLB Secondary (grades 6-12) Specialty Content Area (Agriculture, Business, Computer Science, Family and Consumer Sciences, Journalism, Marketing, Speech, Technology Education). This policy revision will allow individuals that currently hold secondary teaching certificates the option of taking a Praxis content

exam or completing 21 semester hours to add a Non-NCLB secondary area to their certificate.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 6. Endorsements to Existing Certificates
Subchapter A. Regular Education Level and Area Endorsements**

§613. Requirements to Add a Non-NCLB Secondary (Grades 6-12) Specialty Content Area (Agriculture, Business, Computer Science, Family and Consumer Sciences, Journalism, Marketing, Speech, Technology Education)

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), or special education certificate must achieve the following:

1. passing score for Praxis secondary specialty area exam in the content area; or 21 credit hours in the specialty content area; or

2. passing Praxis score for Principles of Learning and Teaching 7-12 exam.

B. Individuals holding a valid secondary certificate (e.g., 6-12, 7-12, 9-12) or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve one of the following:

1. passing score for the Praxis secondary specialty area exam; and

2. 21 credit hours in the specialty content area.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1816 (October 2006), amended LR 36:2547 (November 2010).

Jeanette Vosburg
Executive Director

1011#044

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Temporary Authority to Teach (TAT)
(LAC 28:CXXXI.323)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §323, Temporary Authority to Teach (TAT). This revision in policy would reduce the number of years a Temporary Authority to Teach (TAT) can be issued to an individual from three years to one year. Current BESE policy allows a noncertified teacher to instruct students for three years on a Temporary Authority to Teach (TAT). The proposed policy will reduce the number of years.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 3. Teaching Authorizations and Certifications**

**Subchapter B. Nonstandard Teaching Authorizations
§323. Temporary Authority to Teach (TAT)**

A. Temporary Authority to Teach (TAT)—issued for one calendar year, while the holder pursues alternate certification program admission requirements or certification requirements. Upon completion of one year of employment on this certificate, for continued employment as a teacher in a Louisiana school system, the holder must fulfill guidelines for a Practitioner License or a higher-level certificate. A TAT cannot be issued to teachers who previously held a Temporary Employment Permit (TEP) or a standard teaching certificate.

B. An applicant must have a baccalaureate degree from a regionally accredited institution; passing scores on the Praxis Pre-professional Skills Tests (PPSTs) Reading and Writing examinations or appropriate scores on the ACT or SAT and at least a 2.20 GPA. Applicants who meet these eligibility requirements can apply for a TAT through their employing school district.

C. Districts submit the application and provide an affidavit signed by the local superintendent verifying that good faith efforts for recruiting certified personnel have been made, including posting all positions for which TATs are issued on the Teach Louisiana website; that "there is no regularly certified, competent, and suitable person available for the position."

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1803 (October 2006), amended LR 36:2547 (November 2010).

Jeanette Vosburg
Executive Director

1011#043

RULE

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

Scholarship/Grant Programs—Chafee Educational and Training Voucher Program (LAC 28:IV.Chapter 18)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).(SG10117R)

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 18. Chafee Educational and Training Voucher Program**

§1801. General Provisions

A. The Chafee Educational and Training Voucher (ETV) Program is administered by the Louisiana Office of Student

Financial Assistance (LOSFA) in accordance with a Memorandum of Understanding by and between the Louisiana Student Financial Assistance Commission (LASFAC) and the Department of Children and Family Services (DCFS).

B. Description, History and Purpose. The Chafee ETV Program is administered in accordance with the federal Chafee Act, 42 U.S.C.A. 677 et seq., to provide grants to certain students who have been in the foster care system to pursue postsecondary education or training to enter the workforce.

C. Effective Date. The Chafee ETV Program will be administered by LOSFA beginning with the 2010-2011 academic year.

D. Eligible Semesters/Terms. The Chafee ETV is available to students throughout the academic year.

E. Award Amount. A Chafee ETV recipient may receive up to \$5,000 during the academic year. The award amount is determined by the recipient's financial need as calculated in accordance with the Higher Education Act of 1965, as amended.

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 36:2547 (November 2010).

§1803. Definitions

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

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

Educational and Training Voucher—a federal grant that is available to certain students who have been in the foster care system based on the student's financial need.

Foster Care System—a protective service administered by the Louisiana Department of Children and Family Services or by a similar agency in another state, for children who must live apart from their parents due to neglect, abuse, or special family circumstances which requires that the child be cared for outside the family home.

Institution of Higher Education—a school that:

- a. is eligible to receive funds under Title IV of the Higher Education Act of 1965; and
- b. awards a bachelor's degree; or
- c. provides a program of study that is at least 2 years long in which a student can earn credit toward a bachelor's degree; or
- d. provides not less than one year of training towards gainful employment; or
- e. provides vocational training for gainful employment and has been in existence for at least two years.

Legal Guardianship—the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the responsibility for the child's general welfare until he reaches the age of majority, subject to any residual rights possessed by the child's parents. It shall include, but not necessarily be limited

to, the rights and responsibilities of legal custody as established in the Louisiana Children's Code.

Postsecondary Education—any educational program at an institution of higher education which admits as regular students those individuals with a high school diploma or equivalent, or admits as regular students persons who are beyond the age of compulsory school attendance, including, but not limited to, academic programs leading to an associate or baccalaureate, graduate or professional degree, or training which leads to a skill, occupational, or technical certificate or degree.

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

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 36:2548 (November 2010).

§1805. Eligibility

A. To establish eligibility, a student must:

1. be ages 15 to 21, except that a student who was participating in the Chafee ETV Program at age 21 may continue to receive ETVs until he attains the age of 23; and
2. be in the foster care system, or aged out of the foster care system, or was under legal guardianship, or was in the foster care system or under legal guardianship and was adopted after age 16; and
3. be enrolled in postsecondary education; and
4. annually complete the Free Application for Federal Student Aid.

B. To continue to receive Chafee ETV, a student must:

1. not have attained the age of 21, or the age of 23 if the student was receiving a Chafee ETV at the age of 21 and received the Chafee ETV continuously; and
2. be making satisfactory academic progress in his program of study.

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 36:2548 (November 2010).

§1807. Eligibility of Institutions of Higher Education

A. Institutions of Higher Education Eligible to Participate

1. Louisiana public colleges and universities are authorized to participate in the Chafee ETV Program.
2. Regionally accredited private colleges and universities that are members of the Louisiana Association of Independent Colleges and Universities, Inc. (LAICU) are authorized to participate in the Chafee ETV Program. As of June 2010, LAICU membership included Centenary College, Dillard University, Louisiana College, Loyola University, New Orleans Baptist Theological Seminary, Our Lady of the Lake College, Our Lady of Holy Cross College, St. Joseph Seminary College, Tulane Medical Center, Tulane University and Xavier University.
3. Louisiana proprietary schools licensed pursuant to Chapter 24-A of Title 17 of the Revised Statutes are authorized to participate in the Chafee ETV Program.

4. Any other institution of learning that is an institution of higher education.

B. Audits. Institutions of higher education that participate in the Chafee ETV Program grant LOSFA, the Louisiana legislative auditor, and the Louisiana Department of Children and Family Services the right to inspect records and perform on-site audits of each institution's administration of the program for the purpose of determining the institution's compliance with state law and applicable program rules and regulations.

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 36:2548 (November 2010).

§1809. Responsibilities of Participating Institutions of Higher Education

A. Preliminary Eligibility Determination

1. Institutions of higher education must verify the student's age.

2. Institutions of higher education must determine whether the student is or was prior to age 18 an orphan or ward of the court in accordance with procedures established by the postsecondary institution for verifying information reported by the student on the Free Application for Federal Student Aid.

3. If the school determines that the student is an orphan or ward of the court in accordance with its procedures and this Section, it shall provide to LOSFA the student's name, social security number, and current address.

B. Continuing Eligibility

1. Institutions of higher education must verify the student is making satisfactory academic progress.

2. If a prior recipient is making satisfactory academic progress, it shall provide to LOSFA the student's name, social security number, and current address.

C. Award Amount Determination

1. Institutions of higher education will determine the student's Chafee ETV amount based upon his financial need in accordance with the Higher Education Act of 1965, as amended, and will report that award amount to LOSFA.

2. Institutions of higher education shall provide students the opportunity to appeal the amount of the Chafee ETV amount if the award to the student is less than \$5,000. Such appeals shall be conducted in accordance with the institution of higher education's procedures for appealing Title IV student aid eligibility. Immediately upon receipt of an appeal, the institution of higher education shall notify LOSFA of the appeal, the student's name, and the reason for awarding less than the full grant amount. In the event the student is not satisfied with the school's final decision on the appeal, the institution of higher education shall advise the student that he may appeal the institution of higher education's decision to the Department of Children and Family Services.

D. Certification of Student Data

1. Upon request by LOSFA, and for the purpose of meeting federal audit requirements for the Chafee Grant, an institution of higher education shall report the following data:

a. admission and enrollment; and

b. semester hours attempted; and

c. semester hours earned; and

d. semester quality points earned; and

e. resignation from the institution or withdrawal from all courses.

E. Program Billing

1. If the institution of higher education operates on a semester or term basis, it shall divide the student's annual Chafee ETV amount by the number of semester/terms the student will be attending and it shall bill LOSFA for the resulting amount at the beginning of each semester or term the student attends.

2. If the institution of higher education operates on a basis other than semester or term, it shall bill LOSFA for one quarter of the student's Chafee grant amount on September 1, December 1, March 1, and June 1, if the student's program of study is at least one full year. If the student's program of study is less one full year, the school will divide the Chafee ETV amount by the number of billing dates encompassed by that program and bill LOSFA the resulting amount.

3. Submission of a bill for a student is certification by the post-secondary institution that the student is enrolled at the institution and has maintained satisfactory academic progress.

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 36:2549 (November 2010).

§1813. Responsibilities of the Louisiana Department of Social Services

A. The Department of Children and Family Services shall verify that a student:

1. was in the foster care system, or aged out of the foster care system; or

2. was under legal guardianship; or

3. was in the foster care system or under legal guardianship and was adopted after age 16; or

4. is a Native American whose Indian tribe has an approved plan under Title IV-E of the Social Security Act for foster care, adoption assistance, and kinship guardianship within that Indian tribe.

B. The Department of Children and Family Services will notify LOSFA of any students who are eligible to receive a Chafee ETV and for whom LOSFA did not previously request verification in accordance with §1817.A, including those students who may be attending school in a state other than Louisiana.

C. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Department of Children and Family Services shall develop, approve and deliver a plan to LOSFA to address the shortfall.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:2549 (November 2010).

§1817. Responsibilities of LOSFA

A. LOSFA shall:

- 1. verify a student’s eligibility to receive a Chafee ETV with the Department of Children and Family Services;
- 2. pay program funds to the eligible post-secondary institution in which the student is enrolled;
- 3. maintain a secure database of all information collected on recipients and former recipients, including name, address, social security number, program of study, name of the institution(s) the recipient attended, and amounts disbursed;
- 4. notify the Department of Children and Family Services immediately if projections indicate that sufficient funds will not be available to pay all eligible students the amount originally awarded to those students at the beginning of the academic year.

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 36:2550 (November 2010).

§1819. Responsibilities of LASFAC

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

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 36:2550 (November 2010).

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General Counsel

1011#016

RULE

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

Scholarship/Grant Programs
Healthcare Educator Loan Forgiveness Program
Eligible Schools
(LAC 28:IV.1603)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5, and R.S. 17:3048.6).(SG10118R)

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance—Higher
Education Scholarship and Grant Programs
Chapter 16. Health Care Educator Loan Forgiveness
Program**

§1603. Definitions

A. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these

rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Participating Institution—a postsecondary institution that has been approved by the Board of Regents to participate in the Health Care Educator Loan Forgiveness Program.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:224 (February 2009), amended LR 36:2550 (November 2010).

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General Counsel

1011#015

RULE

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

START Saving Program Account Deposits/Documentations
(LAC 28:VI.305, 307, and 311)

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.). (ST10119R)

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings**

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A. - A.2. ...

3. An initial deposit is not required to open an Education Savings Account; however, a deposit of at least \$10 must be made within 180 days from the date on the letter of notification of approval of the account.

A.4. - 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 35:236 (February 2009), LR 35:1234 (July 2009), LR 36:492 (March 2010), LR 36:2550 (November 2010).

§307. Allocation of Earnings Enhancements

A. - B.4. ...

5. If an account owner is classified in §305.A.1 or 2 and the tax documents required by §307.B.2 are not received by February 15 immediately following the year for which the beneficiary of the account is being considered for an earnings enhancement, as an exception to §307.D, the account shall be allocated an earnings enhancement for the year being considered at the earnings enhancement rate shown in §307.D for account owners who are members of the family of the beneficiary who report an adjusted gross income of \$100,000 and above.

6. Example. An account owner has made deposits in a START account for a beneficiary during calendar year 2010 and desires to receive the highest earnings enhancement rate authorized for those deposits. If the account owner did not file a Louisiana Income Tax Return for the tax year 2009 or is notified by LATTA that the Louisiana Department of Revenue could not validate his federal adjusted gross income, he must submit the tax documents for tax year 2009 required by §307.B.2.b so that they are received by LATTA no later than February 15, 2011, or his earnings enhancement rate will be defaulted to the rate for account owners who are members of the family of the beneficiary who report an adjusted gross income of \$100,000 and above.

C. - J.3. ...

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 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:1263 (June 2000), LR 26:2263 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1880 (November 2001), LR 28:779 (April 2002), LR 30:788 (April 2004), LR 30:2302 (October 2004), LR 34:1886 (September 2008), LR 36:2550 (November 2010).

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

A. - B.2. ...

3. The LATTA may terminate an account if no deposit of at least \$10 has been made within 180 days from the date on the letter of notification of approval of the account.

B.4. - I.2.b. ...

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 36:492 (March 2010), LR 36:2551 (November 2010).

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RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Incorporation by Reference—2009
(LAC 33:III.506)(MM014ft)

Editor's Note: Section 506 is being repromulgated to correct a citation error. The original Rule may be viewed in its entirety on pages 2271-2275 of the October 20, 2010 edition of the Louisiana Register.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality

regulations, LAC 33:I.3931; III.506, 507, 2160, 3003, 5116, 5122, 5311 and 5901; V.3099; IX.2301, 4901 and 4903; XV.1599 (Log #MM014ft).

This Rule is identical to federal regulations found in 10 CFR 71, App. A, 1/1/10; 40 CFR 51, App. M, 60-61, 63, 68, 70, 6(a), 117.3, 136, 266, App. I-IX and XI-XIII, 302.4, 302.6(e), 355.40(a)(2)(vii), 401 and 405-471, 7/1/09; and subsequent revisions to 40 CFR 60 and 63 in the *Federal Register* (see rule text), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No Fiscal or Economic Impact will result from the Rule. This Rule was promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference (IBR) into LAC 33:I, III, V, IX and XV the corresponding federal reportable quantity list of hazardous substances in 40 CFR 117.3 and 302.4, July 1, 2009; administrative reporting exemptions for certain air releases of Nox in 40 CFR 302.6(e) and 355.40(a)(2)(vii), July 1, 2009; Capture Efficiency Test Procedures in 40 CFR Part 51, Appendix M, July 1, 2009; Federal So2 Model Rule in 40 CFR Part 96, July 1, 2009; Standards of Performance for New Stationary Sources in 40 CFR Part 60, July 1, 2009; National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61, July 1, 2009; NESHAP for Source Categories in 40 CFR Part 63, July 1, 2009; Chemical Accident Prevention and Minimization of Consequences in 40 CFR Part 68, July 1, 2009; Part 70 Operating Permits Program in 40 CFR 70.6(a), July 1, 2009; hazardous waste regulations in 40 CFR Part 266, Appendices I-IX and XI-XIII, July 1, 2009; National Pollutant Discharge Elimination System regulations in 40 CFR Parts 136, 401, 405-471, July 1, 2009; and radiation regulations in 10 CFR Part 71, Appendix A, January 1, 2010. Also incorporated are subsequent revisions to 40 CFR Part 60 and 63 promulgated in the *Federal Register*.

In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted in the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package was proposed to keep Louisiana's regulations current with their federal counterparts.

The basis and rationale for this Rule are to mirror the federal regulations in order to maintain equivalency. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. - B.4. ...

C. Annual Sulfur Dioxide. Except as specified in this Section, The Federal SO₂ Model Rule, published in the *Code of Federal Regulation* at 40 CFR Part 96, July 1, 2009, is hereby incorporated by reference, except for Subpart III—CAIR SO₂ OPT-In Units and all references to opt-in units.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), repromulgated LR 36:2551 (November 2010).

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1011#011

RULE

Department of Environmental Quality Office of the Secretary

Miscellaneous Amendments and Corrections
(LAC 33:I.903, 1905, 1909, 1911, and 3925; III.502; V.109, 4489, and 4901; VII.303; and XV.588)(MM013)

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 Radiation Protection regulations, LAC 33:I.903, 1905, 1909, 1911, and 3925; III.502; V.109, 4489, and 4901; VII.303; and XV.588 (MM013).

This Rule corrects errors that have been found in the Environmental Quality regulations. Language found to be unclear has been clarified, grammatical errors have been corrected, some wording has been restructured, and instances of improper regulation citations have been corrected.

Maintenance of the regulations is part of the responsibility of the department. An aspect of maintenance is for the department to correct errors when they are found. The basis and rationale of this Rule is to maintain the regulations that protect the environment and public health of the state, as authorized by the Environmental Quality Act. 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 19. Facility Name and Ownership/Operator Changes Process

§1903. Liability

A. ...

B. The previous owner or operator retains responsibility for compliance with the financial requirements until the new owner or operator has demonstrated that he or she is complying with the specified financial requirements of Title 33 of the Louisiana Administrative Code (e.g., LAC 33:V.Chapter 37, LAC 33:VII.Chapter 13, and LAC 33:IX.Chapter 67 and Section 7307).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005), LR 36:2552 (November 2010).

§1905. Name Change

A. - B. ...

C. For permitted hazardous waste facilities, the permittee shall send a notice of the name change to all persons on the facility mailing list maintained by the administrative authority, and to the appropriate units of state and local government, as specified in LAC 33:V.717. This notification shall be made within 90 calendar days after the change is effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005), LR 36:2552 (November 2010).

§1909. Change of Ownership/Operator—Financial Assurance Required

A. - B.2. ...

3. When a transfer of ownership or operational control occurs, the previous owner or operator shall comply with the applicable requirements of LAC 33:V.Chapter 37 (hazardous waste financial requirements), LAC 33:VII.Chapter 13 (solid waste financial assurance requirements), and LAC 33:IX.Chapter 67 (water financial security requirements) and Section 7307 (sewage sludge financial assurance requirements) until the new owner or operator has demonstrated that he or she is complying with the applicable requirements of LAC 33:V.Chapter 37, LAC 33:VII.Chapter 13, and LAC 33:IX.Chapter 67 and Section 7307.

C. The new owner or operator shall demonstrate compliance with the applicable requirements of LAC 33:V.Chapter 37, LAC 33:VII. Chapter 13, and LAC 33:IX.Chapter 67 and Section 7307 within six months of the date of the change of ownership or operational control of the facility. Upon adequate demonstration to the administrative authority by the new owner or operator of compliance with these financial assurance requirements, the administrative authority shall notify the previous owner or operator that he or she no longer needs to comply with the financial assurance requirements as of the date of demonstration.

D. ...

E. For permitted hazardous waste facilities, the new permittee shall send a notice of the change of ownership or operational control to all persons on the facility mailing list maintained by the administrative authority, and to the appropriate units of state and local government, as specified in LAC 33:V.717. This notification shall be made within 90 calendar days after the administrative authority has provided a written response approving the transfer of the permit and the change has been put into effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005), LR 36:2552 (November 2010).

§1911. Fees for Name and Ownership/Operator Changes

A. Notifications of name or ownership/operator changes at a facility shall be submitted by the new owner or operator with the appropriate fees. The fees listed below cover the cost of reviewing, evaluating, and processing a name or ownership/operator change that has occurred at the facility.

Name and Ownership/Operator Change Fees	
Program	LAC Citation for Fee
Air	LAC 33:III.223, Fee Number 2000
Hazardous Waste	LAC 33:V.5123.A
Solid Waste: Type I, I-A, II, and II-A Facilities	LAC 33.VII.1501.C (N/A for name change alone)
Solid Waste: Type III Facilities or Beneficial Use Facilities	LAC 33.VII.1501.D (N/A for name change alone)
LPDES	LAC 33:IX.1309.D.4 (N/A for name change alone)

B. - 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), LR 36:2552 (November 2010).

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter D. Procedures for Notifying the Department §3923. Notification Procedures for Other Regulatory Required Reporting

A. - B. ...

C. The party who is required to give prompt notification shall provide the following information, as applicable:

C.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 36:1240 (June 2010), LR 36:2553 (November 2010).

§3925. Written Notification Procedures

A. Written reports for any unauthorized discharge that requires notification under LAC 33:I.3915.A, 3917, 3919, or 3923 shall be submitted by the discharger to SPOC in accordance with this Section within seven calendar days after the expiration of the time allowed for the notification required by LAC 33:I.3915.A, 3917, 3919, or 3923, unless otherwise provided for in a valid permit or other department regulation.

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 33:2628 (December 2007), LR 36:1240 (June 2010), LR 36:2553 (November 2010).

Part III. Air

Chapter 5. Permit Procedures

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in

this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

* * *

Title I Modification—any physical change or change in the method of operation of a stationary source which increases the amount of any regulated air pollutant emitted or which results in the emission of any regulated air pollutant not previously emitted and which meets one or more of the following descriptions.

a. ...

b. The change will result in a significant net emissions increase under the *Prevention of Significant Deterioration (PSD) Program*, as defined in LAC 33:III.509.B.

c. - d. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2553 (November 2010).

**Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—
Hazardous Waste**

**Chapter 1. General Provisions and Definitions
§105. Program Scope**

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Wastes that are excluded from regulation are found in this Section.

A. Notification of Hazardous Waste Activity

1. Within 90 days after the promulgation of these regulations anyone subject to these regulations who has not previously notified the department on the Notification of Hazardous Waste Activity Form HW-1, or whose notification on Form HW-1 is not approved, must notify the Office of Environmental Services, using Form HW-1.

2. Within 90 days after changes in waste characteristics or changes in these regulations that result in changes in the notification, interim status facilities must revise their notification form by resubmitting a corrected copy of Form HW-1.

3. All notifications received must be in accordance with EPA notification procedures and must receive an EPA identification number issued through the state of Louisiana.

4. All facilities with an active EPA identification number shall be subject to requirements in LAC 33:V.Subpart 1.

B. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:2553 (November 2010).

§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

A. - F.5. ...

G. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kg of hazardous waste during a calendar month to be excluded from full regulation under this Section, the generator must comply with the following requirements:

1. - 3.g. ...

4. notify the department in accordance with LAC 33:V.105.A.1; and

G.5. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:2554 (November 2010).

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Solid Waste—

1.a - 4.c.iii. ...

5. Materials That Are Not Solid Waste When Recycled

a. - b.ii. ...

iii materials accumulated speculatively; or

iv. inherently waste-like materials listed in Paragraph 4 of this definition;

6. respondents in actions to enforce regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so:

Table 1. - Zone of Engineering Control. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), LR 36:2554 (November 2010).

Chapter 41. Recyclable Materials

§4143. Recyclable Materials Utilized for Precious Metal Recovery

A. - B.1. ...

2. generators shall operate in accordance with LAC 33:V.1107, 1108 and 1109.F;

3. ...

4. persons who store shall operate in accordance with LAC 33:V.1516.B and C; and

B.5 - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 36:2554 (November 2010).

Chapter 43. Interim Status

Subchapter L. Land Treatment

§4489. Closure and Post-Closure

A. - E. ...

F. In addition to the requirements of LAC 33:V.4389, during the post-closure care period the owner or operator of a land treatment unit must:

1. continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:1006 (June 2008), LR 36:2555 (November 2010).

Chapter 49. Lists of Hazardous Wastes

[Comment: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

§4901. Category I Hazardous Wastes

A. - B.1. ...

NOTE: EPA, in January 1985, added new listed hazardous wastes.

Table 1. Hazardous Wastes from Nonspecific Sources				

(See Prior Text in F038 through F039)				

*(L,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

B.2. - G. Table 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007), LR 34:635 (April 2008), LR 34:1020 (June 2008), LR 34:2392 (November 2008), LR 36:2555 (November 2010).

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 13. Financial Assurance for all Processors and Disposers of Solid Waste

§1303. Financial Responsibility for Closure and Post-Closure Care

A. - C.9. ...

D. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. - 7. ...

8. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:VII.1399. Appendix E, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

E. - L.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1090 (June 2007), amended LR 33:2154 (October 2007), LR 36:2555 (November 2010).

Part XV. Radiation Protection

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

Subchapter C. Precautionary Procedures in Radiographic Operations

§588. Documents and Records Required at Temporary Job Sites and Applicable Field Stations

A. Each licensee or registrant conducting industrial radiography at a temporary job site or applicable field station

Table 1. Hazardous Wastes from Nonspecific Sources				
Industry and EPA Hazardous Waste Number	Hazard Code	Hazardous Waste		Generic

(See Prior Text in F001 through F035)				
F037	(T)	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators, tanks and impoundments, ditches and other conveyances sumps, and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in LAC 33:V.4901.B.2.b (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units), and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under LAC 33:V.105.D.1.1, if those residuals are to be disposed of.		

shall have the following documents and records available at that job site or field station for inspection by the department:

1. - 3. ...

4. survey records required pursuant to LAC 33:XV.472 and 587. E for the period of operation at the site;

5. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2772 (December 2000), LR 27:1236 (August 2001), LR 28:1952 (September 2002), amended by the Office of Environmental Assessment, LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs, LR 36:2555 (November 2010).

Herman Robinson, CPM
Executive Counsel

1011#010

RULE

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

Prevention of Significant Deterioration (Significance Level for Direct PM2.5 Emissions)(LAC 33:III.509)(AQ311ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Regulations, LAC 33:III.509.B (Log #AQ311ft).

This Rule is identical to federal regulations found in 40 CFR 51.166(b)(23)(i), which are applicable in Louisiana.

This Rule amends LAC 33:III.509.B to establish a significance level for direct PM2.5 emissions equivalent to the federal rule. On May 16, 2008, the Environmental Protection Agency (EPA) promulgated a rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5)" (73 FR 28321). The Rule establishes a significance level for direct PM2.5 emissions equal to 10 tons per year.

The basis and rationale for this Rule is to maintain equivalency with the federal regulation 40 CFR 51.166(b)(23)(i). This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 5. Permit Procedures

§509. Prevention of Significant Deterioration

A. - B. *Secondary Emissions* ...

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions 15 tpy of PM ₁₀ emissions 10 tpy of direct PM _{2.5} emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics ¹	0.0000035 tpy
Municipal waste combustor metals ²	15 tpy
Municipal waste combustor acid gases ³	40 tpy
Municipal solid waste landfills emissions ⁴	50 tpy

¹Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.
²Measured as particulate matter.
³Measured as sulfur dioxide and hydrogen chloride.
⁴Measured as nonmethane organic compounds.

b. - c. ...

B. Significant Emissions Increase – AA.15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010).

Herman Robinson, CPM
Executive Counsel

1011#012

RULE

**Office of the Governor
Division of Administration
Patient's Compensation Fund Oversight Board**

Actuary; Annual Actuarial Study; Risk Rating; Rates; Surcharges (LAC 37:III.701-713)

The Patient's Compensation Fund Oversight Board, under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 37:III.701-713, to clarify the Oversight Board's role in administering the Fund; to clarify the role of

the Oversight Board's consulting actuary; to clarify and be consistent with recently amended statutory law the circumstances under which a reduction in the aggregate annual surcharges could be accomplished; to require the executive director to give notice of rates or rate changes via the Oversight Board's website; to provide, consistent with recently amended statutory law, that the Oversight Board determines surcharge rates in an open meeting following notice and public comment; to clarify to be consistent with statutory law that the late payment penalty will be set annually by the Oversight Board not to exceed 12 percent; to require payment of NSF charges; and to clarify time delays for certain health care providers to pay surcharges to continue PCF qualification.

Title 37
INSURANCE

Part III. Patient's Compensation Fund Oversight Board

Chapter 7. Surcharges

§701. PCF Consulting Actuary

A. In accordance with the provisions of law applicable to contracting for personal, professional, or consulting services, the board shall retain a qualified, competent, and independent consulting actuary to advise and consult the board on all aspects of the board's administration, operation, and defense of the fund which require application of the actuarial science. Each year, the board shall cause the consulting actuary to prepare an annual actuarial study required by the Act and these rules. An individual actuary contracted by the board, or a principal actuary assigned to the engagement and employed by a partnership, firm, or corporation contracted by the board, shall possess formal education and at least a baccalaureate degree in the actuarial sciences, shall be a full member of the Casualty Actuarial Society, and shall have had substantial prior experience in providing services as a consulting actuary to insurance companies underwriting professional health care liability insurance.

B. The board's contract with a consulting actuary shall provide that the consulting actuary shall be responsible for:

1. – 2. ...

3. performing actuarial analysis of claims experience data collected and maintained by the executive director with respect to the fund, commercial professional liability insurers doing business in this state, self-insured health care providers, together, as necessary or appropriate, with regional or national professional health care liability claims experience data, and development, in consideration of the fund's allocated and unallocated expenses, its organization, administration, and legal and regulatory constraints, of a surcharge rate structure, rated and classified according to the several classes or risks against which the fund provides compensation, that shall reasonably ensure that the fund is sufficiently funded so as to be and remain financially and actuarially capable of providing the compensation for which it is organized;

4. developing, in conjunction with the executive director, proposed surcharge rates and surcharge rate changes in accordance with the consulting actuary's actuarial analyses, for submission to the board;

5. as requested by the executive director, personal presentation of proposed surcharge rates and surcharge rate changes at meetings of the board; and

6. generally advising and consulting with the executive director on all actuarial questions affecting the board's administration, operation, and defense of the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:174 (February 1992), amended LR 29:346 (March 2003), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2557 (November 2010).

§703. Annual Actuarial Study

A. An actuarial study of the fund and the surcharge rate structure necessary and appropriate to ensure that it is and remains financially and actuarially sound shall be performed annually by the board's consulting actuary on the basis of an actuarial analysis of all relevant claims experience data collected and maintained by the board.

B. In the performance of the board's annual actuarial study and the development of a financially sound and appropriate surcharge rate structure for the fund, the board's consulting actuary and the executive director shall accord the greatest weight to the claims experience of the fund and of commercial professional health care liability insurance underwriters and self-insurance funds with respect to the risk underwritten by such insurers and self-insurance funds in this state and as particularly reflected in such insurers' then most recent premium rate filings with the Louisiana Department of Insurance (LDOI) or such self-insurance funds' current rate structure and supporting data, provided, however, that such data shall be viewed in light of national claims experience data and provided further that the board's consulting actuary may place reliance on national claims experience data when, in the opinion of such actuary, claims experience within the state of Louisiana as to any class of risks provides an insufficient basis for reliance thereon for purposes of actuarial analysis or in calculating indicated surcharge rates.

C. Without respect to the rate structure indicated by any annual actuarial study of the fund, no changes to surcharge rates or to the surcharge rate structure shall be approved by the board when the total assets of the fund could become less than the amount provided for in R.S. 40:1299.44(A)(6)(a) and (b).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 19:204 (February 1993), LR 24:1111 (June 1998), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2557 (November 2010).

§705. Risk Rating

A. Surcharge rates collected by the board shall be based on and classified according to the classes and categories of health care liability risks underwritten by the fund with respect to each class of health care practitioners and institutions eligible for enrollment with the fund. With regard to hospitals, surcharge rates collected by the board shall be based on the annual average number of occupied beds. Risk classifications and ratings adopted by the board shall be based on actuarial analysis of the claims experience of health care provider groups enrolled with the fund and equivalent data and practices of commercial insurance

underwriters and self-insurance funds insuring such groups. Risk rating classifications for health care providers eligible for enrollment with the fund shall be based on Louisiana claims experience data, including the fund's own claims experience, unless the board's actuary affirmatively demonstrates that, as respects any class of provider, reasonably obtainable, competent, and credible Louisiana claims experience data provides an insufficient basis for such classifications under generally accepted insurance actuarial standards, in which case regional or national claims experience data and statistics relative to such classes of health care provider may be utilized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 29:346 (March 2003), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2557 (November 2010).

§707. Determination of Rates; Notice of Rates

A. The board shall determine surcharge rates in a public meeting held pursuant to Louisiana's open meetings laws based upon actuarial principles and reports, experience and prudent judgment of the board. The board shall provide written or electronic notice of the meeting at least 15 days in advance of the meeting and provide an opportunity for public comment at the meeting before determining surcharge rates.

B. Within 30 days of the date on which the board determines surcharges rates or rate changes, the executive director shall give notice of such rates or rate changes via the board's website and any other means at the discretion of the executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 24:1112 (June 1998), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2558 (November 2010).

§709. Interim, Emergency Rates

A. Interim or emergency surcharge rates or rate changes may be determined by the board at any time when the board, in consultation with its consulting actuary, determines that a new surcharge rate or rate changes are necessary. The board shall comply with the notice and comment provisions set forth in §707 prior to determining interim or emergency surcharge rates or rate changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2558 (November 2010).

§711. Payment of Surcharges: Insurers and Self-Insurance Trusts

A. Applicable surcharges for enrollment and qualification with the fund shall be collected on behalf of the board by commercial professional health care liability insurance companies and approved self-insurance trusts from insured health care providers electing to enroll and

qualify with the fund. Such surcharges shall be collected by such insurers and trusts at the same time and on the same basis as such insurers' and trust's collection of premiums or contributions from such insureds. Surcharges collected by such insurers and trusts on behalf of the board shall be due and payable and remitted to the board by such insurers and trusts within 45 days from the date on which such surcharges are collected from any insured health care provider.

B. Annual surcharges for initial PCF coverage for insured health care providers whose surcharges are collected by insurers and trusts for enrollment and qualification with the fund shall be due and payable to the collecting insurers and trusts on or before the date of initial PCF coverage. Annual surcharges for renewal coverage due the board by insured health care providers whose surcharges are collected by insurers and trusts for enrollment and qualification with the fund shall be due and payable to the collecting insurers and trusts on or before 30 days following the expiration of the prior enrollment period. Remittance of surcharges to the board by the insurers and trusts shall be made in such form and accompanied by records in such forms or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care providers on whose behalf such surcharges are remitted. Such insurers and funds remitting surcharges to the board shall certify to the board, at the time of remitting such surcharge to the board, the date that the surcharges were collected by them from the health care providers. The payment of surcharges by an approved self-insurance trust that does not collect premiums or contributions from insureds will be governed by §713 hereof.

C. Failure of the commercial professional health care liability insurers, commercial insurance underwriters, and approved self-insurance trust funds to remit payment within 45 days of collecting such annual surcharge shall subject the commercial professional liability insurers, commercial insurance underwriters, and approved self-insurance trust funds to a penalty, the amount of which will be set by the board on an annual basis, not to exceed 12 percent of the annual surcharge, and all reasonable attorney fees. Upon the failure of the commercial professional health care liability insurers, commercial insurance underwriters and approved self-insurance trust funds to remit as provided in §711, the board may institute legal proceedings to collect the surcharge, together with penalties, legal interest, and all reasonable attorney fees.

D. If the instrument used to pay the surcharge is returned to the board by the payor institution and/or payment hereon is denied for any reason, the health care provider shall be notified thereof by the board. If the surcharge and any insufficient funds (NSF) charge incurred by the board is not paid in full by certified check, cashier's check, money order, or cash equivalent funds received by the board within 10 calendar days of the provider's receipt of said notice, then the provider's coverage with the fund shall be terminated as of the end of the previous enrollment period.

E. It is the purpose of §711 that insurers and approved self-insurance trust funds remit surcharges collected from their insured providers to the board timely. The timeliness of surcharge remittances to the board by insurers and approved self-insurance trust funds shall not affect the effective date

of fund coverage. However, the failure of insured health care providers to timely remit applicable surcharges to insurers and approved self-insurance trust funds for renewal may result in lapses of coverage with the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended LR 20:432 (April 1994), LR 23:69 (January 1997), LR 29:346 (March 2003), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2558 (November 2010).

§713. Payment of Surcharges: Self-Insureds

A. ...

B. Annual surcharges for initial PCF coverage for self-insured health care providers for enrollment and qualification with the fund shall be due and payable to the board on or before the date of initial PCF coverage. Surcharges due the board by self-insured health care providers for enrollment with the fund for an enrollment year shall be due and payable to the board on or before 30 days following the expiration of the prior enrollment period. Remittance of surcharges to the board shall be made in such form and accompanied by records in such form or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care provider remitting surcharges.

C. If the instrument used to pay the surcharge is returned to the board by the payor institution and/or payment hereon is denied for any reason, the health care provider shall be notified thereof by the board. If the surcharge and any insufficient funds (NSF) charge incurred by the board is not paid in full by certified check, cashier's check, money order, or cash equivalent funds received by the board within 10 calendar days of the provider's receipt of said notice, then the provider's coverage with the fund shall be terminated as of the end of the previous enrollment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended LR 20:432 (April 1994), LR 23:69 (January 1997), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:2559 (November 2010).

Lorraine LeBlanc
Executive Director

1011#041

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

Licensure Exemptions; Emergency Transfer of Patients
(LAC 46:XLV.423)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has amended its administrative rules

governing licensure and certification of physicians, LAC 46:XLV, Subpart 2 (Licensure and Certification), Chapter 3 (Physicians), Subchapter I, (License Issuance, Termination, Renewal and Reinstatement), by adopting a new Section 423 (Exemptions to Licensure; Emergency Transfer of Patients). The Rule is set forth below

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

**Subchapter I. License Issuance, Termination, Renewal,
Reinstatement and Exemptions**

**§423. Exemptions to Licensure; Emergency Transfer
of Patients**

A. In addition to the exemptions to licensure provided by R.S. 37:1291, a license to practice medicine shall not be required for a physician-member of a transport team providing emergency or other medical care to an acutely ill patient during transfer or transportation to or from a hospital in this state provided such physician is duly licensed to practice medicine by the medical licensing authority of another state.

B. The exemption provided by Subsection A of this Section, shall also apply to any license, certificate or registration of any allied health care professional, which the board is authorized to issue, who is a member of a transport team providing emergency or other medical care to an acutely ill patient during transfer or transportation to or from a hospital in this state provided such allied health care practitioner is duly licensed to practice his profession by the medical licensing authority of another state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, and 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR. 36:2559 (November 2010).

Robert L. Marier, M.D.
Executive Director

1011#118

RULE

**Department of Health and Hospitals
Practical Nurse Examiners**

Adjudication, Definitions, Licensure Qualifications, and Name Change (LAC 46:XLVII.306, 501, 1701, and 1709)

The Board of Practical Nurse Examiners hereby amends LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 3. Board of Practical Nurse Examiners

§306. Adjudication Proceedings

A. - G. ...

H. The formal complaint shall be sent by mail, at least 20 days, including weekends and holidays, prior to the hearing date, to the last known address of the respondent. It is the licensee's obligation and duty to keep the board informed of his/her whereabouts.

I. - P. ...

Q. The board shall make a decision based on the entire record, including the hearing officer's report and determine what sanctions, if any, should be imposed and issue an appropriate order with respect thereto. This order of the board shall be sent to the respondent by mail.

R. - V. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:978 and Acts 675 and 827, 1993.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 2:275 (September 1976), amended LR 3:193 (April 1977), LR 10:336 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 20:663 (June 1994), LR 26:2614 (November 2000), LR 28:2353 (November 2002), LR 30:1478 (July 2004), LR 34:1912 (September 2008), LR 35:1247 (July 2009), LR 35:2757 (December 2009), LR 36:2559 (November 2010).

Chapter 5. Definitions

§501. Terms in the Manual

* * *

Survey—periodic review of a practical nursing program by the board to determine compliance with the adopted minimum requirements contained herein.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:961 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:193 (April 1977), amended LR 10:337 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 26:2617 (November 2000), LR 32:637 (April 2006), LR 36:2560 (November 2010).

Chapter 17. Licensure

§1701. Qualifications

A. A person applying for a license to practice as a practical nurse in the state of Louisiana shall:

1. be of good moral character;
2. be a graduate of an accredited program in practical nursing;
3. attain a score of 350 or above for those writing the board-approved licensure examination for practical nursing prior to October 1988, or a result of "Pass" for those writing the examination in October 1988 and beyond;
4. complete and submit the required application accompanied by the specified fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:970.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:199 (April 1977), amended LR 10:341 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1129 (October 1992), repromulgated LR 18:1263 (November 1992) amended LR 36:2560 (November 2010).

§1709. Name Change

A. A licensee requesting a name change on the license form shall forward a request to the board accompanied by a certified and true copy of a legal document. Licensees shall sign all practice related documents legibly using the name printed on the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:200 (April 1977), amended LR 10:342 (April 1984), LR 36:2560 (November 2010).

Claire Doody Glaviano
Executive Director

1011#004

RULE

Department of Health and Hospitals Board of Wholesale Drug Distributors

Wholesale Drug Distribution—Exemptions (LAC 46:XCI.105)

The Louisiana Board of Wholesale Drug Distributors has amended LAC 46:XCI.105 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq. and R.S. 37:3467 et seq., of the Louisiana Board of Wholesale Drug Distributors Practice Act. These rule amendments will support the board's ability to license entities and regulate the wholesale distribution of legend drugs and devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The amendments to the Rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XCI. Wholesale Drug Distributors

Chapter 1. General Provisions

§105. Wholesale Drug Distribution—Exemptions

- A. Wholesale drug distribution does not include:
1. intra-company sales;
 2. the sale, purchase or trade of a drug or device or an offer to sell, purchase, or trade a drug or device by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
 3. the sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device among hospitals or other health care entities that are under common ownership;
 4. the sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device for emergency medical reasons; for purposes of this Section, *emergency medical reasons* include transfers of prescription drugs or devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage that arises from delays in or interruptions of regular distribution schedules;
 5. the dispensing of a drug or device pursuant to a prescription;

6. the distribution of drug samples by manufacturers' representatives or distributors' representatives;

7. the sale, purchase, or trade of blood and blood components intended for transfusion; or

8. 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 36:321 (February 2010), LR 36:2560 (November 2010).

John Liggio
Executive Director

1011#019

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
Personal Care Services Reimbursement Methodology
(LAC 50:XV.7321)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 73. Personal Care Services

§7321. Reimbursement

A. Reimbursement for EPSDT personal care services shall be the lesser of billed charges or the maximum unit rate set by the department. The maximum rate is a flat rate for each approved unit of service provided to the recipient. This rate shall be adjusted as necessary by the department.

1. One quarter hour (15 minutes) is the standard unit of service, exclusive of travel time to arrive at the recipient's home.

2. The entire 15 minutes shall have been spent providing personal care services in order to be reimbursed for a unit.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:2202 (October 2007), repromulgated LR 33:2425 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2561 (November 2010).

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

Bruce D. Greenstein
Secretary

1011#101

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reduction
(LAC 50:V.953, 955, 959 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.953, §955, §959, and adopted §967 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. - M. ...

N. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and

payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

O. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010).

§955. Long Term Hospitals

A. - E. ...

F. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010).

§959. Inpatient Psychiatric Hospital Services

A. - G. ...

H. Effective for dates of service on or after February 3, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010).

§967. Children's Specialty Hospitals

A. Routine Pediatric Inpatient Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges

for the period multiplied times the target rate per discharge for the period.

B. Inpatient Psychiatric Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by CMS beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants. Payment shall be the lesser of costs or the per diem limitation for each specialty service or type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each specialty or type of transplant per the cost reporting period ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each specialty or type of transplant multiplied times the per diem limitation for the period.

D. Children's specialty hospitals shall not be eligible for outlier payments after September 1, 2009.

1. Outlier payments made in SFY 2010 in excess of \$12,798,000 shall be considered as an interim payment in the determination of the cost settlement.

E. These provisions shall not preclude children's specialty hospitals from participation in the Medicaid Program under the high Medicaid or graduate medical education supplemental payment provisions.

1. All Medicaid supplemental payments shall be included as an interim Medicaid inpatient payment in the determination of cost settlement amounts on the filed cost report.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.A.-C above shall be reduced by 5 percent. Final payment shall be the lesser of 95 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 95 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, amended LR 36:2562 (November 2010).

Bruce D. Greenstein
Secretary

1011#102

RULE

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

Laboratory and Radiology Services
Reimbursement Rate Reduction
(LAC 50:XIX.4329 and 4334-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XIX.4329 and §§4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act. 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 XIX. Other Services

Subpart 3. Laboratory and Radiology

Chapter 43. Billing and Reimbursement

Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

A. - G. ...

H. Effective for dates of service on or after January 22, 2010, the reimbursement rates for laboratory services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:2563 (November 2010).

§4334. Radiology Services

A. - F. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

AUTHORITY NOTE: Promulgated in 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 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010).

§4335. Portable Radiology Services

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for portable radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010).

§4337. Radiation Therapy Centers

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

AUTHORITY NOTE: Promulgated in 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 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010).

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

Bruce D. Greenstein
Secretary

1011#103

RULE

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

Medical Necessity Criteria (LAC 50:I.1101)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:I.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 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 I. Administration

Subpart 1. General Provisions

Chapter 11. Medical Necessity

§1101. Definition and Criteria

A. Medically necessary services are defined as those health care services that are in accordance with generally accepted evidence-based medical standards or that are considered by most physicians (or other independent licensed practitioners) within the community of their respective professional organizations to be the standard of care.

B. In order to be considered medically necessary, services must be:

1. deemed reasonably necessary to diagnose, correct, cure, alleviate or prevent the worsening of a condition or conditions that endanger life, cause suffering or pain or have resulted or will result in a handicap, physical deformity or malfunction; and

2. those for which no equally effective, more conservative or less costly course of treatment is available or suitable for the recipient.

C. Any such services must be individualized, specific and consistent with symptoms or confirmed diagnosis of the

illness or injury under treatment, and neither more nor less than what the recipient requires at that specific point in time.

D. Although a service may be deemed medically necessary, it doesn't mean the service will be covered under the Medicaid Program. Services that are experimental, non-FDA approved, investigational or cosmetic are specifically excluded from Medicaid coverage and will be deemed "not medically necessary."

1. The Medicaid director, in consultation with the Medicaid medical director, may consider authorizing services at his discretion on a case-by-case basis.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2563 (November 2010).

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

Bruce D. Greenstein
Secretary

1011#104

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services
Reimbursement Rate Reduction
(LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXVII.325 and §353 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 XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§325. Reimbursement

A. - F.2. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for emergency ambulance transportation services shall be reduced by 5 percent of the rate on file as of January 21, 2010.

AUTHORITY NOTE: Promulgated in 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 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), amended LR 36:2564 (November 2010).

Subchapter C. Aircraft Transportation

§353. Reimbursement

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 5 percent of the rate on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010).

Bruce D. Greenstein
Secretary

1011#105

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Ambulance Service
Reimbursement Rate Reduction
(LAC 50:XXVII.571)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXVII.571 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act. 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. XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§571. Non-Emergency Ambulance Transportation

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the ground mileage and ancillary services reimbursement rates for non-emergency ambulance transportation services shall be reduced by 5 percent of the rate in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010).

Bruce D. Greenstein
Secretary

1011#106

RULE

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

Medical Transportation Program
Non-Emergency Medical Transportation
Reimbursement Rate Reduction
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 XXVII. Medical Transportation Program

**Chapter 5. Non-Emergency Medical Transportation
Subchapter D. Reimbursement**

**§573. Non-Emergency, Non-Ambulance
Transportation**

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 5 percent of the rates in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2565 (November 2010).

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

Bruce D. Greenstein
Secretary

1011#108

RULE

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

Mental Health Rehabilitation Program
Reimbursement Rate Reduction
(LAC 50:XV.901)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XV.901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act.

This Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 9. Reimbursement

§901. Reimbursement Methodology

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Mental Health Rehabilitation services shall be reduced by 1.62 percent of the rates on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:2565 (November 2010).

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

Bruce D. Greenstein
Secretary

1011#109

RULE

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

Multi-Systemic Therapy—Prior Authorization and
Reimbursement Rate Reduction
(LAC 50:XV.25305 and 25701)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XV.25305 and amended §25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 17. Multi-Systemic Therapy

Chapter 253. Services

§25305. Prior Authorization

A. Effective for dates of service on or after January 22, 2010, prior authorization is required for services in excess of 244 units or four months.

1. Proof of medical necessity must be submitted in accordance with department guidelines.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 36:2565 (November 2010).

Chapter 257. Reimbursement

§25701. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 5 percent of the rates on file as of January 21, 2010.

AUTHORITY NOTE: Promulgated in 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 35:247 (February 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1250 (June 2010), amended LR 36:2566 (November 2010).

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

Bruce D. Greenstein
Secretary

1011#110

RULE

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

**Nursing Facilities—Reimbursement Rate Reduction
(LAC 50:VII.1305)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:VII.1305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement paid to non-state nursing facilities shall be reduced by 1.5 percent of the per diem rate on file as of January 21, 2010 (\$1.95 per day).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:2566 (November 2010).

Bruce D. Greenstein
Secretary

1011#111

RULE

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

**Professional Services Program—Family Planning Services
Reimbursement Rate Reduction
(LAC 50:IX.15141-15143)**

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:IX.15141-15143 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 IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter E. Family Planning Services

§15141. General Provisions (Reserved)

§15143. Reimbursement

A. The reimbursement for family planning services shall be a flat fee for each covered service as specified on the established Medicaid fee schedule. Fee schedule rates are based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

B. Family planning services are currently reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for family planning services rendered by a physician shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2566 (November 2010).

Bruce D. Greenstein
Secretary

1011#112

RULE

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

**Prosthetics and Orthotics—Reimbursement Rate Reduction
(LAC 50:XVII.501)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:9530 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XVII. Prosthetics and Orthotics
Subpart 1. General Provisions

Chapter 5. Reimbursement

§501. Reimbursement Methodology

A. - E.1. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement for prosthetic and orthotic devices shall be reduced by 5 percent of the fee amounts on file as of January 21, 2010.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), amended LR 36:1253 (June 2010), LR 36:2567 (November 2010).

Bruce D. Greenstein
Secretary

1011#113

RULE

Department of Natural Resources
Office of Conservation

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation amends LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This action will adopt Statewide Order No. 29-R-10/11 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-09/10.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 2. Statewide Order No. 29-R

Chapter 7. Fees

§701. Definitions

Application Fee—an amount payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by industries under the jurisdiction of the Office of Conservation.

Application for Automatic Custody Transfer—an application for authority to measure and transfer custody of liquid hydrocarbons by the use of methods other than customary gauge tanks, as authorized by Statewide Order No. 29-G-1 (LAC 43:XVII.2304 et seq.), or successor regulations.

Application for Commercial Class I Injection Well—an application to construct and/or operate a commercial Class I injection well, as authorized by Statewide Order No. 29-N-1

(LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Application for Commercial Class I Injection Well (Additional Wells)—an application to construct and/or operate additional Class I injection wells within the same filing, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Application for Commercial Class II Injection Well—an application to construct and/or operate a commercial Class II injection well, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

Application for Commercial Class II Injection Well (Additional Wells)—an application to construct and/or operate additional Class II injection wells within the same filing, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

Application for Multiple Completion—an application to multiple complete a new or existing well in separate common sources of supply, as authorized by Statewide Order N. 29-C-4 (LAC 43:XIX.1301 et seq.), or successor regulations.

Application for Non Commercial Injection Well—an application to construct and/or operate a Class I, II, III, or V noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), 29-N-2 (LAC 43:XVII.201 et seq.), 29-M-2 (LAC 43:XVII.3101 et seq.), successor regulations.

Application for Permit to Drill (Minerals)—an application to drill in search of minerals (six-months or one-year), as authorized by R.S. 30:28.

Application for Public Hearing—an application for a public hearing as authorized by R.S.30:1, et. seq.

Application for Site Clearance—an application to approve a procedural plan for site clearance verification of platform, well or structure abandonment developed by an operator/lessee and submitted to the Commissioner of Conservation, as authorized by LAC 43:XI.311 et seq., or successor regulations.

Application for Substitute Unit Well—an application for a substitute unit well as authorized by Statewide Order No. 29-K-1 (LAC 43:XIX.2901 et seq.), or successor regulations.

Application for Surface Mining Development Operations Permit—an application to remove coal, lignite, or overburden for the purpose of determining coal or lignite quality or quantity or coal or lignite mining feasibility, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

Application for Surface Mining Exploration Permit—an application to drill test holes or core holes for the purpose of determining the location, quantity, or quality of a coal or lignite deposit, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

Application for Surface Mining Permit—an application for a permit to conduct surface coal or lignite mining and reclamation operations, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

Application for Unit Termination—an application for unit termination as authorized by Statewide Order No. 29-L-3 (LAC 43:XIX.3100 et seq.), or successor regulations.

Application to Amend Permit to Drill (Injection or Other)—an application to alter, amend, or change a permit to drill, construct and/or operate an injection, or other well after its initial issuance, as authorized by R.S. 30:28.

Application to Amend Permit to Drill (Minerals)—an application to alter, amend, or change a permit to drill for minerals after its initial issuance, as authorized by R.S. 30:28.*

*Application to Amend Operator (transfer of ownership, including any other amendment action requested at that time) for any orphaned well, any multiply completed well which has reverted to a single completion, any non-producing well which is plugged and abandoned within the time frame directed by the commissioner, as well as any stripper crude oil well or incapable gas well so certified by the Department of Revenue shall not be subject to the application fee provided herein.

Application to Commingle—an application for authority to commingle production of gas and/or liquid hydrocarbons and to use methods other than gauge tanks for allocation, as authorized by Statewide Order No. 29-D-1 (LAC 43:XIX.1500 et seq.), or successor regulations.

Application to Process Form R-4—application for authorization to transport oil from a lease as authorized by Statewide Order No. 25 (LAC 43:XIX.900 et seq.), or successor regulations.

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 13.0.

Capable Gas—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2009.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2009.

Class I Well—a Class I injection well used to inject hazardous or nonhazardous, industrial, or municipal wastes into the subsurface, which falls within the regulatory purview of Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

Class I Well Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class I wells in an amount not to exceed \$400,000 for Fiscal Year 2000-2001 and thereafter.

Class II Well—a Class II injection well which injects fluids which are brought to the surface in connection; with conventional oil or natural gas production, for annular disposal wells, for enhanced recovery of oil or natural gas, and for storage of hydrocarbons. For purposes of administering the exemption provided in R.S. 30:21(B)(1)(c), such exemption is limited to operators who operate Class II wells serving a stripper oil well or an incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Section of the Department of Revenue and located in the same field as such Class II well.

Class III Well—a Class III injection well which injects for extraction of minerals or energy.

Emergency Clearance—emergency authorization to transport oil from lease.

Production Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity on a dollar amount between the wells. The tiered system shall be established annually by rule on capable oil and capable gas production, including nonexempt wells reporting zero production during the annual base period, in an amount not to exceed \$2,450,000 for fiscal year 2002/2003 and thereafter.

Production Well—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2009.

Regulatory Fee—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Section of the Department of Revenue as of December 31, 2009, and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

Type A Facility—commercial E and P waste disposal facilities within the State that utilize technologies appropriate for the receipt, treatment, storage, or disposal of oilfield waste solids and liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:CIC.501 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

Type B Facility—commercial E and P waste disposal facilities within the State that utilize underground injection technology for the receipt, treatment, storage, or disposal of only produced saltwater, oilfield brine, or other oilfield waste liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:XIX.501 et seq.), or successor regulations.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November

1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009), LR 36:2567 (November 2010).

§703. Fee Schedule for Fiscal Year 2010-2011

A. Fee Schedule

Application Fees	Amount
Application for Unit Termination	\$ 252
Application for Substitute Unit Well	\$ 252
Application for Public Hearings	\$ 755
Application for Multiple Completion	\$ 126
Application for Commingle	\$ 252
Application for Automatic Custody Transfer	\$ 252
Application for Noncommercial Injection Well	\$ 252
Application for Commercial Class I Injection Well	\$ 1,264
Application for Commercial Class I Injection Well (Additional Wells)	\$ 631
Application for Commercial Class II Injection Well	\$ 631
Application for Commercial Class II Injection Well (Additional Wells)	\$ 314
Application for Permit to Drill—Minerals: 0'-3,000' (6 months)	\$ 126
Application for Permit to Drill—Minerals: 3,001'-10,000' (6 months)	\$ 631
Application for Permit to Drill—Minerals: 10,001'+ (6 months)	\$ 1,264
Application for Permit to Drill—Minerals: 0'-3,000' (1 year)	\$ 252
Application for Permit to Drill—Minerals: 3,001'-10,000' (1 year)	\$ 1,262
Application for Permit to Drill—Minerals: 10,001'+ (1 year)	\$ 2,528
Drill Minerals Deeper (> 3,000') (1 year)	\$ 1,008
Drill Minerals Deeper (> 10,000') (1 year)	\$ 1,264
Drill Minerals Deeper (> 3,000') (6 months)	\$ 504
Drill Minerals Deeper (> 10,000') (6 months)	\$ 632
Application for Amend Permit to Drill—Minerals	\$ 126
Application for Permit to Drill—Injection or Other	\$ 126
Application for Surface Mining Exploration Permit	\$ 65
Application for Surface Mining Development Operations Permit	\$ 94
Application for Surface Mining Permit	\$ 2,212
Application to Process Form R-4	\$ 36
Application to Reinstate Suspended Form R-4	\$ 65
Application for Emergency Clearance Form R-4	\$ 65
Application for Site Clearance	\$ 600

B. Regulatory Fees

- Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,942 per facility.
- Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,471 per facility.
- Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$704 per well.
- Operators of record of permitted Class III and Storage wells are required to pay \$704 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$11,111 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	18
Tier 2	1 - 5,000	98
Tier 3	5,001 - 15,000	284
Tier 4	15,001 - 30,000	467
Tier 5	30,001 - 60,000	742
Tier 6	60,001 - 110,000	1,027
Tier 7	110,001 - 9,999,999	1,271

E. Exceptions

1. Operators of record of each Class I injection/disposal well and each Type A and B commercial facility that is permitted, but has not yet been constructed, are required to pay an annual fee of 50 percent of the applicable fee for each well or facility.

2. Operators of record of each inactive Type A and B facility which have voluntarily ceased the receipt and disposal of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable Type A or B facility.

3. Operators of record of each inactive Type A or B facility which have voluntarily ceased the receipt and disposal of E and P waste, have completed Office of Conservation approved closure activities and are conducting a post-closure maintenance and monitoring program, are required to pay an annual Regulatory Fee of 25 percent of the annual fee for each applicable Type A or B facility.

F. Pipeline Safety Inspection Fees

1. Owners/operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$22.40 per mile, or a minimum of \$400, whichever is greater.

2. Owners/operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$22.40 per mile, or a minimum of \$400, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2461 (November 2007), LR 34:2405 (November 2008), LR 35:2463 (November 2009), LR 36:2569 (November 2010).

§705. Failure to Comply

A. Operators of operations and activities defined in §701 are required to timely comply with this order. Failure to comply by the due date of any required fee payment will subject the operator to civil penalties provided in Title 30 of the Louisiana Revised Statutes of 1950, including but not limited to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR

27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2501 (November 2003), LR 34:2406 (November 2008), LR 36:2569 (November 2010).

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-10/11 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This order (Statewide Order No. 29-R-10/11) supersedes Statewide Order No. 29-R-09/10 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:2464 (November 2009), LR 36:2570 (November 2010).

James H. Welsh
Commissioner

1011#035

RULE

Department of Natural Resources Office of Conservation

Statewide Order No. 29-B
(LAC 43:XIX.301, 303, 501, 519 and 565)

The Louisiana Office of Conservation has amended LAC 43:XIX.303, 501, 519 and 545 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana. The amendment would allow commercial facilities to reclaim material that would otherwise be disposed of as E and P Waste and use said material solely as media during Office of Conservation permitted hydraulic fracture stimulation operations.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

§301. Definitions

FSR Fluid—fracture stimulation reclamation fluid as defined in §501.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2798 (December 2000), amended LR 33:1653 (August 2007), LR 36:2570 (November 2010).

§303. General Requirements

A. - O.6 ...

P. FSR fluid received by an operator regulated pursuant to this Chapter shall be used solely as media for hydraulic fracture stimulation operations. Upon receiving possession of FSR fluid from a commercial facility, the operator shall be solely responsible for ensuring that this requirement is met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000), amended LR 30:254 (February 2004), LR 33:1654 (August 2007), LR 36:2570 (November 2010).

Chapter 5. Off-Site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells

§501. Definitions

Fracture Stimulation Reclamation Fluid (FSR fluid)—a material that would otherwise be classified as E&P Waste, but which has been reclaimed for the sole use as media for Office of Conservation permitted hydraulic fracture stimulation operations.

Reusable Material—a material that would otherwise be classified as E&P Waste, but which is capable of resource conservation and recovery and has been processed in whole or in part for reuse. To meet this definition, the material must have been treated physically, chemically, or biologically or otherwise processed so that the material is significantly changed (i.e., the new material is physically, chemically, or biologically distinct from the original material), and meets the criteria §565.F. This term does not include FSR Fluid.

Type A Facility—a commercial E&P Waste disposal facility within the state that utilizes technologies appropriate for the receipt, storage, treatment, reclamation, or disposal of E and P Waste solids and fluids (liquids) for a fee or other consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000), amended LR 27:1898 (November 2001), LR 29:937 (June 2003), LR 34:1421 (July 2008), LR 36:2570 (November 2010).

§519. Permit Application Requirements for Commercial Facilities

A - A.1. ...

2. A major modification to an existing commercial facility or transfer station permit is one in which the facility requests approval to include FSR fluid operations or make significant technological changes to an existing E and P Waste treatment and/or disposal system, including the

construction and operation of additional equipment or systems to treat and/or dispose of E and P Waste streams other than those previously accepted by the facility. A major modification request may include a request to expand an existing commercial facility or transfer station onto adjacent property not previously permitted for E and P Waste disposal activities.

A.3. - C.21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000), amended LR 27:1905 (November 2001), LR 29:938 (June 2003), LR 36:2570 (November 2010).

§565. Resource Conservation and Recovery of Exploration and Production Waste

A. In order to encourage the conservation and recovery of resources in the oilfield industry, the processing of E and P Waste into reusable materials or FSR fluid, in addition to or beyond extraction and separation methods which reclaim raw materials such as crude oil, diesel oil, etc., is recognized as a viable alternative to other methods of disposal.

B. Commercial facilities may function for the purpose of generating reusable material or FSR fluid only, or they may generate reusable material or FSR fluid in conjunction with other storage, treatment or disposal operations.

C. Commercial facilities that generate reusable material or FSR fluid are subject to all of the permitting requirements imposed on other commercial facilities. They are also subject to the same operational requirements without regard to the distinction between E and P Waste and reusable material or FSR fluid. Existing permits may be amended to allow re-use or FSR fluid operations at commercial facilities which acquire the capability to engage in processing for re-use or FSR fluid operations. Commercial facilities which utilize extraction or separation methods to reclaim raw materials such as crude oil, diesel oil, etc. may do so without amendment of existing permits.

D. - H. ...

I. Reporting. Each company which generates reusable material must furnish the commissioner a monthly report showing the disposition of all such material.

J. Onsite temporary use of E and P Waste for hydraulic fracture stimulation operations is permissible only as authorized by the Office of Conservation and in accordance with the requirements of LAC 43:XIX.313.J.

K. Existing commercial facilities who desire to commence FSR fluid operations must comply with the notification, application and permitting requirements of LAC 43:XIX.519.

L. The Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the State of Louisiana upon issuance of a permit to a commercial facility operator for FSR fluid operations shall be held harmless from and indemnified for any and all liabilities arising from such operations and use of FSR fluid, and the commercial facility operator shall execute such agreements as the commissioner requires for this purpose.

M. Reporting. Each commercial facility which generates FSR fluid must furnish the commissioner a monthly report showing the disposition of all such material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1916 (November 2001), amended LR 29:939 (June 2003), LR 34:1422 (July 2008), LR 36:2571 (November 2010).

James H. Welsh
Commissioner

1011#062

RULE

Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

Emergency Powers of Director (LAC 55:IX.103 and 301)

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., and Act 211 of the 2009 regular session of the Louisiana Legislature, enacted as R.S. 40:1846(1) has amended Sections 103, "Definitions" and 301 "Emergency Powers of Director." This text has been amended to comply with the above legislative Act to allow the Director of the Liquefied Petroleum Gas Commission the authority to suspend non safety related rules of the commission by the majority vote of the commission when the governor has declared an emergency or disaster under R.S. 29:721 et seq.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter A. New Dealers

§103. Definitions

A. ...

Materially Affect Safety—any action or inaction that significantly and adversely affects the public health, safety or welfare, whether caused by deliberate act or negligence.

State of Emergency or Disaster—any event declared by the governor of the state by his authority under the "Louisiana Homeland Security and Emergency Assistance and Disaster Act" under R.S. 39:721 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846(1).

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:459 (March 1998), LR 29:2508 (November 2003), LR 31:2556 (October 2005), LR 33:1139 (June 2007), effective July 1, 2007, LR 36:2571 (November 2010).

Chapter 3. Emergency Powers

§301. Procedure

A. During a declared emergency or disaster by the governor, the commission may delegate authority to the director for the purposes of waving any rule under Part IX of Title 55 that does not materially affect safety.

B. The delegation shall be by majority vote of the commission.

C. If the commission cannot meet in person to vote on the delegation due to an inability to travel because of the

declared emergency or disaster, the director may make contact with each commissioner by any form of communications available at the time.

D. The director shall make a written record of each vote cast by the individual commissioners. This record shall contain:

1. the date of the vote;
2. the name of the commissioners available for vote;
3. the method of communication used to contact each commissioner including any contact information;
4. the affirmative or negative vote of each commissioner.

E. If the director cannot make contact with enough commissioners to make a quorum, he may act in on behalf of the commission during the declared emergency or disaster. Once the commission is able to meet, it shall review all exemptions granted by the director during the declared emergency or disaster. The commission may ratify any actions taken on behalf of the commission by the director.

F. The emergency powers of the director under this Section shall expire upon either of the following:

1. a majority vote of the commission;
2. the expiration of the declaration of emergency or disaster by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 36:2571 (November 2010).

John W. Alario
Executive Director

1011#025

RULE

Department of Public Safety and Corrections Corrections Services

Attorney Visits (LAC 22:I.317)

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 §317 Attorney Visits.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW

ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

§317. Attorney Visits

A. Purpose—to provide uniform procedures for the approval and conduct of visits by attorneys to offenders.

B. Applicability—deputy secretary, chief of operations, regional wardens and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all offenders, affected employees and attorneys seeking to visit.

C. Policy. It is the secretary's policy that attorney visits shall be conducted in accordance with the procedures of this regulation.

D. General

1. Offenders may refuse to see any attorney; such refusal shall be in writing and filed in the offender's master record.

2. A log shall be maintained of all visits by attorneys, paralegals, legal assistants, law clerks and investigators.

3. Visits may be visually observed, but conversations between offenders and counsel shall not, under any circumstance, be monitored.

4. Visits between death row offenders and attorneys, paralegals, legal assistants, law clerks and investigators may be non-contact at the warden's discretion.

5. Attorneys, paralegals, legal assistants, law clerks and investigators are subject to searches according to established procedures, as are all other visitors.

E. Procedures

1. Approval of Attorneys. An attorney's credentials shall be verified through the State Bar Association prior to being approved to visit or initiate privileged communication with offenders.

2. Approval of authorized representatives: Paralegals, legal assistants, law clerks and investigators may be permitted to enter the institution to conduct interviews with offender clients of their supervising attorney, either with the attorney or alone. Such permission is at the discretion of the warden, who may approve or disapprove these requests. Prior to a paralegal, legal assistant, law clerk or investigator being approved to enter the grounds of the institution, the following criteria shall be met by the employing attorney:

a. The paralegal, legal assistant, law clerk or investigator must not be on the visiting list of any offender confined in a state institution (except for immediate family members).

b. A paralegal must have completed a paralegal or legal assistant study program at an accredited four-year college or junior college, or have completed a paralegal or legal assistant study program approved by the American Bar Association. (Certification by the National Association of Legal Assistants, Inc. as a Certified Legal Assistant (CLA) may be substituted for the aforementioned programs.)

c. The employing or supervising attorney shall submit a paralegal, legal assistant, law clerk or investigator affidavit to the warden of the institution to be visited certifying the following prior to the approval for a paralegal, legal assistant, law clerk or investigator to enter institutional grounds:

i. the individual's name, social security number and birth date;

ii. the length of time the individual has been employed or supervised by the attorney;

iii. paralegals and investigators must attach a copy of their certification or license to the affidavit, if applicable.

iv. representatives of attorneys who seek authorization to visit a client on behalf of their supervising attorney, but do not possess a certificate and/or license shall not be authorized or approved except by special permission from the warden.

d. Paralegals, legal assistants, law clerks and investigators shall complete the department's "Orientation for Legal Representatives" training prior to being allowed to

visit an offender. This training may be conducted using the automated presentation on the department's website or upon arrival at the institution for an approved visit. The person taking the training on-line shall be required to submit the printable certificate of training with their affidavit. The visit may be prohibited if the required training is not completed.

e. This information shall then be verified and the attorney notified of the disposition of the request. Thereafter, for a period not to exceed one year from the date of approval, as long as the paralegal, legal assistant, law clerk or investigator continues in the employ or under the supervision of the same attorney, visits may be approved.

3. Scheduling. Visits by attorneys and their authorized representatives shall be scheduled through the institution at least 24 hours in advance.

4. Time of Visits. Visits by attorneys and their authorized representatives must normally take place Monday through Friday, excluding holidays, between the hours of 8:00 a.m. and 4:00 p.m.

5. Exceptions

a. The warden may approve special visits not in conformity with Paragraphs E.1, 2, 3 and 4 when unusual circumstances warrant.

b. Any improper acts or unethical behavior with an offender during a visit may result in an attorney or their authorized representatives being denied future requests to visit an offender.

F. Limitations of Visits

1. Number of Offenders. Generally, no more than ten offenders may be seen at any one time, and no more than twenty on any one day. Further limitations may be imposed by the warden if valid reasons exist.

2. Number of Attorneys. Generally, no more than two persons (attorneys, paralegals, legal assistants, law clerks or investigators or any combination thereof) may see an offender on any one day; however, the number visiting at one time may be limited based on available space and security constraints. Exceptions may be approved for good cause by the warden.

G. Exception. Nothing contained in this regulation shall apply to attorneys representing the state, the department or the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1313 (June 2000), amended LR 31:1098 (May 2005), LR 36:2572 (November 2010).

James M. Le Blanc
Secretary

1011#117

RULE

**Department of Public Safety and Corrections
Office of State Police**

**Motor Carrier Safety—Hazardous Materials
(LAC 33:V.10305)**

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1501 et seq., hereby amends its Rules regulating motor carrier safety and hazardous materials by excluding from Federal Motor Carrier Safety regulation those carriers, drivers, or vehicles with a single or combined gross vehicle weight rating of less than 26,001 pounds, and which carrier, driver, or vehicle is engaged in intrastate commerce. This adoption will bring the state of Louisiana in line with the majority of other states in relation to regulatory enforcement of adopted federal regulations.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

**Subpart 2. Department of Public Safety and
Corrections—Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous
Materials**

§10305. Applicability of Regulations

A. For the purpose of this Chapter, the federal regulations, as adopted or amended herein, shall govern all carriers, drivers, persons or vehicles:

1. to which the federal regulations apply;
2. engaged in the transportation of hazardous materials within this state.

B. For the purpose of this Chapter, the federal motor carrier safety regulations, as adopted or amended herein, shall also govern all carriers, drivers, persons or vehicles not subject to the federal regulations if the operated vehicle has a single or combined gross vehicle weight rating greater than 26,000 pounds and is used in commerce or industry.

C. The adopted federal regulations applicable to all carriers, drivers, persons or vehicles set forth in Subsections A and B of this Section shall be amended as follows.

1. For the adopted regulations governing all carriers, drivers or vehicles as specified in Subsection B, substitute "26,000 pounds" for all references made to "10,000 pounds."

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 14:298 (May 1988), LR 17:1115 (November 1991), repromulgated LR 18:78 (January 1992), amended LR 18:746 (July 1992), LR 20:58 (January 1994), LR 36:2573 (November 2010).

Jill Boudreaux
Undersecretary

1011#026

RULE

Department of Public Safety and Corrections Office of State Police

State Uniform Construction Code (LAC 55:VI.301)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.22 (C) and (D), R.S. 40:1730.28 and R.S. 40:1730.34 (B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Council hereby amends Chapter 3, Section 301, which amendments will update the various construction codes by adopting the 2009 editions, with certain noted deletions and amendments. These updated codes are effective 2011.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. In accordance with the requirements set forth in R.S. 40:1730.28, effective January 1, 2011 (excepting the National Electric Code which is presently in effect), the following is hereby adopted as the Louisiana State Uniform Construction Code. (The "Louisiana State Plumbing Code" shall replace all references to the "International Plumbing Code" in the following codes)

1.a. International Building Code(IBC), 2009 Edition, not including Chapter 1, Administration, Chapter 11, Accessibility, Chapter 27, Electrical and Chapter 29, Plumbing Systems. The applicable standards referenced in that code are included for regulation of construction within this state. Furthermore, IBC shall be amended as follows and shall only apply to the International Building Code.

i. Delete Chapter 4, Section 403.5.5: Luminous Egress Path Markings.

ii. Substitute Chapter 5, Table 503 Allowable Building Height Modifications of the 2006 IBC, in lieu of Table 503 of the 2009 IBC.

iii. Amend Chapter 10, Section 1018.5 Air Movement in corridors. *Corridors* that require protection under Table 1018.1—Corridor Fire-Resistance Rating, shall not serve as supply, return, exhaust, relief or ventilation air ducts.

iv. Amend Chapter 23, Section 2308.2, Exceptions 4. Wind speeds shall not exceed 110 miles per hour (mph) (48.4m/s) (3-second gust) for buildings in Exposure Category B.

2. International Existing Building Code(IEBC), 2009 Edition, not including Chapter 1, Administration, and the standards referenced in that code for regulation of construction within this state.

3.a. International Residential Code, 2009 Edition, not including Parts I-Administrative, V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new

construction, reconstruction, additions to homes previously built to the International Residential Code, and extensive alterations. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission. For purposes of this part, section R301.2.1.1 of the 2003 edition of the International Residential Code is hereby specifically adopted in lieu of the 2009 edition. Part IV-Energy Conservation of the latest edition of the International Residential Code is hereby amended to require that supply and return ducts be insulated to a minimum of R-6. Furthermore, IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the International Residential Code:

i. amendment of R301.2.1.1 (Design Criteria);
ii. item 5, Concrete construction shall be designed in accordance with the provisions of the 2009 IRC.

iii. item 6, the American Concrete Institute, Guide to Concrete Masonry Residential Construction in High Winds Areas, shall be added;

iv. item 7, Institute for Business and Home Safety, *Optional Code-plus Fortified for Safer Living*, shall be added;

v. item 8, Federal Alliance for Safe Homes, *Optional Code-plus Blueprint for Safety*, shall be added.

vi. item 9, International Code Council ICC Standards for Residential Construction in High Wind Regions.(ICC-600), shall be added.

vii. item 10, Structural Insulated Panel (SIP) wall shall be designed in accordance with the provisions of the 2009 IRC.

b. Additionally, Section 302, R302.1 Exterior Walls shall be amended to add the following exception.

i. On lots that are 50 feet or less in width and that contain a one or two family dwelling or townhouse that was in existence prior to October 1, 2005, the following are permitted for rebuilding:

(a). a projection 2 feet from the property line with a 1 hour minimum fire-resistance rating on the underside;

(b). a wall 3 feet or more from the property with a 0 hour minimum fire-resistance rating.

c. Additionally, IRC shall be amended as follows and shall only apply to the International Residential Code.

i. Substitute Chapter 3, Section R317 Dwelling Unit Separation of the 2006 IRC, in lieu of the Section 313 Automatic Fire Sprinkler Systems of the 2009 IRC.

ii. Amend Chapter 3, Section R315.2 Where Required in Existing Dwellings: When Alterations, repairs or additions occur or where one or more sleeping rooms are added or created in existing dwelling that have garages or in existing dwellings within which fuel fired appliances exist, carbon monoxide alarms shall be provided in accordance with Section R315.1.

iii. Substitute Chapter 11,Energy Efficiency of the 2006 IRC, in lieu of Chapter 11 Energy Efficiency of the 2009 IRC.

4.a. International Mechanical Code(IMC), 2009 Edition, and the standards referenced in that code for regulation of construction within this state. Also included for regulation, the Louisiana One- and Two- Family Supplement to the 2006 International Mechanical Code. Furthermore, the International Mechanical Code, 2006 Edition, Chapter 1,

Section 101.2 Scope is amended as follows: Exception: Detached one- and two- family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the Louisiana One- and Two- Family Supplement to the 2006 International Mechanical Code. Furthermore, IMC shall be amended to include the following:

i. Amend Chapter 1, Section 103.2. The code official shall be appointed by the chief appointing authority of the jurisdiction; and the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.

ii. Amend Chapter 6, Section 606.4.1 Supervision. The duct smoke detectors shall be connected to a fire alarm system where a fire alarm system is required by Section 907.2 of the International Fire Code or locally adopted fire code. The actuation of a duct smoke detector shall activate a visible and audible supervisory signal at a constantly attended location.

5. The Louisiana State Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code] as amended by the state health officer acting through the Office of Public Health of the Department of Health and Hospitals. Nothing in this Part shall be construed so as to prevent the state health officer from enforcing Part XIV (Plumbing) of the State Sanitary Code, the enforcement of which is his statutory and regulatory responsibility.

6. International Fuel Gas Code (IFCG), 2009 Edition, and the standards referenced in that code for regulation of construction within this state.

7. National Electric Code (NEC), 2008 Edition. This Code is to become effective on January 1, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010).

Jill Boudreaux
Undersecretary

1011#037

RULE

Department of Public Safety and Corrections Office of State Police

Towing, Recovery and Storage (LAC 55:I.Chapter 19)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1711 et seq., hereby promulgates multiple and varied amendments to the regulatory requirements regarding the towing and storage industry. The Sections to be amended are listed above.

Title 55 PUBLIC SAFETY Part I. State Police

Chapter 19. Towing, Recovery, and Storage Subchapter A. Authority, Exemptions, Definitions, Scope §1903. Exemptions

A. These rules shall not apply to:

1. - 5.d. ...

e. ensure tow trucks are permanently and prominently marked on both side in lettering at least 2 1/2 inches in height and 1/4 inch in width with the company's legal name, city and "NOT FOR HIRE."

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 32:853 (May 2006), amended LR 36:2575 (November 2010).

§1905. Definitions

A. The definitions found in the Louisiana Highway Regulatory Act, specifically R.S. 32:1 and the Towing and Storage Act, specifically, R.S. 32:1711 et seq., are applicable to these rules and shall have the same meaning indicated unless the context clearly indicates otherwise.

Authorized Agent—a suitable company authorized by the department in accordance with this Chapter to process and exchange the Official Report of Stored Vehicle information.

Automobile Liability Coverage—insurance which covers damage to property and/or personal injury to third parties.

Deputy Secretary—the deputy secretary of the Department of Public Safety and Corrections, Public Safety Services.

Garage Keepers Legal Liability Insurance—insurance which provides coverage to owners of storage facilities, garages, parking lots, body and repair shops, etc., for liability as bailees with respect to damage or loss to vehicles and contents left in their custody for safe keeping or repair.

Garage Liability Insurance—liability insurance covering storage facilities, automobile dealers, garages, repair shops, and service stations against claims of bodily injury and property damage that may arise through operation of such businesses.

Gross Combination Weight Rating (GCWR)—the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

Gross Vehicle Weight Rating (GVWR)—the value specified by the manufacturer as the loaded weight of a single motor vehicle.

Law Enforcement Hold—a hold placed on a specific vehicle by a law enforcement agency due that vehicle's evidentiary value in an active investigation.

License Holder—shall include, but not be limited to, a tow truck operator, towing service, storage facility or other entity requiring licensure pursuant to this Chapter.

Nonconsensual Tow—the towing of a motor vehicle without the prior consent or authorization of the motor vehicle owner or operator.

Offending Vehicle—the tow truck for which a violation of law, rule or regulation has been cited by the department and a administrative penalty has been assessed.

Offense—shall be synonymous with violation and mean any infraction of law, rule or regulation promulgated in accordance with this Chapter.

On-Hook/In Tow Coverage—insurance specifically covering tow truck operators when engaged in the recovery, towing or transporting of a vehicle.

Owner—the last registered owner of a vehicle as shown on the records of the Office of Motor Vehicles and/or the holder of any lien on a vehicle as shown on the records of the Office of Motor Vehicles and/or any other person who has a documented ownership interest in a vehicle.

Place of Business—a permanent structure located within Louisiana used for business, staffed during regular business hours, equipped with phone and utility services, and houses records and other appropriate or required documents.

Responsible Party—the principal person or business that is civilly liable or criminally culpable for the occurrence or commission of a violation of law, rule or regulation.

Storage Area—an approved building, structure, yard, or enclosure used for the purposes of storing vehicles in Louisiana.

Storage Facility—any business or company that receives direct or indirect compensation for storing vehicles in Louisiana.

Tow Truck—a motor vehicle equipped with a boom or booms, winches, slings, tilt beds, wheel lifts, under-reach equipment, and/or similar equipment including, but not limited to, trucks attached to trailers, tow dollies, and car carriers designed for the transportation and/or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 36:2575 (November 2010).

§1907. Administrative Penalty Assessment; Arbitration; Recovery of Penalties

A. Administrative Penalty Assessment

1. A tow truck owner or operator, an employee or the agent of a tow truck owner or operator, a storage facility owner or operator, an employee or the agent of a storage facility owner or operator, determined by the department to have committed a violation of R.S. 32:1711 et seq., or adopted and promulgated regulations as provided in this Chapter, is subject to legal sanctions being imposed against them. Legal sanctions shall include, but are not limited to, administrative civil penalties, warnings, and suspension and/or revocation of the operator's license, storage inspection license, tow truck license plate.

2. The department shall issue a citation or inspection report for violations of law, rule or regulation which shall specify the offense committed. The citation or inspection report shall provide for the payment of an administrative penalty to the department in an amount prescribed by the

department or if a suspension or revocation is being imposed, specify the duration of said suspension or revocation. The penalty shall be paid or imposed within 45 days of issuance and mailing, by first class mail, of the initial notice of violation, unless within that period the person to whom the citation is issued files a written request for an administrative hearing within the 45 days.

3. ...
4. Schedule of Fines

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:1.1903 and 1905)	
\$100-\$500	055.1911C5 Vehicle Staging Or Transfer During Private Property/Non-Consensual Tow
\$250	055.1939B3 Abuse Of Storage And Permit To Sell Process In Order To Obtain Title
\$100-\$500	055.1911B2A Improper Towing Fees For Non-Consensual Tow
\$100-1000	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	055.1930-DR Improper Nonconsensual Tow
\$200-1000 Company Fine	055.1930-TC Improper Nonconsensual Tow
\$200	055.1930-NC Failure To Possess Contract For Nonconsensual Tow
Tow Truck License Plates	
\$100	055.1913B2A-IC EXPIRED LA VEHICLE INSPECTION CERTIFICATE
\$150	055.1913B2A-SC Switched LA Vehicle Inspection Certificate
\$200 Driver Fine	055.1917A1-NL Unqualified Driver - No Driver's License
\$100 Driver Fine	055.1917A1-EL Unqualified Driver - Expired Driver's License
\$200-500	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

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:1.1903 and 1905)	
\$250-1000	055.1913B2-RV Failure To Register Vehicle As La Tow Truck
\$125-1000	055.1913B2A-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	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-NP 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
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 Lamps(s)
\$75	055.1919A-IW {#} Inoperative Emergency Warning Lamp(s)

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:1.1903 and 1905)	
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)
\$100	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	
\$50 (each)	055.1919B-WT {#} Tire Violation(S)
\$25 (each)	055.1919B-FL EXCESSIVE FLUID LEAK
\$75 (each)	055.1919B-DW {#} Defective/Cracked Wheel(S)
\$75 (each)	055.1919B-MB {#} Missing/Inop/Defective Brake Componets(S)
\$75 (each)	055.1919B-OA {#} Brake(S) Out Of Adjustment
\$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
\$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

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:1.1903 and 1905)	
\$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)
\$100	055.1921B2-IS Improper Securement Of Towed Vehicle
Capacities and Specifications of Towing Equipment (LAC 55:1.1923)	
\$200-1000	055.1923A-LW Improper Licensing Of Gvwr Weight Of Tow Truck
\$300-\$500	055.1923-WE Exceeding Weight Capacity Of Towing Equipment
\$300-\$500	055.1923-WT Exceeding Weight Capacity Of Tow Truck
\$100-1000	055.1923 No / Improperly Certified Tow Assembly
\$100-1000	055.1923D-VN Missing Original Vin/Gvwr Label
Tow Truck Equipment Specifications (LAC 55:1.1925)	
Inspection By The Department (LAC 55:1.1927)	
\$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 55:1.1929)	
\$200-1000	055.1929A Failure To Exercise Due Care/Removal Operation
\$300-1000	055.1929B Failure To Obey Law Enforcement Officer
Insurance Requirements (LAC 55:1.1931)	
\$500	055.1931B6-NI No Required/Storage Insurances
\$100-1000	055.1931B6 Improper Amount Of Required Towing/Storage Insurance
\$300-1000	055.1915C-NP No Proof Of Req Towing/Storage Insurance
Towing/Storage Facility Business Practices (LAC 55:1.1941)	
\$100	055.1943B 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
\$100-1000	055.1941K Improper Third Party Tows / Storage
\$100-1000	055.1941L Improper Handling Of Towed/Stored Vehicles (Damaged)
\$200-1000	055.1941P No Towing Billing Invoices
\$100	055.1941P2B Billing Invoices Not Consecutively Numbered
\$100-1000	055.1941P-AI Improper/Incomplete Billing Invoices (All Invoices)
\$100-1000	055.1941P-TI Improper/Incomplete Billing Invoices (Tow Invoices)
\$100-1000	055.1941P-IC Failure To Denote Itemized Charges As They Occur.
\$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	055.1943B-SH Failure To Staff Towing Headquarters Facility
\$200-1000	055.1931D1 Business Records Unavailable For Inspection
Storage Procedures (LAC 55:1.1941)	
\$100-1000	055.1941B Failure To Properly Release Vehicle

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:1.1903 and 1905)	
\$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 55:1.1941)	
\$100-1000	055.1941C-IS Improperly Secured Storage Facility Area (Fence Missing, Etc)
\$100-1000	055.1941F Improper/Inadequate Storage Lot
\$100-300	055.1941D Failure To Post Sign W/ Required Information
\$300-1000	055.1927B1 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
\$300-1000	055.1931D-PR Failure To Provide Storage Records For Review
Storage Fees (LAC 55:1.1945)	
\$100-1000	055.1943C Excessive/Improper Storage Fees
\$100-1000	055.1945B Excessive/Improper Gate Fees
Notification To Dept. Public Safety & Corrections (LAC 55:1.1935)	
\$100-1000	055.1933A1 FAILURE TO NOTIFY DEPARTMENT (3 DAYS, ORSV)
\$100-1000	055.1933A1-IF 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 Notice By Cert Of Mailing
\$200-1000	055.1937 Excessive Administrative Fees
\$100-1000	055.1939 Violation Of Permit To Sell Requirements
Licensing; Storage Facilities (LAC 55:1.1931)	
\$200-1000	055.1931-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 55:1.1947)	
\$100-200	055.1947A4 Failure To Respond Within 45 Minutes
\$25-1000	055.1947A2 Failure To Comply W/LSP Policies and Procedures

B. Administrative Hearings

1. - 3. ...

4. In such cases, on or after the forty-sixth day the department shall inform the responsible party by first class mail of the conviction and that he has 30 days from the date

of this notice to pay the penalty or the Office of Motor Vehicles shall suspend his driver's license and/or vehicle registration. Suspending the vehicle registration shall mean any registration transaction, including renewal, may be denied.

5. ...

C. - D.1.a. ...

i. a tow truck license plate removed or denied renewal pursuant to this Part may only be reinstated upon receipt of payment of fines and fees owed the department;

1.b. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 35:2201 (October 2009), LR 36:2576 (November 2010).

§1911. Code of Conduct

A. - B.2.f.ii. ...

iii. every owner or operator shall ensure there is no presence of an alcoholic beverage, narcotic, or controlled dangerous substance within the tow truck.

C. - C.4.a. ...

5. Vehicle Staging or Transfer

a. The operator of a tow truck, towing service, employee or agent shall not tow any vehicle to any location other than that company's licensed storage facility without prior authorization of that vehicle's owner.

b. Vehicles shall not be towed from their original location to a secondary location for the purpose of transfer to another tow truck unless the primary tow truck has become disabled and cannot complete the tow. In this case the primary tow truck and its driver must wait with the towed vehicle until a second tow truck arrives to complete the tow.

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 32:855 (May 2006), LR 36:2579 (November 2010).

Subchapter B. Tow Truck License Plate; Required Insurance

§1913. Tow Truck License Plate

A. - B.3.a.i. ...

ii. a tow truck has a GVWR of 10,000 pounds or less and it shall not be used for towing vehicles for compensation; unless the year of manufacture is prior to 2007, in which case, a GVWR of 10,000 pounds shall not be cause for denial; or

B.3.a.iii. - C.1.c. ...

d. Is found to have been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession a stolen vehicle(s) or stolen vehicle parts or employs someone convicted of one of the above stated offenses.

D. - D.1.c. ...

d. obtaining a tow truck license plate under false pretenses; or is found to have been convicted of felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession of vehicle(s) or stolen vehicle parts or employees someone convicted of one of the above stated offenses;

e. - h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:856 (May 2006), amended LR 36:1270 (June 2010), LR 36:2579 (November 2010).

§1930. Vehicles Towed from Private Property

A. Tow truck company owners, operators, and employees shall comply with the provisions of R.S. 32:1736 when towing vehicles from private property.

B. Towing and storage companies that conduct nonconsensual tows shall possess authority through the Louisiana Public Service Commission and a valid storage inspection license.

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 36:2579 (November 2010).

Subchapter D. Vehicle Storage

§1931. Storage Facility; Licensing, Fees, Inspection, Requirements

A. Storage Facilities

1. Storage facilities, subject to the provisions of R.S. 32:1711 et seq., shall be located within Louisiana and make application to the department for a storage inspection license for each storage facility location.

2. A valid storage inspection license must be issued by the department before conducting business as a storage facility or a new storage facility location being utilized.

A.3. - B.7. ...

8. Storage facilities must have their place of business and storage area located on the same piece of property. The property may not be subdivided by any public street, right of way, or other piece of property not owned or leased by the storage facility. This provision will apply to all new storage facility applicants effective July 1, 2010 and will not affect licensed facilities seeking a renewal.

C. - C.1. ...

a. remit the sum of \$100 per storage license, payable to the Louisiana State Police, Towing and Recovery Unit;

b. ...

D. Inspection of a Storage Facility

1. Storage facilities shall make business records available for inspection by department officers during normal business hours, unless exigent circumstances exist which may require access to records after hours and shall provide copies upon request. Business records shall include any records created or obtained while acting as a towing and/or storage facility.

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 32:861 (May 2006), amended LR 36:2579 (November 2010).

§1933. Requirements for Official Report of Stored Vehicle (ORSV); Filing; Submittal; Option of the Department to Send and Receive ORSV Information

A. - A.1. ...

a. File an Official Report of Stored Vehicle (ORSV) within three business days of receiving the vehicle in writing addressed to the Department of Public Safety and

Corrections, Office of Motor Vehicles, Specialized Vehicle Unit, P.O. Box 64886, Baton Rouge, LA 70896, or the department's authorized agent. If the vehicle is released to the vehicle owner within three business days of towing or receiving the vehicle, a storage/towing company shall not be required to submit the ORSV notification and if the ORSV notification is not made prior to the release of the vehicle, there shall be no charge for related administrative fees.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006), amended LR 36:2579 (November 2010).

§1937. Administrative Fees

A. Administrative fees for storage of vehicles shall not be charged or otherwise collected without possession of a valid storage inspection license, and the timely filing of an ORSV prior to the release of the vehicle or other notification requirements in the Towing and Storage Act.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006), amended LR 36:2580 (November 2010).

§1939. Permits to Sell and Permits to Dismantle

A. - B.2. ...

3. Licensed storage facilities shall not place a vehicle into storage for the purposes of circumventing acceptable titling practices and the payment of statutorily required taxes and fees.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006), amended LR 36:2580 (November 2010).

§1941. Storage and Towing Facilities; General Requirements; Procedures

A. A facility may only store and charge storage on vehicles that are in the facility's actual possession, located within the licensed storage area and meets the requirements of this Chapter.

B. Vehicles shall be released immediately to the vehicle owner or lien holder, or authorized agent once payment is made, any applicable lien holder requirements (R.S. 32:1720.1) are met, and any applicable documented law enforcement or department hold orders are released.

C. Storage and towing facilities shall provide for the security and safety of vehicles stored in accordance with this Chapter. Storage areas shall have security barriers or safety apparatus suitable to insure the security of the property contained therein. Outside storage areas shall be enclosed by at least a 6 foot high chain link fence, or fence of similar strength or solid wall sufficient to protect against loss, trespass or vandalism. The loss, damage, theft or misappropriation of a stored vehicle or its contents shall be evidence of a violation of this provision, if the loss, damage, theft or misappropriation was supported by sufficient evidence.

D. - F. ...

G. Whenever any vehicle has been towed to a storage facility, other than by owner's request, the owner or operator of the storage facility shall comply with the law enforcement notification requirements found in R.S. 32:1718.

H. - M. ...

N. The address that the towing or storage service lists on its applications shall be the business location where its business records are kept.

O. - Q.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006), amended LR 36:2580 (November 2010).

Subchapter E. Rotation List

§1947. Law Enforcement Tow Truck Rotation List

A. - A.4. ...

5. Towing and storage facilities storing a vehicle that has a law enforcement hold, and the law enforcement agency requesting the hold, shall comply with R.S. 32:1735.1. Law enforcement agencies requesting to extend the hold beyond the initial 14 days shall submit the request in writing, on the agency's letterhead, to the storage facility. This request shall be kept on file at the facility and must contain the following information:

- a. the name and contact information of the officer requesting the hold;
- b. the name of the vehicle's owner, if available;
- c. the license plate number with state of issue and vehicle identification number;
- d. the year, make, and model of the vehicle

B. - G.13. ...

H. - H.2.a.iii ...

iii. Tow truck minimum qualifications:

(a). GVW rating of not less than 10,001 pounds as rated by the manufacturer. Tow trucks manufactured prior to 2007 shall have a GVW rating of not less than 10,000 pounds;

(b). minimum of 60 inches from rear of cab to center of rear axle;

(c). adequate service brake system for normal and adverse towing conditions;

iii.(d). - iv(a). ...

(b). power winch rated not less than 20,000 pounds, dual winches must have a minimum of 150 feet wire rope per winch with a breaking strength of 21,000 pounds and 1/2 inch in diameter.

b.v. - c. ...

i. The towing company may own and maintain for service at least one heavy duty tow truck in addition to at least one light or medium duty tow truck.

H.2.c.ii. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:863 (May 2006), amended LR 36:546 (March 2010), LR 36:2580 (November 2010).

Jill Boudreaux
Undersecretary

1011#023

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

General and WMA Turkey Hunting Regulations (LAC 76:XIX.113)

The Wildlife and Fisheries Commission has amended the turkey rules and regulations for the 2011 season.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§113. General and WMA Turkey Hunting Regulations

A. General Regulations. Only gobblers (male turkeys) may be taken. Taking of hen (female) turkeys, including bearded hens, is prohibited. Still hunting only. Use of dogs, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot, and approved archery equipment but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited. The running of coyote with dogs is prohibited in all turkey hunting areas during the open turkey season. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys. A baited area is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closures. No person hunting turkeys more than 200 yards from a baited area will be in violation of the turkey baiting regulation.

B. Tags

1. Prior to hunting turkeys, all turkey hunters, regardless of age or license status, must obtain turkey tags and have them in their possession while turkey hunting. Immediately upon killing a turkey, hunters must attach a carcass tag to the turkey before it is moved from the site of the kill and must document the kill on the turkey harvest report card. The date of kill and parish of kill must be recorded on the carcass tag. The tag must remain attached to the turkey while kept at camp or while it is transported to the domicile of the hunter or to a cold storage facility. Hunters who keep the carcass or meat at a camp must also comply with game possession tag regulations. Within 72 hours of the kill, the hunter must report the kill and record the validation number on the turkey harvest report card. Hunters may report turkeys by calling the validation phone number or using the validation web site.

2. Turkey hunters purchasing licenses by phone or internet will be given an authorization number and a LDWF

identification number that will serve as their license and tags until the physical license and tags arrive by mail. Turkey hunters who have purchased a license with tags, but have not yet received their physical license and tags, must immediately tag their kill with a possession tag before moving it from the site of the kill. The authorization number and LDWF identification number must be recorded on the possession tag. Hunters must retain documentation of any turkeys killed and upon receiving their physical tags and harvest report card, validate their kill as required in these regulations. The tags for turkeys killed prior to receiving the physical tags must be removed from the turkey harvest report card and discarded.

3. Tags removed from the turkey harvest report card prior to killing a turkey are no longer valid and if lost will not be replaced. Duplicate tags and turkey harvest report cards are available to replace lost report cards and attached tags. Hunters will be charged a fee for duplicate turkey harvest report cards and tags. Hunters that have killed a turkey prior to losing their remaining tag and harvest report card must remove and discard the duplicate tag to account for the original tag that was used and validated. Hunters must record any previously validated turkey on the duplicate turkey harvest report card.

C. Possession of Live Wild Turkeys. No person shall take live wild turkeys or their eggs from the wild. No person shall possess captive live wild turkeys, (*Meleagris gallopavo silvestris*, *M. g. osceola*, *M. g. intermedia*, *M. g. merriami*, *M. g. mexicana*) or their eggs, regardless of origin, without a valid game breeder license. No pen-raised turkeys from within or without the state shall be liberated (released) within the state.

D. Statewide Youth and Physically Challenged Season Regulations. Only youths 17 years of age or younger or hunters possessing a Physically Challenged Hunter Permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Youths must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for youth younger than 16 years of age. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. Except properly licensed youths 16-17 years old and youths 12 years old or older who have successfully completed a hunter safety course may hunt without a supervising adult. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their season bag limit of two.

E. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

F. Turkey Hunting Area Descriptions

1. Area A

a. All of the following parishes are open:

i. Beauregard;

ii. Bienville;

iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

iv. East Baton Rouge;

- v. East Feliciana;
- vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- vii. Jackson;
- viii. LaSalle;
- ix. Lincoln;
- x. Livingston;
- xi. Natchitoches (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- xii. Rapides (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- xiii. Sabine;
- xiv. St. Helena;
- xv. Tangipahoa;
- xvi. Union;
- xvii. Vernon (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- xviii. West Baton Rouge;
- xix. West Feliciana (including Raccourci Island);
- xx. Winn (Exception: see Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- b. Portions of the following parishes are also open:
 - i. Allen: north of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;
 - ii. Avoyelles: that portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;
 - iii. Calcasieu: north of I-10;
 - iv. Caldwell: west of Ouachita River southward to Catahoula Parish line;
 - v. Catahoula: south and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. also that portion lying east of LA 15;
 - vi. Evangeline: north and west of LA 115, north of LA 106 west of LA 115 to US 167, west of US 167 south to LA 10, north of LA 10 west of US 167 to LA 13, west of LA 13 south of LA 10 to Mamou and north of LA 104 west of Mamou;
 - vii. Franklin: that portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;
 - viii. Iberville: west of LA 1. Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - ix. Jefferson Davis: north of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;
 - x. Madison: that portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;
 - xi. Morehouse: west of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;

xii. Ouachita: all west of the Ouachita River. That portion east of the Ouachita River lying north of US 80 to LA 139, west of LA 139 to LA 134, north of LA 134 to the Morehouse parish line, south of the Morehouse parish line, and east of the Ouachita River.

xiii. Pointe Coupee: all of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis. (Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries);

xiv. Richland: that portion south of US 80 and east of LA 17;

xv. St. Landry: that portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River. Exception: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates;

xvi. Upper St. Martin: all within the Atchafalaya Basin. Exceptions: Sherburne WMA and Indian Bayou Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates;

xvii. Tensas: that portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River.

2. Area B

a. All of the following parishes are open:

- i. Caddo;
- ii. DeSoto;
- iii. Red River;
- iv. St. Tammany;
- v. Washington.

b. Portions of the following parishes are open:

- i. Ascension: all east of the Mississippi River;
- ii. Bossier: all open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish Line;
- iii. East Carroll: east of US 65 from Arkansas state line to Madison Parish line;
- iv. Iberville: all east of the Mississippi River;
- v. Webster: all open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates).

3. Area C

a. All of the following parishes are open:

- i. Concordia;

b. Portions of the following parishes are open:

- i. Caldwell: all east of the Ouachita River;
- ii. Catahoula: all of the parish Except for that portion located in Area A;
- iii. Franklin: west of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;

iv. Iberia: east of the West Atchafalaya Basin Protection Levee;

v. Richland: west of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;

vi. Tensas: east and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

4. Turkey season dates on Wildlife Management Areas, National Wildlife Refuges, Kisatchie National Forest and U.S. Army Corps of Engineers land located within Areas A, B, and C may vary from the season set for the parish in which they are located. Seasons for these lands are specified in LAC 76:XIX.115.

G. WMA Turkey Hunting Regulations

1. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

2. Self-Clearing Permits. all turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

3. Lottery Hunts. all or portions of some WMA seasons are designated as lottery hunts and are restricted to hunters selected by pre-application lottery. To apply for these lottery hunts, a hunter must submit a completed official application form to the Baton Rouge office by the deadline printed on the application. A non-refundable fee of \$5 must be sent with each application. Applicants for WMA youth hunts must be 17 years of age or younger and at least 8 years old on the day of the hunt. Applicants may submit only one application and may be selected for only one spring WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Hunters must abide by self-clearing permit requirements. Hunters chosen for WMA lottery hunts may be accompanied by one person. The person accompanying a lottery hunter shall not possess a firearm/bow or take a turkey, and must remain within a distance that allows normal voice contact with the lottery hunter at all times. Youths chosen for special youth only hunts may be assigned a guide on the day of the hunt provided that guides are available. One person may accompany the youth and guide, but may not hunt.

4. WMA Physically Challenged Hunt (wheelchair confined). open only to hunters with a physically challenged hunter permit with wheelchair classification. During this hunt, ATVs may be used by hunters on all designated ATV trails in accordance with the physically challenged hunter permit. hunters must abide by self-clearing permit requirements.

5. Rules Specific to Certain WMAs

a. Bens Creek: no turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree;

b. Sandy Hollow: no turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree;

c. Sherburne: all turkeys taken must be checked at the WMA headquarters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November 2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2469 (November 2007), LR 35:91 (January 2009), LR 35:2478 (November 2009), LR 36:2581 (November 2010).

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Chairman

1011#032

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Turkey Seasons (LAC 76:XIX.115)

The Wildlife and Fisheries Commission does hereby amend the turkey dates and limits for the 2011 season.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§115. Turkey Hunting Areas, Seasons, and Bag Limits

A. Daily limit is one gobbler. Season limit is two gobblers. Turkeys taken on WMAs are part of the season bag limit. Only one turkey may be taken during spring WMA lottery hunts.

B. Turkey season will open in designated areas on the Saturday nearest March 22. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife management areas, national forests, national wildlife refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the Saturday nearest March 22 falls the day before Easter.

C. Statewide Youth Turkey and Physically Challenged Season on private lands shall be the weekend prior to the statewide turkey season.

D. Only those wildlife management areas listed herein are open to turkey hunting. All other wildlife management areas are closed.

E. 2011 Turkey Hunting Schedule

Area	Season Dates
A	March 19 - April 17
B	March 19 - April 10
C	March 19 - April 3
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 12-13

F. Wildlife Management Area Turkey Hunting Schedule

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Attakapas	March 19 – 27	None
Bayou Macon	None	April 9-10
Bens Creek	March 19 - April 3	None
Big Lake	March 19 - April 3	None
Bodcau	March 19 - April 3	None
Boeuf	March 19 - 27	None
Clear Creek	March 28 - April 17	March 19 - 20 March 26 - 27
Camp Beauregard	March 19 - 27	None
Dewey Wills	None	April 9 - 10 April 16 - 17
Fort Polk	March 19 – April 17	None
Grassy Lake	March 19 - 27	None
Hutchinson Creek	March 19 – April 17	None
Jackson-Bienville	March 19 – April 3	None
Lake Ramsey	March 19 – April 3	None
Little River	March 19 – April 3	None
Loggy Bayou	None	April 8 - 10
Peason Ridge	March 19 – April 17	None
Red River	March 19 – April 3	None
Sabine	None	March 19 - 21 April 1-3
Sandy Hollow	March 19 – April 3	None
Sherburne	March 24 - 27	March 19-20 March 21-23
Sicily Island	None	March 19-21 March 22-24 March 25-27 March 28 – April 3
Tangipahoa Parish School Board	March 19 – April 17	None
Three Rivers	March 19 – April 3	None
Tunica Hills South Tract	April 4-10	March 19-20 March 26-27 April 2-3
Tunica Hills North Tract	April 4-10	March 19-20 March 26-27 April 2-3
Union	None	April 15-17
Walnut Hills	March 19 – April 17	None
West Bay	None	March 19-20 March 26-27

G. Wildlife Management Area Lottery Youth Hunts

WMA	Lottery Youth Hunt Date
Attakapas	March 12
Bens Creek	March 12
Big Lake	March 12

WMA	Lottery Youth Hunt Date
Bodcau	March 12
Clear Creek	March 12
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 12
Grassy Lake	March 12
Jackson-Bienville	March 12
Loggy Bayou	April 2
Pearl River	April 2
Pomme de Terre	March 12
Sherburne	March 12-13
Sicily Island	March 12
Spring Bayou	March 12
Thistlethwaite	April 2
Tunica Hills	March 12
Union	April 2
West Bay	March 12

H. Non-Lottery Youth Hunts

1. Bodcau WMA will be open April 9-10 (only youths may hunt).
 2. Jackson-Bienville WMA will be open April 9-10 (only youths may hunt).
- I. Wildlife Management Area Physically Challenged (wheelchair confined) Hunt
1. Jackson-Bienville WMA will be open April 11-17 to holders of valid Physically Challenged Hunter (wheelchair classification) Permits.

J. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) turkey hunting schedule: Caney Ranger District, March 19 - April 3; all remaining KNF lands, March 19 - April 10 (including Catahoula and Red Dirt National Wildlife Management Preserves).
 2. U.S. Army Corps of Engineers turkey hunting schedule: Indian Bayou Area, March 12-13 physically challenged lottery only hunt, lottery hunt only on March 19-20 and March 21-23, non-lottery hunt March 24-27. Old River Control and Lock Areas, March 19 - April 3.
 3. National Wildlife Refuges: Bogue Chitto NWR, March 19 - April 10; Lake Ophelia NWR, March 19 - April 3 hunt ends at 12:00 p.m. each day; Tensas NWR, March 12-13 (youth only), March 19 - April 3; Upper Ouachita NWR, March 12 (youth lottery only).
- AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.
- HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2513 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2470 (November 2007), LR 35:90 (January 2009), LR 35:2481 (November 2009), LR 36:2583 (November 2010).

Robert J. Barham
Secretary

1011#033

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Agricultural Commodities Commission

Agricultural Commodity Dealer and Warehouse Law (LAC 7:VII.Chapter 3 and XXVII.Chapter 1)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3405, the Louisiana Agricultural Commodities Commission (Commission) proposes to amend the Agricultural Commodity Dealer and Warehouse Law in order to make technical corrections, update language and fees to meet the requirements established in the revisions of Act 767 enacted in the 2010 Regular Legislative Session, adopt new regulations that pertain to the use of Electronic Warehouse Receipts as well as adopt fees for the testing and sampling of aflatoxin for corn.

Act No. 767 of the 2010 Regular Legislative Session adopted, amended and reenacted several sections of R.S. 3:3401-3425 of the Agricultural Commodity Dealer and Warehouse Law pertaining to the seizure of facilities, grain dealer license exams, moisture meter devices as well as technical corrections. The law also repeals obsolete provisions related to certification requirements for grain sampling, licensure requirements for weighmasters, policies for sampling and grading grain and design approval for scale tickets.

These rules are enabled by R.S. 3:3401 -3425.

Title 7

AGRICULTURE AND ANIMALS

Part VII. Dealers in Farm Products

Chapter 3. Cotton Buyers

§301. Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703 and R.S. 3:702.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:473 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§303. Bonds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703 and R.S. 3:702.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§305. Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§307. Term of License; Renewal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:702 and R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§309. Posting of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:702 and R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§311. Suspension and Revocation of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§313. Contracts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Louisiana Agricultural Commodities Commission

Subchapter A. General Provisions

§101. Definitions

Adjudicatory Proceeding—an open public hearing by the commission to determine whether violations of R.S. 3401-3425 or the regulations contained in this Part have occurred. Such proceedings are conducted in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

Advance—a partial payment against total proceeds due to a seller.

Agricultural Commodities—cotton, all agricultural products commonly classed as grain (rice, corn, wheat, oats, rye, soybeans, barley, and grain sorghum), and any other agricultural commodity which the commission may declare to be an agricultural commodity subject to regulation under R.S. 3:3401-3425.

Applicant—any person making application for a license to engage in any of the activities regulated under R.S. 3:3401-3425 or anyone who requests official grain inspection services and/or grain weighing services of the department.

Audited [with respect to a financial statement]—a financial statement prepared by an independent certified

public accountant, the basis of which financial statement is the accountant's independent examination of the books and records of the business entity covered by the financial statement.

Authentic Act—a statement executed before a notary public and at least two witnesses.

Authorized Agent—with reference to the authorized agent of a warehouse or grain dealer, any representative thereof whose name has been filed with the commission as such. A person whose name has not been filed with the commission as an authorized agent will not be recognized by the commission as entitled to act for or on behalf of a warehouse or grain dealer.

Bid Contract—an agreement between a producer and a purchaser under which the purchaser examines samples of rice and extends to the producer an offer to purchase the rice at a price based on the quality of the sample.

Capacity—all of the area of a licensee which is in any kind of protected enclosure.

CCC—Commodity Credit Corporation.

Central Filing System (CFS) —an electronic system operated and maintained by a provider where information relating to electronic warehouse receipts is recorded and maintained in a confidential and secure fashion independent of any outside influence or bias in action or appearance, and that is authorized by the director.

Certified—with respect to the financial statements required under the Act R.S. 3:3401-3425, a written statement signed by the independent certified public accountant preparing the financial statement.

Commission—the Louisiana Agricultural Commodities Commission.

Commissioner—the Louisiana Commissioner of Agriculture and Forestry.

Compilation—with respect to a financial statement, a financial statement prepared by an independent certified public accountant solely on the basis of representations of the management of the business entity covered by the financial statement.

Confirmation Date—the date on which the bid contract was confirmed.

Confirmed—the bid contract has been agreed to by both parties. A bid contract is confirmed when the producer and the purchaser agree to the quantity and price of the rice to be sold.

Cotton Agent—every person, firm, corporation, association, or other legal entity which purchases or contracts to purchase cotton grown or to be grown by producers in this state for or on behalf of a cotton merchant and which is required to be a party to a notarized written agency agreement.

Cotton Merchant—every person, firm, corporation, association, or other legal entity which purchases or contracts to purchase, either directly or through a cotton agent, cotton grown or to be grown by producers in this state.

Current Financial Statement—a financial statement containing all of the documents listed in §107.B of this Part and presenting financial position as of the close of the applicant's or licensee's most recent fiscal year.

Deferred Price Commodities—commodities purchased by a grain dealer from a producer for which the sale price will

be established after date of the initial agreement between the parties. The agreement between the parties covering deferred price commodities shall be in writing. The term deferred price commodities is the same as the other following terms in general usage: price later, no price established (NPE), delayed price, basis contract, future settlement delivery, or contract for purchase.

Delivery Date—the date on which the purchaser is required to take delivery of the rice, either under the provisions of Subchapter O of this Chapter or under the provisions of a written agreement between the producer and the purchaser.

Department—the Louisiana Department of Agriculture and Forestry.

Director—the employee of the commission who is responsible for implementing the policies of the commission and performing the administrative responsibilities delegated to the commissioner under R.S. 3:3401-3425.

Electronic Warehouse Receipt (EWR)— a receipt that is issued or transmitted in the form of an electronic document.

Farm Products—products employed directly in the cultivation, production, or harvesting of any agricultural commodities or containers for agricultural commodities or farm products.

Fee—any charge imposed by a warehouse, directly or indirectly, for care of agricultural commodities belonging to any person other than the warehouse owner, including but not limited to base price adjustments, storage, handling, dockage, commission, drying, and/or conditioning fees or any fees as listed on the latest approved schedule of fees (§128.D of this Part) for official grain inspections and weighing services provided by the department.

Field Warehouse—a warehouse operated by a management organization under a contractual agreement between the management organization and the owner of the warehouse.

First Point of Sale— the initial time when title to agricultural commodities or farm products passes from a seller to a buyer.

Grain— corn, wheat, oats, rye, soybeans, barley, and grain sorghum.

Grain Dealer—any person who purchases agricultural commodities from producers, sells agricultural commodities for producers, or represents producers in the purchase or sale of agricultural commodities. The term does not include producers who purchase grain commodities for their own use as feed or seed.

Hedge [with respect to a contract to sell commodities]—a secondary contract to buy commodities to protect the obligations incurred with respect to the contract to sell. Hedge, with respect to a contract to buy commodities, means a secondary contract to sell commodities to protect the obligations incurred with respect to the contract to buy.

Identity Preserve – 1. instances in which a warehouse preserves the separate identities of different lots of agricultural commodities; or

2. instances in which a warehouse preserves the separate identities of agricultural commodities belonging to different owners.

Independent Certified Public Accountant—a person who has completed all requirements established by the American Institute of Certified Public Accountants and the state

Society of Louisiana Certified Public Accountants. To be recognized as an independent public accountant, the accountant, members of his immediate family, and his accounting business associates shall be totally free of any obligation to or interest in the client, its management, or its owners.

Licensed Capacity—the warehouse area which is bonded for the storage of agricultural commodities or farm products belonging to a person other than the owner of the warehouse.

Licensee—any person holding a license as a warehouse, cotton merchant or grain dealer issued by the commission.

Open or Open Position—the grain dealer's contracts for purchase or sale of agricultural commodities which are unhedged.

Person—any individual, partnership, company, firm, association, corporation, cooperative association, or any other legal entity engaged in any of the activities regulated under R.S. 3:3401-3425.

Producer—the owner, tenant, lessee, or operator of land within this state who has an interest in or receives all or any part of the proceeds from the sale of agricultural commodities produced thereon.

Purchaser—any person who purchases rice from a producer under a bid contract.

Review (with respect to a financial statement)—a financial statement prepared by an independent certified public accountant, in the preparation of which financial statement the accountant makes such inquiries of management and performs such analyses and/or comparisons as may appear appropriate to the accountant.

Risk Position—the loss potential to the grain dealer resulting from bringing its open position to market.

Scale Ticket—the document issued to a producer when agricultural commodities are delivered to a warehouse or grain dealer.

Spot or Spot Sale—a transaction where title to agricultural commodities passes from the producer to the buyer on the day of delivery, in which transaction the producer is paid promptly at the market price established on the day of delivery.

Storage—the physical possession by a warehouse, in any manner and/or under any type of fee arrangement, of agricultural commodities belonging to any person other than the owner of the warehouse. The term storage does not apply to a transaction in which title passes from the seller to the buyer upon delivery.

Warehouse—any building, structure, or any other protected enclosure required to be licensed by the commission in which agricultural commodities or farm products are stored for the public for a fee. The term includes facilities which commingle commodities belonging to different owners and facilities which preserve the separate identities of different lots of agricultural commodities.

Warehouse Operator—any person or other entity operating a warehouse.

Warehouse Receipts—may be paper or electronic and may be negotiable or non-negotiable and are defined as follows.

1. *Non-Negotiable Warehouse Receipts*—written evidence of the deposit of agricultural commodities or farm products in a warehouse, which cannot be sold or traded by the holder and cannot be used to secure a loan.

2. *Negotiable Warehouse Receipts*—written evidence of the deposit of agricultural commodities or farm products in a warehouse, which can be sold or traded by the holder and can be used to secure a loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3402 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:284 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§103. Administration of the Affairs of the Commission

A. The officers of the commission shall be a chairman and a vice-chairman, who shall serve for terms concurrent with the commissioner, but may be elected for an indefinite number of terms.

B. After the initial election of officers, the chairman and vice-chairman shall be elected at the commission's regular meeting during the first quarter of each year.

C. In the absence of the chairman at any meeting of the commission, the vice-chairman shall preside.

D. The commission shall hold at least one regular meeting during each quarter of the year, but may meet more frequently upon the call of the chairman.

E. Meetings of the commission shall normally be held in its domicile but may be held at other locations upon the determination of the chairman or the will of the commission.

F. The quorum of the commission is five members.

G. An affirmative vote of a minimum of five members shall be required for the adoption of any motion.

H. There shall be no voting by proxy.

I. Rules and regulations of the commission, and amendments thereto, shall be noticed, adopted, and promulgated as required by the Louisiana Administrative Procedure Act.

J. The chairman shall designate a hearing officer, who may or may not be a member of the commission, to preside at all adjudicatory proceedings of the commission. The chairman may, if he so desires, serve as hearing officer at any adjudicatory proceeding.

K. The commission shall serve as the hearing body in all adjudicatory proceedings and shall make the final determination with regard to the disposition of all matters coming to adjudication.

L. The director shall provide clerical and other support services as may be required by the commission and shall maintain and distribute appropriate minute records of the commission.

M. No member of the commission shall participate in any discussion or vote concerning any matter before the commission in which such member has a personal or commercial interest.

N. No member of the commission or the staff shall disclose any financial information pertaining to any licensee or applicant for license.

O. The commission may, from time to time, delegate any of its responsibilities to subcommittees appointed by the chairman. Such subcommittees may perform such specific

duties as may be assigned by the chairman but all actions of such subcommittees shall be subject to ratification by the full commission.

P. Appointed members of the commission shall be entitled to receive a per diem of \$40 and to be reimbursed for mileage expenses in accordance with the same travel regulations applying to state employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:287 (May 1983), amended 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§105. Agricultural Commodities and Other Farm Products Regulated by the Commission

A. The following agricultural commodities shall be regulated by the commission at all times:

1. rice;
2. rough rice;
3. all agricultural commodities commonly classed as grain; including:
 - a. wheat;
 - b. corn;
 - c. oats;
 - d. rye;
 - e. soybeans;
 - f. barley;
 - g. grain sorghum;
4. cotton.

B. Whenever commission warehouse receipts are issued to cover any of the following agricultural commodities, the following agricultural commodities shall be regulated by the commission:

1. peppers;
2. oils (vegetables and mineral);
3. pecans;
4. molasses and/or syrup;
5. any canned and/or frozen vegetables/fruits/juices.

C. Commodities and farm products enumerated in §105.B of this Part shall be subject to all requirements set forth in the regulations contained in this Part whenever commission warehouse receipts are issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:288 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter B. Application for Warehouse, Grain Dealer and Cotton Merchant Licenses

§107. Application for License (Initial and Renewal); Time for Filing; Contents; Fees; Style of Document

A. Applications for renewal of warehouse, cotton merchant and grain dealer licenses shall be received no later than April 30 of each year. Applications for initial license

may be filed at any time during the year. For both initial and renewal licenses, the following information shall be furnished on the application form provided by the commission:

1. type of application:
 - a. warehouse;
 - b. grain dealer;
 - c. cotton merchant;
2. date of submission;
3. nature of application:
 - a. initial application;
 - b. renewal application;
4. nature of applicant's business:
 - a. sole proprietorship;
 - b. partnership;
 - c. corporation;
 - d. association;
 - e. agricultural cooperative;
 - f. other;
5. name under which the business will operate;
6. address of the principal office of the business, either in-state or out-of-state, including mailing address, physical location, and telephone number;
7. name of the person in charge (e.g., manager, warehouse operator, principal dealer, etc.) and his residence address and telephone number;
8. if a partnership, the names, addresses, and interests of all partners;
9. if a corporation, the names and addresses of all officers;
10. if an association, including an agricultural cooperative, the names and addresses of all members of the board of directors;
11. name and address of the owner of the business, if not shown under §107.A.7, 8, and 9 of this Part;
12. status of the facility in which the business will be operated:
 - a. owned by applicant;
 - b. leased by applicant (short term or long term);
 - c. rented by applicant and name and address of owner;
 - d. other;
13. type of agricultural commodities that the applicant will store or trade;
14. for all business locations to be operated under one license:
 - a. number of locations;
 - b. address of each location;
 - c. total capacity;
 - d. capacity of each location to be licensed, if different from total capacity;
 - e. name of person in charge of each facility;
15. bond status of the applicant:
 - a. amount of bond posted;
 - b. name and address of bonding company;
 - c. period for which bond written;
16. insurance of applicant:
 - a. amount of provisional stock insurance carried;
 - b. name and address of carrier;
 - c. term of policy;
 - d. physical address of each location covered by stock insurance;

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3408, R.S. 3:3409, R.S. 3:3410, R.S. 3:3411 and R.S. 3:3411.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:289 (May 1983), amended LR 10:75 (February 1984), LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§109. Grounds for Refusal to Issue or Renew a Warehouse, Cotton Merchant, or Grain Dealer License

A. The commission may refuse to issue or renew a warehouse, cotton merchant, or grain dealer license in any of the following circumstances:

1. the applicant cannot demonstrate to the satisfaction of the commission that he is competent to operate the business for which the license is sought;
2. the applicant cannot demonstrate a \$100,000 net worth;
3. the applicant has failed to provide all of the information required in the application for licensure;
4. the applicant has previously refused to permit audit of his records;
5. the applicant has not or cannot secure the bond required by R.S. 3:3401-3425;
6. the applicant has not or cannot secure the insurance required by R.S. 3:3401-3425;
7. if an applicant for a warehouse license: the facilities in which the business will be operated are not suitable for storage of agricultural commodities;
8. if an applicant for a grain dealer license: the applicant has failed to hedge its obligations to producers as required by R.S. 3:3401-3425 and the rules contained in this Part.

B. Any cotton merchant, warehouse or grain dealer whose application for license is refused by the commission may appeal the decision of the commission under the Administrative Procedure Act or through the judicial process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3412.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:293 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter C. Warehouse Licenses

§111. Requirements Applicable to All Warehouses

A. No person shall operate a warehouse subject to regulation under R.S. 3:3401-3425 unless licensed by the commission or under the U.S. Warehouse Act. The following types of warehouses are specifically defined as warehouses subject to regulation under R.S. 3:3401-3425:

1. any facility offering storage as defined in §101 of this Part;

2. any facility which issues state warehouse receipts covering agricultural commodities or farm products;

3. all field warehouses. The management organization operating a field warehouse shall secure a separate license for each location. Field warehouses shall be licensed in the same manner as any other warehouses and regulations governing other warehouses shall apply equally to field warehouses.

B. Warehouses licensed under the U.S. Warehouse Act are not required to submit the application required under R.S. 3401-3425 and are not subject to all other requirements of R.S. 3:3401-3425 unless licensed under the provisions of R.S. 3:3401-3425.

C. No warehouse, whether licensed under R.S. 3:3401-3425 or the U.S. Warehouse Act, shall buy or sell agricultural commodities for producers unless such warehouse is also licensed by the commission as a grain dealer.

D. A single business entity which operates warehouse facilities at more than one location may be covered by one license. In such instances, the applicant shall provide separate capacity and personnel information for each location but may submit a consolidated financial statement covering all locations.

E. When two or more businesses which are separate legal entities, even though owned and/or operated by the same individual or the same legal entity, are operated at one or more physical locations, each separate legal entity shall obtain a separate license.

F. Each license is personal to the holder thereof and may not be transferred or assigned to another for any purpose or any period of time.

G. Licenses issued by the commission shall be consecutively numbered and the number shall include a fiscal year designation.

H. All warehouse licenses issued by the commission shall expire on June 30 following the date of issue.

I. For initial and continuing licensure, the facility shall meet all requirements of §113 of this Part.

J. The warehouse shall meet all bonding and insurance requirements set forth in §§115 and 117 of this Part prior to issuance of the license. Failure to maintain the required bond and insurance in full force and effect for the license period shall subject the licensee to revocation of its license.

K. The person in charge of each warehouse unit shall possess the following qualifications:

1. be of legal age;
2. demonstrate the following:
 - a. knowledge of the practical facts of keeping accurate records regarding the storage of agricultural commodities;
 - b. knowledge of proper pest control and fumigation procedures.

L. Provisions Relative to the Schedule of Tariffs or Charges

1. Each warehouse shall file its current tariff with the commission for the commission's approval as to form.

2. Whenever there is any change in any warehouse's tariff, the new tariff shall be filed with the commission prior to implementation of any changes.

3. The director shall note on each warehouse's tariff the fact of its receipt by the commission. Upon the

warehouse's receipt of the tariff bearing the director's notation, the warehouse shall post the copy bearing the director's signature in a conspicuous location at the warehouse.

4. Each tariff shall indicate whether charges are made on the basis of barrels, bushels, or hundredweights.

5. The tariff shall contain all fees routinely charged to depositors.

6. The tariffs or charges shall be the same for the same class of services to each customer of the warehouse.

M. Each warehouse shall maintain a daily inventory report on forms provided by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3409, R.S. 3:3410 and R.S. 3:3420.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:294 (May 1983), amended LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§113. Standards for Approval of Facilities for Storage of Agricultural Commodities

A. The building shall be of sound construction, in good physical condition, and suitable for storage of the agricultural commodities to be stored therein.

B. The building shall be weathertight so as to protect the commodities stored in it from the elements at all times.

C. The building and the surroundings shall be reasonably clean and free of debris of any kind.

D. There shall be safe ingress and egress to all storage units.

E. Storage units having entrances more than 20 feet above ground or floor level shall be equipped with a safe and adequate lift or ladder.

F. All catwalks shall be equipped with railings, shall be structurally sound, and shall be kept free of all grain or other matter which might endanger human life.

G. The facility shall maintain reasonable provisions for rodent and insect control.

H. Commodities or farm products stored in containers rather than in bulk shall be separated by an aisle of sufficient width to permit passage for inspection.

I. When different agricultural commodities are stored in the same facility in bulk, the different commodities shall be separated by a substantial partition.

J. When a warehouse license covers more than one facility, each warehouse unit shall be designated by a number, beginning with the number 1, which number may not be changed without the prior approval of the commission.

K. Each storage unit, building, bin, or compartment shall have painted thereon or securely affixed, in a conspicuous manner and location, an identifying number or letter, or both, which may not be changed without prior approval of the commission.

L. Bulk grain bins shall be numbered at all openings on top and also on or near all outlet valves underneath so as to be easily identified.

M. Each facility shall contain adequate and accurate weighing and sampling equipment. All scales in warehouses

licensed by the commission are subject to examination by the Division of Weights and Measures of the department.

N. Special Requirements for Rice. Provisions for identification cards shall be securely attached to all bins and when commodities are placed under receipt, an identification card showing the following information shall be firmly attached to the bin boards:

1. the lot number;
2. whether the receipt is negotiable or non-negotiable;
3. the number of the receipt;
4. the name of the person or company to whom the receipt was issued;
5. the number of containers of commodities, if not in bulk, in the bin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3409.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:296 (May 1983), amended LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§115. Bond Required for Warehouse License; Provisions Relative to Licensed Capacities

A. Each applicant shall execute and file a bond, on bond forms provided by the commission, which bond shall be issued by a company authorized to do business in Louisiana prior to issuance of the license.

B. Each bond shall be conditioned upon:

1. the faithful performance of all duties and obligations to patrons of the warehouse; and
2. compliance with all requirements of R.S. 3:3401-3425 and the regulations contained in this Part.

C. The amount of the bond shall be established on the basis of the capacity of the warehouse to be licensed.

1. The commission shall establish capacity records for all licensed facilities. Whenever there is a discrepancy between the capacity claimed by the applicant and the commission's capacity figures for the applicant, the bond to be required shall be determined by the commission's capacity figures. A licensee may, however, appeal the decision of the commission whenever it disagrees with the capacity figures established by the commission for its facility.

2. All facilities which commingle agricultural commodities shall bond 100 percent of their available capacity, subject to the exemptions contained in §115.C.5 and 6 of this Part.

3. Facilities which store identity-preserved commodities may, with the prior approval of the commission, bond 75 percent of their available capacity. In such event, the amount of the bond shall be increased if commodities in storage exceed the licensed capacity.

4. All capacity under one roof shall be bonded.

5. Outside tanks which are used solely for storage of company-owned commodities are not required to be bonded.

6. Buildings which are used solely for storage of company-owned commodities are not required to be bonded.

D. The amount of the bond shall be as follows:

1. \$0.20 per bushel for the first million bushels of licensed capacity—up to \$200,000 for a licensed capacity of 2 million bushels;

2. plus \$0.15 per bushel for the second million bushels of licensed capacity—a total of \$350,000 for a facility with a licensed capacity of 2 million bushels;

3. plus \$0.10 per bushel for all bushels over 2 million bushels up to 3.5 million bushels of licensed capacity—a maximum of an additional \$150,000.

E. A minimum bond of \$25,000 is required for all facilities of 125,000 bushels or less licensed capacity.

F. A maximum bond of \$500,000 is required for all facilities of 3.5 million or more bushels of licensed capacity.

G. Each bond shall be written for a period of one year, beginning on July 1, or for such other period of time as the commission may require.

H. Each bond shall provide for at least 90 days written notice to the commission prior to cancellation.

I. Each bond is subject to final approval by the commission and shall be so approved prior to issuance of the license.

J. Provisions for Alternate Security in Lieu of the Required Bond

1. The commission may accept alternate security in lieu of the required bond in an amount equal to 100 percent of the required bond.

2. Alternate security may be offered only by:

a. pledging of certificates of deposit;

b. filing of an irrevocable letter of credit, which shall be non-cancelable for a period of one year;

c. securing a first mortgage on immovable property which is located in Louisiana and which has an appraised value of at least one hundred fifty percent of the amount of the bond. The appraisal shall be made by an independent appraiser jointly designated by the commission and the applicant. The applicant shall provide a title insurance policy issued by a company authorized to do business in Louisiana in the amount of the required bond with the commission being an insured under the policy. The applicant shall pay all fees involved in providing such security.

3. Alternate security is subject to the approval of the commission. Approval is required prior to issuance of a license.

4. All alternate security instruments shall be assigned to the commission and maintained in the commission's office in Baton Rouge. Holders of certificates of deposit will continue to draw the interest thereon.

5. Whenever any warehouse ceases to operate as a licensed warehouse, alternate security filed in lieu of the required bond shall be retained by the commission:

a. until public notice, as herein required, is made; and

b. until completion of a final audit, which final audit shall be completed in not more than 120 days. Public notice of the commission's intent to release alternate security shall be made by publication in a newspaper of general circulation in the area where the licensee is located, as follows:

i. if there is a daily newspaper in the area, such notice shall be published at least three times, beginning at least 15 days prior to the date on which the commission will release the alternate security;

ii. if there is no daily newspaper in the area, such notice shall be published in a weekly newspaper and shall be published once each week for the three weeks preceding the

date on which the commission will release the alternate security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and 3:3410.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:297 (May 1983), amended LR 10:75 (February 1984), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§117. Provisional Stock Insurance Required for Warehouse License

A. At all times, each warehouse shall carry sufficient provisional stock insurance to assure protection against fire and other disasters for all agricultural commodities in storage in an amount proportionate to the licensed capacity of the facility. Provisional stock insurance records are subject to examination by the commission during audit of the facility.

B. The provisional stock insurance shall be written for a period of at least one year by an insurance company authorized to do business in Louisiana and shall provide for 30 days written notice to the commission prior to cancellation.

C. A copy of the insurance policy or a certificate of insurance shall be filed with the commission prior to issuance of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3410.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:299 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§119. Amendment to License Required When Change of Status Occurs

A. The licensee shall give written notice to the commission within three days after any of the following occurs:

1. loss or damage to stored commodities or licensed facilities;

2. change of ownership of a licensed warehouse, including a change in the members of a partnership or in the officers of a corporation;

3. change in management personnel of a licensed warehouse;

4. change in the name of the business operating the facility;

5. any major structural change in the facility;

6. the termination of a lease covering a licensed facility;

7. change of business address;

8. filing of any legal action (except filing of suits for workmen's compensation) against the warehouse or the management personnel of the warehouse.

B. The licensee shall give prior written or oral notice to the commission before use of the facilities for the storage of any agricultural commodity not listed on the application and before any change in the licensed capacity of the facility (except a change resulting from fire or other actions outside the control of the warehouse).

C. Notice to the commission concerning a change in licensed capacity shall include:

1. name, address, and license number of the warehouse;
2. warehouse or warehouses affected by the change in capacity;
3. current licensed capacity of the affected facility(ies);
4. proposed new capacity (whether increased or decreased).

D. Whenever the licensed capacity of a facility changes, the bond required under §115 of this Part shall be changed within 45 days to conform to the new capacity. Failure to amend the bond as required herein will subject the licensee to revocation of its license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3410.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:299 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter D. Grain Dealers

§123. Requirements Applicable to All Grain Dealers

A. No person shall buy and/or sell agricultural commodities for producers, or represent producers in the purchase or sale of agricultural commodities, unless licensed as a grain dealer by the commission.

B. No grain dealer may store agricultural commodities belonging to any other person unless such grain dealer is also licensed by the commission as a warehouse or licensed under the U.S. Warehouse Act.

C. A single business entity which operates grain dealerships at more than one location may be covered by one license. In such instances, the applicant shall provide separate personnel information for each location but may submit a consolidated financial statement covering all locations.

D. When two or more businesses which are separate legal entities, even though owned and/or operated by the same individual or the same legal entity, are operated at one or more physical locations, each separate entity shall obtain a separate license.

E. Each grain dealer license issued by the commission shall expire on June 30 following the date of issue.

F. The applicant shall be of legal age and shall be able to demonstrate knowledge of the practical facts of keeping accurate records regarding the trading of agricultural commodities.

G. The applicant shall execute and file a bond, on forms provided by the commission, which is written by a bonding company authorized to do business in Louisiana. The bond shall be in an amount of \$50,000 and shall provide for 90 days written notice to the commission prior to cancellation. The bond shall be conditioned upon:

1. the faithful performance of all duties and obligations to producers; and
2. compliance with all requirements of R.S. 3:3401-3425 and the regulations contained in this Part. The bond is subject to the approval of the commission and shall be so approved prior to issuance of the license. Failure to keep the

bond in full force and effect shall subject the grain dealer to suspension or revocation of its license.

H. The commission may accept alternate security in an amount of \$50,000 in lieu of the required bond.

1. Alternate security may be offered only by:
 - a. pledging of certificates of deposit or other similar negotiable instruments; or
 - b. filing of an irrevocable letter of credit, which shall be non-cancelable for a period of one year; or
 - c. securing a first mortgage on immovable property which is located in Louisiana and which has an appraised value of at least one hundred fifty percent of the amount of the bond. The appraisal shall be made by an independent appraiser jointly designated by the commission and the applicant. The applicant shall provide a title insurance policy issued by a company authorized to do business in Louisiana in the amount of the required bond with the commission being an insured under the policy. The applicant shall pay all fees involved in providing such security.

2. All alternate security instruments shall be assigned to the commission and will be maintained in the commission's office in Baton Rouge. Holders of certificates of deposit will continue to draw interest thereon.

3. Whenever any grain dealer ceases to operate as a licensed grain dealer, alternate security filed in lieu of the required bond shall be retained by the commission:

- a. until public notice, as herein required, is made; and

b. until completion of a final audit, which final audit shall be completed in not more than 120 days. Public notice of the commission's intent to release alternate security shall be made by publication in a newspaper of general circulation in the area where the licensee is located as follows:

- i. if there is a daily newspaper in the area, such notice shall be published at least three times, beginning at least 15 days prior to the date on which the commission will release the alternate security;
- ii. if there is no daily newspaper in the area, such notice shall be published in a weekly newspaper and shall be published once each week for the three weeks preceding the date on which the commission will release the alternate security.

4. Alternate security offered in lieu of the required bond is subject to the approval of the commission and shall be approved prior to issuance of the license.

I. The applicant shall demonstrate a net worth which is reasonably sufficient to assure its ability to meet its obligations to producers. The commission shall be the final judge of the sufficiency of each applicant's net worth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3411.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:301 (May 1983), amended LR 10:75 (February 1984), LR 12:287 (May 1986), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§125. Risk Position Requirements

A. Each grain dealer shall achieve and maintain a relatively even hedge position within no more than three business days after deposit of agricultural commodities by producer. Relatively even hedge position means that the

grain dealer has entered into contracts to buy or sell commodities which are roughly equal in value to the amount of the dealer's outstanding obligations to producers.

B. Whenever a grain dealer's risk position is brought to market, its loss potential shall never exceed 30 percent of the grain dealer's current net worth. No grain dealer may maintain a risk position in excess of 30 percent of its current net worth, provided that the commission may specify a lower maximum risk position for any grain dealer in an amount having a reasonable relationship to that grain dealer's current net worth.

C. The commission may require a lower maximum risk position on any grain dealer by the following procedures.

1. The commission shall notify the grain dealer that a public hearing will be held, within five days after notice, to establish for such grain dealer a requirement that its risk position will be less than 30 percent of its current net worth.

2. The grain dealer may appear on its own behalf or may be represented by counsel at the hearing, and may show cause why such lower maximum risk position shall not be established for such grain dealer.

3. The commission may require the submission of interim financial statements in order to make a final determination with respect to establishment of a lower risk position requirement for such grain dealer.

4. The commission shall make a determination at the public hearing and shall establish an exact risk position as a percentage of current net worth for such grain dealer. Written notice of the lower risk position requirement shall be given by the director immediately following such public hearing.

D. Any grain dealer who does not adhere to the risk position requirement imposed for such grain dealer by the commission shall be subject to the penalties set forth in §149 of this Part.

E. Any grain dealer whose risk position is established by the commission at less than 30 percent of its net worth may request reconsideration of the established risk position whenever its financial position changes. Such request shall be made in writing, setting forth the reasons therefore, and the commission shall consider the request at the next regularly scheduled quarterly meeting following receipt of such request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3413.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:302 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter E. Assessments and Fees

§127. Assessments: Amount, Time of Payment, Payment under Special Conditions

A. Assessments shall be due and payable from the producer at the first point of sale as defined in §101 of this Part.

B. Each grain dealer shall deduct the assessments set forth in this rule and in R.S. 3:3422 from the proceeds to be paid to producers at the time of sale of commodities.

C. Assessments on commodities normally weighed by hundredweight and on commodities normally weighed by

bushels shall be as set forth in R.S. 3:3422. The weight of commodities normally weighed in barrels shall be converted to bushels by multiplying the barrel weight by 3.6.

D. Rates of Assessments

1. Assessments on regulated commodities listed in §105 of this Part shall be at rates comparable to the rates set forth in §127.E of this Part. The exact assessment on each commodity shall be promulgated in the *Louisiana Register* and when so promulgated shall remain in full force and effect until changed by subsequent promulgation in the *Louisiana Register*. Such assessments may be collected as soon as promulgated in the *Louisiana Register* and shall be collected in the same manner as the assessments listed in §127.C of this Part.

2. Rates of assessments to be levied at the first point of sale of agricultural commodities.

Rough Rice	\$.01 per hundredweight
Corn	\$0.007 per bushel
Soybeans	\$0.007 per bushel
Oats	\$0.007 per bushel
Sorghum	\$0.007 per bushel
Wheat	\$0.007 per bushel
Cotton	\$0.10 per bale

3. All assessments collected by licensees of the commission shall be remitted to the commissioner, together with the report form required by the commission, no later than the fifteenth day of the month following the month in which the assessments are collected.

4. The above assessments shall remain in effect until changed by the commission.

E. Each cotton merchant, grain dealer and warehouse shall remit all assessments withheld from producers, or otherwise due under this rule, together with a report on the form provided by the commission, to the commissioner no later than the fifteenth day of each month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:303 (May 1983), amended LR 9:459 (July 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), repromulgated LR 20:154 (February 1994), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§128. Fees: Amount, Time of Payment

A. Fees are due and payable upon the receipt of an invoice from the department. A late payment shall be assessed for all invoices paid after 30 days from the date of the invoice. The amount which shall be assessed shall be 10 percent of the outstanding balance.

B. Applicable fees shall be charged for each request for the department to provide official inspection service or weighing service.

C. Schedule of Fees

1. The regular hours shall be 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays and declared half-holidays. All hours worked, that are not regular hours, shall be considered as overtime. Legal holidays and half-holidays shall be those legal holidays designated by the

legislature in R.S. 1:55.B and any other time declared to be a holiday or half-holiday by the governor of Louisiana in accordance with R.S. 1:55.

2. The hourly rate shall be \$26 per hour, including travel time. Overtime hours shall be billed at one and one-half times the hourly rate and shall be assessed in half-hour increments.

3. Mileage shall be billed at the IRS standard mileage rate and applicable hourly rate for actual miles traveled from nearest inspection point. Changes to the mileage rate shall be effective when the IRS changes their standard mileage rate.

4. Official Services (including sampling except as indicated)

Online D/T sampling inspection service (sampling, grading and certification), per regular hour	\$26
Overtime hourly rate, per hour	\$39
Unit Inspection Fees:	
Aflatoxin Testing, per sample	\$30
Rail Car, per car	\$20.50
Truck/Trailer, per carrier	\$10
Barge, per 1,000 bushels	\$2.60
Submitted sample inspection	\$12.30
Re-inspection grain sample	\$15
Rail Car (per sample)	\$10.30
Truck/Trailer (per sample)	\$5.30
Barge (per sample)	\$25.30
Starlink TM (if applicant supplies kit), per test	\$6
Starlink TM (if LDAF provides kit), per test	\$12
Factor only determination, per factor (not to exceed full grade fee)	\$5.20
Probe Sampling Barge (per barge)	\$100
On-Line Sampling Barge (per hour)	\$20

D. Moisture Meter Registration and Inspection Fee

1. A registration fee of \$20 per meter and an inspection fee of \$40 per meter to shall be paid by the owner or user of every moisture measuring device used or held for use at any commercial facility which receives, holds, dries, stores, mills, processes or otherwise deals in agricultural commodities in the state, when such use or intended use is for the purpose of determining discounts or other price variances in connection with the purchase or sale of such commodity, said Each moisture meter device shall be registered with the Louisiana Department of Agriculture and Forestry.

2. Registration shall be required on or before May 15 of each year or within five business days of acquisition of new or additional unregistered moisture measuring devices for the purpose set forth in Paragraph 1 of this Section. Registration forms shall be provided by the department and shall state the name and address of the commercial facility which owns or uses the device, the number of devices used and held for use, the brand name(s) of the device(s), and such other information as may be deemed necessary to carry out the provisions of this Subchapter.

3. A moisture measuring device shall be deemed defective when an inspector determines after an inspection and testing that:

a. the moisture measuring device varies in tolerance in excess of one-half of one per cent with the testing device used by the inspector; or

b. the commercial facility does not have available the latest charts and calibration data for the type of commodity being tested; or

c. the facility does not have available accurate and proper scales and thermometers for use in conjunction with the type of moisture measuring device being used.

4.a. A moisture measuring device which is determined to be defective and which the defect cannot be immediately corrected shall be tagged in such a manner as to warn the public that the device is not in compliance with the law.

b. Notice shall be conspicuously posted indicating that a moisture measuring device has been deemed defective and the percentage by which the device has been determined to be out of tolerance.

5. Moisture measuring devices which have been registered and inspected and which have not been found defective shall bear an official tag or sticker from the department, placed on the devices by the inspector in such a manner as to be readily visible, bearing the year of inspection. Such tags or stickers shall be nontransferable.

6. All non-National Type Evaluation Program (NTEP) approved moisture measuring devices registered prior to May 15, 2010 shall be deemed suitable for use. In the event a non-NTEP moisture measuring device is deemed defective after May 15, 2010, it shall be taken out of service and replaced with an NTEP approved device.

7. Notwithstanding §128.D of this Part, all moisture measuring devices shall be NTEP approved devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3414.3 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended LR 14:528 (August 1988), LR 19:889 (July 1993), LR 23:196 (February 1997), LR 27:815 (June 2001), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Agricultural Commodities Commission, LR 30:197 (February 2004), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter F. Scale Tickets

§129. Scale Tickets: Filing, Contents, Maintenance in Records

A. Immediately upon deposit with a licensed warehouse or a licensed grain dealer of any agricultural commodity or farm product regulated under R.S. 3:3401-3425, the warehouse or grain dealer shall issue a scale ticket to the depositor which conforms to the requirements of this rule. Warehouses licensed under the U.S. Warehouse Act may use scale tickets approved by the federal licensing agency.

B. Each scale ticket shall contain the following information:

1. name and location of the licensed warehouse or grain dealer;

2. name and other information sufficient to identify the owner of the agricultural commodities or farm products;

3. the type, quantity, and grade (or applicable grade factors) necessary to determine the net value of the commodity received;

4. date the commodity was deposited in the warehouse or grain dealer's custody;

5. one of the following, as appropriate:

a. if the commodity is deposited on a spot basis, the words spot or spot sale, and when so marked the scale ticket shall serve as written confirmation of the sale;

b. if the commodity is deposited for any type of storage, including open storage, the word storage;

c. if the commodity is deposited for contract, the word contract;

6. such other terms as may be agreed upon between the depositor and the warehouse operator or grain dealer.

C. Scale tickets shall be sequentially pre-numbered and shall be issued to depositors in numerical order. Different scale ticket books may be used for different scales.

D. Each scale ticket shall consist of an original and at least one copy. The original or a copy of the scale ticket shall be maintained in numerical order in the licensee's records and shall be available for examination by the commission at all times.

E. Whenever a scale ticket is voided, all copies shall be so marked, dated, and signed by an authorized agent of the warehouse or grain dealer, and all copies of the voided scale ticket shall be maintained in the warehouse or grain dealer's records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3415, R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:304 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter G. Warehouse Receipts

§131. Warehouse Receipts: Completion; Issuance; Open Storage; Cessation of Business; Other Applicable Laws; Cancellation of Receipts; Company-Owned Commodities; Form of Non-negotiable Receipts

A. A licensee may issue warehouse receipts by use of a paper warehouse receipt system, an electronic warehouse receipt system, or both.

B. Except as herein provided, all warehouses shall use paper or electronic sequentially numbered warehouse receipts.

C. Warehouses licensed under the U.S. Warehouse Act may use receipt forms approved by the federal licensing agency.

D. Issuance of Receipts

1. Each warehouse shall, on demand, issue a warehouse receipt for stored agricultural commodities or farm products.

2. No warehouse shall issue a warehouse receipt covering commodities which are already covered by an outstanding and uncanceled warehouse receipt, except as provided by §133.D of this Part.

3. No warehouse may issue a warehouse receipt covering commodities which are not actually stored in the warehouse.

E. All spaces on the warehouse receipt shall be filled in with appropriate information or crossed out (xxxxx).

F. Warehouse receipts may be signed only by authorized agents of the warehouse.

G. Open Storage

1. A warehouse which has commodities under open storage shall, in all cases when such commodities are not physically stored in its facilities (i.e., forwarded), be able to produce or secure a warehouse receipt from the warehouse to which such commodities were forwarded. The physical whereabouts of all agricultural commodities in open storage are subject to verification by the commission.

H. Delivery of Commodities Covered by Warehouse Receipt or Scale Ticket Marked for Storage

1. The holder of a warehouse receipt or a scale ticket marked for storage may request delivery of the agricultural commodities, or any portion thereof, at any time.

2. When the depositor of agricultural commodities removes such commodities from storage, the warehouse shall deliver to the depositor commodities of the same quantity and grade as designated on the warehouse receipt or scale ticket marked for storage.

3. The warehouse shall, without unnecessary delay, deliver any agricultural commodities or farm products stored therein upon demand by the holder of a warehouse receipt or scale ticket marked for storage upon the following conditions:

a. full payment of all amounts owed to the warehouse;

b. surrender of the warehouse receipt, if negotiable, for cancellation.

I. Cancellation of Warehouse Receipt

1. When commodities or farm products are removed from storage, the warehouse shall promptly and plainly cancel the warehouse receipt covering such commodities or farm products.

2. No warehouse receipt shall be canceled unless:

a. the commodities have been removed from storage, by sale or otherwise; or

b. a new warehouse receipt has been issued to replace a lost or destroyed warehouse receipt, as provided under §133.D of this Part.

J. Warehouse Receipt on Company-Owned Commodities

1. A warehouse may issue and hold a warehouse receipt for commodities which are company-owned, in whole or in part, and stored in the warehouse, provided that such warehouse receipts are subject to all requirements of the regulations contained in this Part.

K. Non-Negotiable Warehouse Receipts

1. Each person to whom a non-negotiable warehouse receipt is issued shall furnish the warehouse with a written statement naming persons having power to authorize delivery of the commodity covered by the non-negotiable warehouse receipt, together with a bona fide signature of such person. The warehouse shall not release the commodity except to persons so authorized by the owner of the commodities or farm products.

2. The warehouse may release a portion of the commodities or farm products covered by a non-negotiable warehouse receipt, upon presentation of authorization as above required, but may not release all of the commodities covered by a non-negotiable warehouse receipt until such time as the non-negotiable warehouse receipt is returned and canceled.

L. Cessation of Business

1. Whenever any warehouse ceases to operate as a licensed warehouse, for any reason, the warehouse shall satisfy all outstanding obligations to producers and all outstanding warehouse receipts shall be canceled. The requirement for cancellation does not, however, apply when the warehouse is unable, for any reason, to satisfy obligations to producers.

M. Other Applicable Laws

1. In any circumstances surrounding the issuance of warehouse receipts which are not covered by R.S. 3:3401-

3425 or the regulations contained in this Part, Chapter 7 of Title 10 of the Louisiana Revised Statutes of 1950 shall control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3416, R.S. 3:3417 and R.S. 3:3418.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:305 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§133. Paper Warehouse Receipts: Required Form; Issuance; Partial Delivery; Duplicate Receipts; Non-Negotiable Receipts

A. Except as herein provided, all paper warehouse receipts shall only be sequentially pre-numbered warehouse receipts on forms furnished by the commission.

B. Agents of the commission shall note the issuance of all partial releases, by number of each such partial release, on the original receipt.

C. Whenever a warehouse receipt is voided, all copies shall be so marked, dated, and signed by an authorized agent of the warehouse; the green and yellow copies of the voided receipt shall be maintained in proper sequence in the warehouse's receipt records and the pink copy shall be mailed to the commission on the day voided.

D. Issuance of Duplicate Negotiable Warehouse Receipt

1. If a negotiable warehouse receipt is lost or destroyed, the warehouse shall notify the commission of such loss or destruction prior to issuance of a duplicate warehouse receipt. A duplicate warehouse receipt replacing a lost or destroyed negotiable warehouse receipt may be issued by the warehouse only upon the written authorization of the commission.

2. Before authorizing issuance of a duplicate negotiable warehouse receipt, the commission shall require that the person applying for authority to issue the duplicate warehouse receipt shall file with the commission a notarized statement that:

- a. the applicant is lawfully entitled to possession of the duplicate warehouse receipt;
- b. the applicant has not negotiated or assigned the lost or destroyed warehouse receipt; and
- c. reports how the original was lost or destroyed.

3. A duplicate negotiable warehouse receipt issued to replace a lost or destroyed receipt shall:

- a. be marked *duplicate*;
- b. be distributed as required under §131.C of this Part;
- c. contain the same terms and conditions as the lost or destroyed warehouse receipt; and
- d. bear on its face the number and date of the warehouse receipt which it replaces.

2. The warehouse shall retain both the green and the yellow copies of canceled warehouse receipts in numerical order in the warehouse records for a period of at least three years after date of cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3416, R.S. 3:3417 and R.S. 3:3418.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:306 (May 1983), amended LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1302 (October 1993), amended

by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§134. Electronic Warehouse Receipts (EWR): Validity; Format; Issuance; Rights and Obligations; Printing; Records Retained; Duplicates

A. The issuance and transfer of warehouse receipts in electronic form are specifically authorized by this Part. Any such warehouse receipts shall have the same validity and enforceability, for all purposes, as those in paper form.

B. An EWR shall be in the format prescribed in the applicable provider agreement.

C. An EWR issued in accordance with the R.S. 3:3401-3425 shall not be denied legal effect, validity, or enforceability on the grounds that the information is generated, sent, received or stored by electronic or similar means.

D. A warehouse shall not be required to issue a warehouse receipt in electronic form.

E. If a warehouse licensed under R.S. 3:3401-3425 elects to issue EWRs, and if the depositor or other holder prefers a paper receipt, the warehouse shall cancel the EWR and issue a paper receipt.

F. A warehouse operator intending to issue or issuing EWRs under the R.S. 3:3401-3425 shall:

1. issue an EWR through only one authorized provider annually;

2. inform the department of the identity of its provider 60 calendar days in advance of first issuing an EWR through that provider. The department may waive or modify this 60-day requirement;

3. before issuing an EWR, request and receive from the department a range of consecutive warehouse receipt numbers that the warehouse will use consecutively for issuing their EWRs;

4. cancel an EWR only when it is the holder of the EWR;

5. receive written authorization from the department at least 30 calendar days before changing providers. Upon authorization, a warehouse may request its current provider to transfer, and that provider shall transfer, its EWR data from the current provider's CFS to the CFS of the authorized provider it selects;

6. notify all holders of EWRs in the CFS at least 30 calendar days before changing providers, unless otherwise allowed or required by FSA; and

7. for purposes of §134.F.4 of this Part, the warehouse is considered a "holder" solely for the purpose of canceling an electronic warehouse receipt on the electronic warehouse receipt system and the warehouse shall in no way be considered the owner of the grain that was covered by the canceled electronic warehouse receipt, absent evidence of sale of that grain to the warehouse.

G. EWR Rights and Obligations. An EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt and possesses the following attributes:

1. The holder of an EWR will be entitled to the same rights and privileges as the holders of a paper warehouse receipt.

2. Only the current holder of the EWR may transfer the EWR to a new holder.

3. The identity of the holder shall be kept confidential by the provider.

4. Only one person may be designated as the holder of an EWR at any one time.

5. A warehouse operator may not issue an EWR on a specific identity-preserved or commingled lot of grain or any portion thereof while another valid warehouse receipt representing the same specific identity-preserved or commingled lot of grain remains not canceled. No two warehouse receipts issued by a warehouse may have the same warehouse receipt number or represent the same lot of grain.

6. Holders and warehouse operators may authorize any other user of their provider to act on their behalf with respect to their activities with this provider. This authorization shall be in writing and acknowledged and retained by the warehouse and provider.

H. Printing

1. Electronic warehouse receipts may be printed by a person authorized by the department. The department shall authorize persons to print warehouse receipts if they are printed in accordance with R.S. 3:3401-3425 and the regulations contained in this Part.

2. All electronic warehouse receipts shall be:

a. Printed only for licensees;

b. numbered consecutively either at the time of printing or through the control of a computer generated system, and the numbers shall not be duplicated.

1. A complete record of receipts printed shall be retained by the person printing them for five years, showing for whom printed, the number printed, and the consecutive numbers that were printed on the receipts.

J. A duplicate copy of any invoice rendered for printing warehouse receipts shall be forwarded by the person printing them to the department at the same time as billing is made to the warehouse. The invoice shall show for whom printed, the consecutive numbers that were printed on the receipts, type of receipt (whether negotiable or non-negotiable), and number of receipts printed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3416, R.S. 3:3417 and R.S. 3:3418.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 37:

Subchapter H. Grading; Sampling; Out-of-Condition Commodities

§135. Elevators: Official Grades and Sampling

A. All agricultural commodities shall be graded and sampled in accordance with official USDA grading standards, as detailed in The Official United States Standards for Grain handbook.

B. Procedures that result in equivalent results to USDA procedures are acceptable.

C. Requirements for Certification as an Elevator Grain Sampler and/or Grader

1. All persons interested in being certified to grade or sample grain for an elevator shall submit an application on a form which shall be provided by the commission.

2. All applicants shall pass an examination which shall be given by the department. The examination fee shall be \$5 and shall be submitted with the application. If the applicant successfully completes the examination, he will be required to pay a \$25 fee in order to be certified.

3. Each person that has been certified and whose certification has not been revoked or suspended may renew that certification by submitting an application to renew with a fee of \$25.

4. All certifications shall expire on December 31 of each year and shall be renewed annually.

D. One elevator representative may be certified as grader and sampler as long as the representative is responsible for subordinate graders and samplers.

E. The commission shall be required to provide each grain dealer with a copy of all changes to USDA standards prior to the effective date of such changes.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:3405 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§136. State Official Grain Inspections

A. Standards established in *Regulations Under the United States Grain Standard Act, As Amended*, USDA, Federal Grain Inspection Service (CFR, Title 7, Chapter VIII, Pt. 800 (Section 800.0 to 800.219), 801 (Section 801.1-801.12), 802 (Section 802.0 to 802.13), and 810 (Section 810.201 to 810.555), shall apply to all Department of Agriculture and Forestry grain inspections.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:3405 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§137. Out-of-Condition Commodities

A. If a warehouse operator has reason to believe that any identity-preserved commodities are out-of-condition, or are becoming out-of-condition, he shall give immediate notice of such fact to the director of the commission and to the owner of the commodities.

B. The director shall immediately send a representative to the warehouse to determine whether out-of-condition commodities shall be cleaned, at the cost of the warehouse, or disposed of as the law permits and the circumstances require.

C. The storer of such commodities shall notify the warehouse operator, within 24 hours after receipt of notice, of the disposition to be made of such commodities. If the storer of the commodities fails to make such notice to the warehouse operator, the warehouse operator may dispose of the commodities as authorized by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter I. Records and Reports

§141. Records Required to be Maintained

A. Each grain dealer, cotton merchant and warehouse shall maintain the following records, when applicable to the commodity stored or traded, on a current basis in the company's principal office in this state at all times:

1. current financial statement;
2. bank statements;
3. bank reconciliations;
4. broker's statements;
5. current listing of unpriced commodities;
6. sequential record of all scale tickets;
7. sequential record of all warehouse receipts;
8. settlement or distribution sheets;
9. weight sheets;
10. perpetual inventory record;
11. insurance file, including copies of monthly reports to the carrier;
12. record of all assessments collected and remitted;
13. copies of all outstanding contracts;
14. copies of all outstanding notes and mortgages affecting the business;
15. a sample of each lot of grain which contains damage in excess of 7 1/2 percent shall be:
 - a. maintained for five days from the original grade date; and
 - b. maintained in separate containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3419 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§143. Reports Required

A. Each cotton merchant, grain dealer and warehouse shall file a report of assessments collected from producers, on the form provided by the commission, and remit such assessments to the commissioner no later than the fifteenth day of each month. The assessment report shall be filed each month whether or not any assessments were collected during the month.

B. No later than the fifteenth day of each month, each warehouse shall file a copy of his daily inventory report for the preceding month with the commission.

1. The reports shall be filed on forms provided by the commission.

2. The commission may accept computer print-outs containing the same information as required by the commission's form.

3. The commission may accept any report in substantially the same form which is prepared as a result of any federal requirement in lieu of the report on the commission's form.

C. Subsequent to initial licensure under R.S. 3:3401-3425, each cotton merchant, grain dealer and warehouse shall file a financial statement, containing all of the information required under §107.B of this Part, no later than 90 days after the last day of the warehouse's or grain dealer's fiscal year.

D. Each cotton merchant, grain dealer and warehouse shall file such unaudited financial statements as and when required by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3419 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:310 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1302 (October 1993), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter J. Access Requirements

§145. Access Requirements

A. Each licensee shall permit any officer or authorized representative of the commission or the commissioner to enter all locations listed on the application for license and inspect, examine, and/or audit all contents, facilities, equipment, records, books, accounts, samples, and grading and sampling practices relating thereto at any time during normal working hours, with or without notice.

B. The warehouse operator, cotton merchant, or grain dealer shall provide the necessary assistance required for any inspection, examination, and/or audit made in accordance with R.S. 3:3401-3425.

C. Each licensee having physical custody of commodities shall permit any authorized representative of the commission or the commissioner to sample commodities at any time during normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3414.3 and R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:310 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§Subchapter K. Posting Requirements

§147. Posting Requirements

A. Each grain dealer and cotton merchant shall post its original license issued by the commission in a conspicuous location at its principal place of business. A copy of the license shall be posted at all other locations covered by the license.

B. Each warehouse location shall post its original license issued by the commission so that it is clearly visible at the main entrance to the warehouse. When only a portion of a location is licensed by the commission, that portion licensed by the commission shall be clearly marked.

C. The warehouse schedule of tariffs or charges shall be posted in a conspicuous location at each location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3409, R.S. 3:3411 and R.S. 3:3420.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:311 (May 1983), amended LR 11:229 (March 1985), LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter L. Suspension/Revocation of License; Other Penalties

§149. Adjudication Required Prior to Suspension/Revocation of License or Imposition of Other Penalties; Amount of Penalties; Surrender of License

A. Whenever the chairman has any reason to believe that a violation of R.S. 3:3401-3425 or the regulations contained

in this Part has occurred, he shall call a meeting of the commission for the purpose of conducting an adjudicatory hearing to make a determination with respect to the suspected violation.

B. Upon any directive of the chairman, the director shall give written notice to the person suspected of the violation, such notice to comply with the requirements of the Administrative Procedure Act, at least five days prior to the date set for such adjudicatory hearing.

C. At any such adjudicatory hearing, the person suspected of a violation of R.S. 3:3401-3425 or the regulations contained in this Part shall be accorded all of the rights set forth in the Administrative Procedure Act.

D. The commission may suspend or revoke a license for any of the grounds set forth in §109 of this Part, or any other violation of R.S. 3:3401-3425 or the regulations contained in this Part, whenever proof thereof is made at any adjudicatory proceeding noticed and conducted as required by the Administrative Procedure Act.

E. Whenever the commission makes a determination at an adjudicatory hearing that any violation of R.S. 3:3401-3425 or the regulations contained in this Part has occurred, the commission may:

1. suspend or revoke the license;
2. impose a monetary fine;
3. place licensee on probation.

F. Any suspension of a license shall be for a definite period of time and the licensee shall be informed in writing of the period of suspension.

G. The commission may impose a penalty of up to \$1,000 for each violation of R.S. 3:3401-3425 or the regulations contained in this Part which is proven in an adjudicatory hearing.

H. Each separate day on which a violation occurs shall be considered a separate violation.

I. Whenever the commission suspends or revokes a warehouse, cotton merchant, or grain dealer license, the former licensee shall immediately surrender the original and all copies of the license.

J. No person whose license has been suspended or revoked may engage in any of the activities regulated under R.S. 3:3401-3425.

K. Any licensee may appeal any action taken by the commission to suspend/revoke a license or impose a monetary penalty by either:

1. applying for a rehearing under the procedures provided in the Administrative Procedure Act; or
2. applying for judicial review of the commission's determination, under either the Administrative Procedure Act or other applicable laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3410, R.S. 3:3411, R.S. 3:3417 and R.S. 3:3424.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:311 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:288 (May 1986), LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter M. Schedule of Inspections; Voluntary Inspection

§151. Inspection of Physical Facilities and Contents; Schedule

A. A complete inspection of the physical facilities and the contents thereof shall be made of each licensee at least once during each license period, but may be made more frequently. Such inspection of facilities and contents may or may not be made in conjunction with an audit of the licensee's books and records.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:312 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§153. Voluntary Inspection Service

A. Warehouses which require more frequent inspection and verification of contents, for whatever reason, may secure such services by making an application to the commission.

B. Voluntary inspection of facilities and contents, and verification thereof, on a schedule which shall be mutually agreed upon between the warehouse applying for voluntary inspection services and the commissioner, shall be made for a fee of \$0.01 per hundredweight for commodities normally weighed by hundredweight, \$.007 per bushel (or barrel weight converted to bushels as provided by R.S. 3:3422 and §127.C of this Part) for commodities normally weighed by bushel, or such other fee as may be promulgated by the commission as an assessment fee on other agricultural commodities or farm products.

C. The fee for voluntary inspection services shall be due and payable within 15 days after each inspection is completed.

D. The total fee for each voluntary inspection of facilities and contents shall be determined by multiplying the total amount of commodities under warehouse receipt at the time of voluntary inspection services times the fee set forth in §153.B of this Part.

E. The minimum inspection fee applicable to voluntary inspection services, when performed for any licensee of the commission, shall be \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:312 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter N. Exemptions

§155. Exemptions

A. The regulations contained in this Part shall not apply to the following:

1. cold storage facilities;
2. facilities which store only commodities which are imported from outside the boundaries of the continental United States;
3. seed dealers licensed under R.S. 3:1431 et seq., who store seed for producers, which is identifiable on the

bag and in the seed dealer's records as to the owner thereof, but who do not engage in any other activities regulated under R.S. 3:3401-3425. This exemption does not apply to seed dealers who issue warehouse receipts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3425 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:313 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Subchapter O. Grain and Cotton Indemnity Fund

§191. Creation

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§193. Definitions

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

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

Fund—the Grain and Cotton Indemnity Fund.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§195. Purpose

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§197. Assessments

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§199. Cotton Merchants Operating on a Cooperative Basis

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§201. Claim Provisions

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

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

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

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

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

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

F. Once proof of loss has been filed against a licensee, the commission may make a complete inspection of the

licensee's physical facilities and the contents thereof, as well as an examination of all books and records of the licensee and/or claimant, subject to the confidentiality requirements of R.S. 3:3421.

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§203. Distribution of Funds for Claims from Prior Insolvency

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§205. Appeal Procedure

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§207. Subrogation

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Louisiana Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§209. Reimbursement Limitations

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§211. Pending Litigation or Arbitration; Stay of Claims

A. Where the commission finds that litigation is pending, which could determine whether payment of a claim is due or to whom payment of a claim is due, the claim in question

may be stayed until the judgment in said litigation has become final and definitive. The commission shall give notice of the stay to any claimants whose claims have been stayed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§213. Violations

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§215. Adjudicatory Hearings

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

§217. Civil Penalties

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

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

C. Any claimant or licensee who knew or should have known that he was providing the commission with false information regarding a claim, or regarding any other matters pertaining to the fund, shall be subject to a

maximum civil penalty of \$1,000 for each violation. Each day the false information is with the commission without correction shall be considered a separate violation.

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:

Family Impact Statement

The impact of the proposed action regarding the regulations set out in the Notice of Intent on family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Kyra Holden, Assistant Director, Louisiana Agricultural Commodities Commission, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4:00 p.m. on the 30th day of December, 2010. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Agricultural Commodity Dealer and Warehouse Law

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 as a result of the proposed rule. The proposed action amends the Agricultural Commodity Dealer and Warehouse Law in order to make technical corrections, update language and fees to meet the requirements established in the provisions of Act 767 of the 2010 Regular Legislative Session and codify current statutorily allowed practices.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed action could increase revenue collections to the department by approximately \$4,800 per year. The proposed administrative rules institutes a \$50 per day late fee that may impact 12 licensees annually based upon historical data. The \$4,800 estimate is based upon an average late filing

of 8 days; however, the impact of the late fee may have on the submission of applications after the required filing deadline is unknown. The proposed administrative rule also increases the license fee from \$100 to \$200. However, this change merely codifies current practice as Title 3 currently provides for the department to assess a \$200 license fee. The collected fees will be deposited into the Agriculture Commodity Dealers and Warehouse Fund (R.S. 3:3423).

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The anticipated economic benefits to directly affected persons or non-governmental groups are unknown. However, to the extent that applications for licensure are received after the required deadline, this proposed action may increase the costs to potential late applicants by an aggregate of \$4,800 per year or approximately \$400 per late applicant. Anticipated groups impacted include grain dealers, cotton merchants and warehouses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistant Commissioner
1011#063

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Mike Strain, DVM
Commissioner

NOTICE OF INTENT

**Department of Agriculture and Forestry
Feed, Fertilizer, and Agriculture Commission**

**Definition of Small Package
(LAC 7:XI.101)**

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:1312, the Department of Agriculture and Forestry, Feed, Fertilizer, and Agricultural Liming Commission is intending on amending these rules and regulations (“the proposed action”) to bring the definition of small packages in line with current fertilizer manufacturing and marketing practices.

Title 7

AGRICULTURE AND ANIMALS

Part XI. Fertilizers

Chapter 1. Sale of Fertilizers

§101. Definitions

* * *

Small Packages—less than 5 gallons of liquid fertilizer and less than 50 pounds of dry material.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1312.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Fertilizer Commission, LR 7:164 (April 1981), amended LR 12:493 (August 1986), amended by the Feed, Fertilizer, and Agricultural Liming Commission, LR 37:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the

family or a local government to perform the function as contained in the proposed action.

Small Business Statement

It is anticipated that the proposed action [may] [will not] have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Mark LeBlanc, Director, Agricultural Chemistry, P.O. Box 25060, Baton Rouge, LA 70894-5060 and must be received no later than 4:00 p.m. on December 27, 2010. No preamble regarding these proposed regulations is available.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Definition of Small Package

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 as a result of this proposed action. The proposed rule changes revise the definition of small packages to conform to current fertilizer manufacturing and marketing practices. The proposed rule changes the definition of small packages from 16 ounces or less of liquid fertilizer and 10 pounds or less of dry material to less than 5 gallons of liquid fertilizer and less than 50 pounds of dry material.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules could have an indeterminable impact upon revenue collections of the state. Current rules provide for fertilizer producers classified as small package producers pay an annual \$100 inspection fee as opposed to the \$1.00 per ton sold. The proposed rule broadens the definition of small package, which could result in some producers paying less or paying more depending upon the current level of business activity.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed administrative rules may impact approximately fifteen (15) fertilizer producers within the state. Current rules provide for fertilizer producers classified as small package producers to pay an annual \$100 inspection fee as opposed to the \$1.00 per ton sold. The proposed rule broadens the definition of small package, which could result in some producers paying less or paying more depending upon the current level of business activity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistant Commissioner
1011#064

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Agriculture Chemistry Lab Fees (LAC 7:I.103)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:16, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences is intending on amending these rules and regulations (“the proposed action”) to substitute the Louisiana Agricultural Chemistry Laboratory for the Department of Agriculture and Forestry as the payee for agricultural chemistry laboratory fees.

Title 7

AGRICULTURE AND ANIMALS

Part I. Administration

Chapter 1. Administrative Procedures

§103. Agriculture Chemistry Lab Fees

A. - A.1....

B. The laboratory fees shall be paid by the party requesting analysis and shall be payable to the Louisiana Agricultural Chemistry Laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:16.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 15:77 (February 1989), amended 37:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed action.

Small Business Statement

It is anticipated that the proposed action [may] [will not] have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Mark LeBlanc, Director, Agricultural Chemistry, P.O. Box 25060, Baton Rouge, LA 70894-5060 and must be received no later than 4:00 p.m. on December 27, 2010. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Agriculture Chemistry Lab Fees

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 as a result of this proposed rule change. The proposed action substitutes “Louisiana Agricultural Chemistry Laboratory” for “Department of Agriculture and Forestry” as the payee for agricultural chemistry laboratory fees. The Louisiana Agricultural Chemistry Laboratory is an entity within the Department of Agriculture and Forestry.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated material effect on the revenue collections of state or local governmental units as a result of this proposed rule change. The proposed rule change codifies the current payment practice for fees charged for chemical and other analyses performed by the agricultural chemistry laboratory.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of this proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistant Commissioner
1011#065

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Licensing Section

Child Placing Agencies (LAC 48:I.Chapter 41 and LAC 67:V.Chapters 65 and 67)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Department of Children and Family Services (DCFS), Division of Programs, Licensing Section is providing notice of its intent to repeal and amend sections of the LAC to comply with Act 64 of the 2010 Regular Session of the Louisiana Legislature.

Title 48, Part I, Subpart 3, Chapter 41 and Title 67, Part V, Subpart 8, Chapter 65 are being repealed. Licensing regulations previously contained in these chapters have been consolidated and rewritten and will be promulgated as Title 67, Part V., Subpart 8, Chapter 73, Child Placing Agencies, in accordance with R.S. 46:1401 et seq.

Title 48

HEALTH AND HOSPITALS—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 41. Child Placing Agencies with and without Adoption Services

Subchapter A. General Provisions

§4101. Introduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1256 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§4103. Licensing Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§4105. Administration and Organization

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§4107. Personnel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§4109. Social Services Related to Child Placement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1258 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§4111. Records

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1259 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

Subchapter B. Foster Care Services Module

§4113. Family Foster Care Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1259 (November 1995), LR 31:2955 (November 2005), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

Subchapter C. Adoption Services Module

§4115. Adoption Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), amended the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 21:1260 (November 1995), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§4117. Effective Date

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

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 LR 15:546 (July 1989), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 8. Residential Licensing

Chapter 65. Transitional Living

§6501. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§6503. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended LR 36:791, 841 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1462 (July 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§6505. Waivers

Repealed.

Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§6567. Food Service

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§6569. Discharge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), 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 35:1570 (August 2009), amended LR 36:798 (April 2010), repealed by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

Subpart 8. Residential Licensing

Chapter 73. Child Placing Agencies—General Provisions

§7301. Purpose

A. It is the intent of the legislature to protect the health, safety, and well being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well being of children, to ensure maintenance of these standards, and to regulate conditions in these providers through a program of licensing. It shall be the policy of the state to ensure protection of all individuals placed by a provider and to encourage and assist in the improvement of provided services. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:

§7303. Authority

A. Legislative Provisions

1. The Child Care Facility and Child Placing Act 286 of 1985 as amended (R.S. 46:1401-1424) is the legal authority under which the department prescribes minimum standards for the health, safety and well-being of children placed in foster care and adoption. The rules are in LAC 67:V.Subpart 8, Chapter 73.

2. Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1978 and Act 429 of 1981 Louisiana legislature made permanency planning for children in foster care a matter of federal and state law and public social policy.

3. Public Law 103-382, the Multiethnic Placement Act of 1994, the U.S. Constitution and Title VI of the Civil Rights Act of 1964 provide that an entity which receives federal financial assistance and is involved in adoption or foster care placements may not discriminate on the basis of the race, color or national origin of the adoptive or foster parent or the child involved.

B. Facilities Requiring a License

1. Any institution, society, agency, corporation, facility, person or persons or any other group other than the parent(s) or guardian(s) of a child, engaged in placing a child or children in foster care and/or adoption in Louisiana or in placing a child or children from Louisiana into another state or foreign country is required to be licensed as follows or to work through a licensed agency in the state.

a. Any agency with an office and staff within the state is required to have a license in Louisiana.

b. Any out-of-state agency placing a child in Louisiana is required to have a license issued by the state in which the main office is located and have a Louisiana license or make placements in Louisiana in cooperation with an agency licensed in Louisiana.

c. A child placing agency (CPA) which is operated in conjunction with other programs subject to licensing shall obtain a license for each of the programs.

C. Exemptions

1. The parent(s) or legal custodian(s) are authorized to place a child directly into a foster or adoptive home without a license. The parent(s) or custodian shall not be represented in placing the child(ren) by other than a licensed CPA.

2. Pursuant to ACT 64 of the 2010 Legislative Session, child placing agencies within the Department of Children and Family Services shall be exempt from the provisions of this Chapter. The department is authorized and mandated to perform its child-placing functions in accordance with the standards promulgated by the department for licensed child-placing agencies.

D. Penalties. As stipulated in R.S. 46:1421, whoever operates any child care facility without a valid license shall be fined not less than \$75 nor more than \$250 for each day of such offense.

E. Waiver Request

1. The secretary of the department, in specific instances, may waive compliance with a standard, as long as the health, safety, and well-being of the staff and/or the health, safety, rights or well-being of residents is not imperiled. Standards shall be waived only when the secretary determines, upon clear and convincing evidence, that the economic impact is sufficient to make compliance impractical for the provider despite diligent efforts, and when alternative means have been adopted to ensure that the intent of the regulation has been carried out.

2. Application for a waiver shall be made in writing and shall include:

a. a statement of the provisions for which a waiver is being requested; and

b. an explanation of the reasons why the provisions cannot be met and why a waiver is being requested.

3. The request for a waiver will be answered in writing and approvals will be maintained on file by the requesting provider and the department. The department

shall document the reasons for granting the waiver. A waiver shall be granted for a period of one year or as specified by the secretary and will not be renewed if the basis for it no longer exists. If the provider has been granted a waiver by the department, the waiver will be identified on the survey report of any subsequent annual survey report.

F. Variance Request

1. The secretary of the department, in specific instances, may grant an exception to the standards temporarily for the purposes of allowing emergency placement of a child as long as the health, safety, and well-being of the child or other children in the home is not imperiled.

2. A request for a variance shall be made in writing and shall include a statement of the provisions for which the variance is being requested.

3. The request for a variance will be answered in writing and specify the period of time for which the variance is being granted. A variance may be granted for a length of time not to exceed 90 days, and may be renewed one time, for good cause shown, for an additional 90 day period not to exceed 180 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:

§7305. Definitions

Abuse—any one of the following acts which seriously endangers the physical, mental, or emotional health of the child:

1. the infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person;

2. the exploitation or overwork of a child by a parent or any other person; and

3. the involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

Affiliate—

1. with respect to a partnership, each partner thereof;

2. with respect to a corporation, each officer, director and stockholder thereof;

3. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

4. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

5. director of any such.

Child—a person who has not reached age eighteen or otherwise been legally emancipated. The words "child" and "children" are used interchangeably in this Chapter.

Child Placing Agency—any institution, society, agency, corporation, facility, person or persons, or any other group engaged in placing children in foster care or with substitute parents for temporary care or for adoption or engaged in assisting or facilitating the adoption of children, or engaged in placing youth in transitional placing programs but shall not mean a person who may occasionally refer children for temporary care.

Complaint—an allegation that any person is violating any provisions of these standards or engaging in conduct, either by omission or commission, that negatively affects the health, safety, rights, or welfare of any child who is receiving services from a CPA.

Criminal Background Check—the requirement of state law and federal funding rule for checking criminal records for certain offenses prior to employing an individual who will have access to a child in a CPA as well as for prospective foster or adoptive parents.

Department—the Department of Children and Family Services.

Director—the person with authority and responsibility for the on-site, daily implementation and supervision of the overall provider's operation.

Disqualification Period—means the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—the date of the revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

Foster Care—a social service that provides a planned period of substitute care in a foster home, a relative's home, or other living arrangements for children or youth when their families cannot or will not care for them.

Foster Home—a private home of one or more persons who provide continuing 24-hour substitute parenting for one to six children living apart from their parent(s) or guardian's and are placed for foster care under the supervision of the department or of a licensed child-placing provider.

Foster Parent—an individual(s) who provides foster care with the approval and under the supervision of the department or of a licensed child-placing provider.

Human Service Field—the field of employment similar or related to social services such as social work, psychology, sociology, special education, nursing, rehabilitation counseling, juvenile justice and/or corrections through which a person gains experience in providing services to the public and/or private children that serves to meet the years of experience required for a job as specified on the job description for that position.

Home Study—an evaluation of a home environment conducted in accordance with applicable requirements of the state in which the home is located to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety, permanency,

health, well-being, and mental, emotional, and physical development.

Injury of Unknown Origin—an injury where the source of the injury was not observed by any person or the source of the injury could not be explained by the child and the injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma).

Interstate Home Study—a home study conducted by a state at the request of another state to facilitate an adoptive or foster placement in the state of a child in foster care under the responsibility of the state.

Legal Custody—the right to have physical custody of the child and to determine where and with whom the child shall reside; to exercise the rights and duty to protect, train, and discipline the child; the authority to consent to major medical, psychiatric, and surgical treatment; and to provide the child with food, shelter, education, and ordinary medical care, all subject to any residual rights possessed by the child's parents.

Legal Guardianship—the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the responsibility for the child's general welfare until he reaches the age of majority, subject to any child rights possessed by the child's parents. It shall include the rights and responsibilities of legal custody.

Legal Guardian—the caretaker in a legal guardianship relationship. This could be the parent or any provider representative.

License—any license issued by the department to operate any child care facility or CPA as defined in R.S. 46:1403.

Neglect—the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired (Ch.C Art 603).

Parent—any living person who is presumed to be a parent under the Civil Code or a biological or adoptive mother or father of a child.

Provider—an entity that is responsible for the placement of children in foster care to include the Department of Children and Family Services and any private child placing provider licensed by the department. All owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Related or Relative—a natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Respite Care—temporary care provided by another individual or family to provide relief to a foster care parent or to allow an adjustment period for the child placed in out-of-home care.

Service Plan—a written plan of action usually developed between the family, child, social worker, and other service providers, that identifies needs, sets goals, and describes strategies and timelines for achieving goals.

Specialized Foster Care—a foster care service to accommodate the needs of a child or youth who is unable to live with the child/youth's own family and who has either an

emotional, behavior, medical or developmental problem that requires more time consuming and specialized care with professional oversight based on the child's specific needs but whose needs prevent placement in a basic level foster home.

Substantial Bodily Harm—a physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

Therapeutic Foster Care—a foster care service to accommodate the needs of a child or youth who require extremely time consuming, specialized care and supervision from a trained person, and ongoing, frequent professional oversight, based on the child's specific needs but whose needs prevent placement in a basic or specialized foster home.

Transitional Placing Program—a program that places youth, at least 16 years of age, in an independent living situation supervised by a provider with the goal of preparing the youth for living independently without supervision.

Unlicensed Operation—operation of any child care facility or child-placing agency, at any location, without a valid, current license issued by the department.

Variance—an exception granted temporarily for the purpose of emergency admittance of specific children.

Volunteer—an individual who works for the provider and whose work is uncompensated. This may include students, interns, tutors, counselors, and other non-staff individuals who may or may not work directly with the child. Persons who visit the provider solely for providing activities for the provider and who are not left alone with the child are not considered as volunteers.

Waiver—an exemption granted by the secretary of the department, or designee, from compliance with a standard that will not place the child or staff member at risk.

Youth—a person not less than sixteen years of age nor older than twenty one years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§7307. Licensing Requirements

A. General Provisions

1. Before beginning operation, it is mandatory to obtain a license from the department.

2. In addition all facilities shall comply with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. (ADA).

B. Initial Licensing Application Process

1. An initial application for licensing as a CPA provider shall be obtained from the department. A completed initial license application packet for an applicant shall be submitted to and approved by department prior to an applicant providing CPA services. The completed initial licensing packet shall include:

- a. application and non-refundable fee;
- b. Office of Fire Marshal approval for occupancy, if applicable;
- c. Office of Public Health, Sanitarian Services approval, if applicable;

- d. city fire department approval, if applicable;
- e. city or parish building permit office approval, if applicable;
- f. local zoning approval, if applicable;
- g. copy of proof of current general liability and property insurance for facility;
- h. copy of proof of insurance for vehicle(s);
- i. organizational chart or equivalent list of staff titles and supervisory chain of command;
- j. director resumé and proof of educational requirement;
- k. supervisor and case manager resumé and proof of educational requirement;
- l. list of consultant/contract staff to include name, contact info and responsibilities;
- m. copy of program plan;
- n. copy of table of contents of all policy and procedure manuals;
- o. copy of evacuation plan, if applicable;
- p. copy of house rules and regulations, if applicable;
- q. copy of grievance process;
- r. a floor sketch or drawing of the premises to be licensed, if applicable; and
- s. any other documentation or information required by the department for licensure.

2. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will have 10 working days to submit the additional requested information. If the department does not receive the additional requested information within the 10 working days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a CPA shall submit a new initial licensing packet with a new application fee to start the initial licensing process. Once the department has determined the application is complete, the applicant will be notified to contact the department to schedule an initial survey. If an applicant fails to contact the department and coordinate the initial survey within 45 days of the notification, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a CPA shall submit a new initial licensing packet with a new application fee to re-start the initial licensing process.

C. Initial Licensing Survey

1. Prior to the initial license being issued to the CPA, an initial licensing survey shall be conducted on-site at the CPA to assure compliance with all licensing standards. The initial licensing survey shall be an announced survey. No resident shall be provided services by the CPA until the initial licensing survey has been performed and the department has issued an initial license.

2. In the event the initial licensing survey finds the CPA is compliant with all licensing laws and standards, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department may issue a full license to the provider after receipt of the annual licensing fee as prescribed by the department. The license shall be valid until the expiration date shown on the license, unless the license is modified, extended, revoked, suspended, or terminated.

3. In the event the initial licensing survey finds the CPA is noncompliant with any licensing laws or standards, or any other required statutes, laws, ordinances, rules, or regulations that present a potential threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

4. In the event the initial licensing survey finds that the CPA is noncompliant with any licensing laws or standards, statutes, laws, ordinances, or rules but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue an initial license for a period not to exceed three months. The provider shall submit a corrective action plan to the department. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which corrections shall be completed. The department must approve the corrective action plan prior to issuing the initial license. If the department determines, prior to the expiration date of the initial license, that such noncompliance or deficiencies have been corrected, a license will be issued. If the department determines that such noncompliance or deficiencies have not been corrected, the license will expire and all operations shall cease. The provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

5. The license shall be displayed in a prominent place at the CPA except that those operated by a church or religious organization may be exempt from such requirement provided the license is available upon request.

6. Once a CPA has been issued a license, the department shall conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards, as well as, other required statutes, laws, ordinances, rules, regulations, and fees. These surveys shall be unannounced.

7. The department shall remove any child or all children from any home or when it is determined that one or more deficiencies exist within the home that place the health and well being of the child or children in imminent danger. The child or children shall not be returned to the home until such time as it is determined that the imminent danger has been removed.

8. Department staff shall be given access to all areas of the facility and to all relevant files during any licensing or other survey. They shall be allowed to interview any provider staff or participant as necessary to conduct the survey.

9. If an applicant or member of his/her immediate family has had a previous license revoked, refused or denied, upon reapplication, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists.

D. Fees

1. There shall be an annual fee as prescribed by the department for a license or renewed license, payable to the department 30 days prior to the date of issuance by certified check or money order. Non-payment of fee by due date may result in revocation of licensing.

2. Other license fees include:

a. replacement fee of \$25 for replacing a license when changes are requested, i.e., change in capacity, name change, age range, etc. No replacement charge will be incurred when the request coincides with the regular renewal of a license;

b. a processing fee of \$5 for issuing a duplicate license with no changes.

E. Renewal of License

1. The license shall be renewed on an annual basis.

2. The provider shall submit, at least 60 days prior to its license expiration date, a completed renewal application form and applicable fee. The following documentation must also be included:

- a. Office of Fire Marshal approval for occupancy;
- b. Office of Public Health, Sanitarian Services approval;
- c. city fire department approval, if applicable;
- d. copy of proof of current general liability and property insurance for facility; and
- e. copy of proof of insurance for vehicle(s).

3. Prior to renewing the CPA license, an on-site survey shall be conducted to assure compliance with all licensing laws and standards. If the CPA is found to be in compliance with the licensing laws and standards, and any other required statutes, laws, ordinances, or regulations, the license shall be renewed for a 12 month period.

4. In the event the annual licensing survey finds the CPA is non-compliant with any licensing laws or standards, or any other required statutes, ordinances or regulations but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on such non-compliance or deficiencies cited but no later than 10 days from the date of notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which correction(s) shall be completed. Failure to submit an approved corrective action plan timely shall be grounds for non-renewal.

5. If it is determined that such noncompliance or deficiencies have not been corrected prior to the expiration of the license, the department may issue an extension of the license not to exceed to 60 days.

6. When it is determined by the department that such noncompliance or deficiencies have been corrected, a license will be issued for a period not to exceed 12 months.

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

F. Notification of Changes

1. A license is not transferable to another person or location.

2. When a provider changes location, it is considered a new operation and a new application and fee for licensure shall be submitted 30 days prior to the anticipated move. All items listed in §7307.B.1 shall be in compliance for the new location. An onsite survey is required prior to change of location.

3. When a provider is initiating a change in ownership a written notice shall be submitted to the department. Within five working days of the change of ownership, the new owner shall submit a completed application, the applicable licensing fee and a copy of bill of sale or a lease agreement.

4. The provider shall provide written notification to the department within 30 days of changes in administration and professional personnel, program direction and admission criteria. A statement to the qualifications of the new employee shall be sent to the office.

G. Denial, Revocation, or Non-renewal of License

1. An application for a license may be denied, revoked or not renewed for any of the following reasons:

- a. cruelty or indifference to the welfare of the residents in care;
- b. violation of any provision of the standards, rules, regulations, or orders of the department;
- c. disapproval from any whose approval is required for licensing;
- d. nonpayment of licensing fee or failure to submit a licensing application;
- e. any validated instance of abuse, neglect, corporal punishment, physical punishment, or cruel, severe or unusual punishment, if the owner is responsible or if the staff member who is responsible remains in the employment of the licensee;
- f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure; or
- g. any act of fraud such as falsifying or altering documents required for licensure;
- h. provider refuses to allow the Licensing Section to perform mandated duties, i.e., denying entrance to the facility, lack of cooperation for completion of duties, intimidating or threatening DCFS staff, etc.

2. Even if a facility is otherwise in substantial compliance with these standards, an application for a license may be denied, revoked or not renewed for any of the following reasons:

- a. the owner, director, officer, board of directors member, or any person designated to manage or supervise the provider or any staff providing care, supervision, or treatment to a resident of the facility has been convicted of or pled guilty or *nolo contendere* to any offense listed in R.S. 15:587.1. A copy of a criminal record check performed by the Louisiana State Police (LSP) or other law enforcement provider, or by the Federal Bureau of Investigation (FBI), or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a rebuttal presumption that such a conviction or plea exists;
- b. the provider, after being notified that an officer, director, board of directors member, manager, supervisor or any employee has been convicted of or pled *nolo contendere* to any offense referenced above, allows such officer, director, or employee to remain employed, or to fill an office of profit or trust with the provider. A copy of a criminal record check performed by the LSP or other law enforcement provider, or by the FBI, or a copy of court records in which a conviction or plea occurred, indicating

the existence of such a plea or conviction shall create a reputable presumption that such a conviction or plea exists;

c. failure of the owner, director or any employee to report a known or suspected incident of abuse or neglect to child protection authorities;

d. revocation or non-renewal of a previous license issued by a state or federal provider;

e. a substantial history of non-compliance with licensing statutes or standards, including but not limited to failure to take prompt action to correct deficiencies, repeated citations for the same deficiencies, or revocation or denial of any previous license issued by the department;

f. failure to timely submit an application for renewal or to timely pay required fees; and/or

g. operating any unlicensed facility and/or program.

3. If a license is revoked, denied or refused, a license may also be denied or refused to any affiliate of the licensee or applicant. For the purpose of this Section, "affiliate" means:

a. with respect to a partnership, each partner thereof;

b. with respect to a corporation, each officer, director and stockholder thereof; and

c. with respect to a natural person: anyone related within the third degree of kinship to that person; each partnership and each partner thereof which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder.

4. In the event a license is revoked or renewal is denied, (other than for cessation of business or non-operational status), or voluntarily surrendered to avoid adverse action any owner, officer, member, manager, director or administrator of such licensee shall be prohibited from owning, managing, directing or operating another licensed facility for a period of not less than two years from the date of the final disposition of the revocation or denial action. The lapse of two years shall not automatically restore a person disqualified under this provision to eligibility for employment. The department, at its sole discretion, may determine that a longer period of disqualification is warranted under the facts of a particular case.

H. Posting of Notices of Revocation

1. The notice of revocation of the license shall be prominently posted.

a. The Department of Children and Family Services shall prominently post a notice of revocation action at each public entrance of the CPA within one business day of such action. This notice must remain visible to the general public, other placing agencies, parents, guardians, and other interested parties who are involved with children who attend the child care facility.

b. It shall be a violation of these rules for a provider to permit the obliteration or removal of a notice of revocation that has been posted by the department. The provider shall ensure that the notice continues to be visible the general public, other placing agencies, parents, guardians, and other interested parties throughout the pendency of any appeals of the revocation.

c. The provider shall notify the department's licensing section in writing immediately if the notice is removed or obliterated.

d. Failure to maintain the posted notice of revocation required under these rules shall be grounds for denial, revocation or non-renewal of any future license.

I. Disqualification of Facility and Provider

1. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any pending application by the same provider shall be treated as an application for a new facility for purposes of this section and shall be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

2. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

3. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of 24 months after the effective date of denial.

4. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

J. Appeal Process

1. If the department refuses to grant or renew a license, if a license is revoked, the procedure will be as follows.

a. The department shall notify the licensee, or applicant in writing of the denial or revocation and the reasons for that denial or revocation and the right of appeal.

b. The program director or owner may appeal this decision by submitting a written request with the reasons to the secretary, Department of Children and Family 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 §7107.H.1 above.

c. The Division of Administrative Law shall set a hearing to be held within 30 days after receipt of such a request except as provided in the Administrative Procedures Act.

d. An administrative law judge shall conduct the hearing. Within 90 days after the date the appeal is filed, the administrative law judge shall notify the appellant in writing of the decision, either affirming or reversing the original decision. If the department's decision is upheld, the facility shall terminate operation immediately.

2. If the facility continues to operate without a license, the department may file suit in the district court in the parish in which the facility is located for injunctive relief.

K. Voluntary Closure

1. When a licensee voluntarily ceases operation, the licensee shall notify the department in writing at least 30 days before the closure date.

2. The provider shall make adequate preparation and arrangements for the care, custody and control of any children in the custody and/or care of the provider.

3. The provider shall make arrangements for the preservation of records.

L. Complaint Process

1. In accordance with R.S. 46:1418, the department shall investigate all complaints (except complaints concerning the prevention or spread of communicable diseases), including complaints alleging abuse or neglect, within prescribed time frames as determined by the department based on the allegation(s) of the complaint. All complaint investigation will be initiated within 30 days.

2. All complaint surveys shall be unannounced surveys.

3. A written report of any noncompliance or deficiencies will be given to the provider. The provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on the areas of non-compliance cited but no later than 10 days from the date of receipt of the notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which corrections shall be completed. If it is determined that all areas of noncompliance or deficiencies have not been corrected, the department may revoke the license.

4. Except in cases alleging abuse or neglect, the complainant will be notified in writing of the results of the complaint investigation conducted by the department's licensing section.

5. If, because of the nature of the allegations, state law or department policy requires that the complaint be handled by another office, or board (including another office or board within the department), the complaint will be referred to the appropriate office or board without delay. Upon such referral, except in cases involving abuse or neglect, the complainant will be notified, in writing, of the referral.

6. The complaint procedure shall be posted conspicuously in the facility including the name, address, and telephone number of the required department units to be notified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§7309. Administration and Operation

A. Department Access

1. The provider shall allow representatives of the department in the performance of their mandated duties to inspect all aspects of a program's function that impacts on children and to interview any staff member or child. The department representatives shall be admitted immediately and without delay, and shall be given free access to all areas of a facility, including its grounds.

2. The provider shall make any information that the provider is required to have under the present standards, and

any information reasonably related to determination of compliance with these standards available to the department. The children's rights shall not be considered abridged by this standard.

B. Other Jurisdictional Approvals

1. The provider shall comply and show proof of compliance with all relevant standards, regulations and requirements established by federal, state, local and municipal regulatory bodies.

2. Except for a child in the custody of or otherwise made the legal responsibility of the department or the Department of Corrections, Office of Juvenile Justice, the provider shall be responsible for obtaining the following:

a. agreement for voluntary care signed by the custodian; or

b. order from a court of competent jurisdiction placing the child into the custody of the child-placing provider.

C. Governing Body. The provider shall have an identifiable governing body with responsibility for and authority over the policies, procedures and activities of the provider.

1. The provider shall have documents identifying all members of the governing body, their addresses, the term of their membership (if applicable), officers of the governing body (if applicable) and the terms of office of all officers (if applicable).

2. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

D. Responsibilities of a Governing Body. The governing body of the provider shall:

1. ensure the provider's compliance and conformity with the provider's charter;

2. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and standards;

3. ensure the provider is adequately funded and fiscally sound by reviewing and approving the provider's annual budget or cost report;

4. ensure the provider is housed, maintained, staffed and equipped appropriately considering the nature of the provider's program;

5. designate a person to act as director and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the director, written policies and procedures concerning the provider's philosophy, goals, current services, personnel practices and fiscal management;

7. have the authority to dismiss the director;

8. meet with designated representatives of the department whenever required to do so;

9. inform designated representatives of the department prior to initiating any substantial changes in the program, services or physical location of the provider.

E. Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

2. A privately owned provider shall have documentation identifying the names and addresses of owners.

3. A corporation, partnership or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, and articles of association or bylaws.

F. Accessibility of Director. The director, or a person authorized to act on behalf of the director, shall be accessible to provider staff or designated representatives of the department at all times (24 hours per day, 7 days per week).

G. Statement of Philosophy

1. The provider shall have a written statement of its child placing philosophy, purpose and program. The statement shall contain a description of all the services the provider provides to include:

- a. the extent, limitation, and scope of the services for which a license is sought;
- b. the geographical area to be served; and
- c. the ages and types of children to be accepted for placement.

2. The statement shall be one that has been adopted by the governing body. When the provider is operated under a charter or articles of incorporation, all of its functions shall be stated therein.

3. When a provider adds a new function to its program, its governing body shall adopt a supplementary statement of such function.

H. Policies and Procedures

1. The provider shall have a clearly defined intake policy in keeping with its stated purpose and it should be clear from the practices of the provider that it is carrying out these purposes.

a. Provider intake policy shall prohibit discrimination on the basis of race, color, creed, sex, national origin, handicapping condition, or ancestry.

b. A provider shall have a written description of admission policies and criteria which expresses the needs, problems, situations or patterns best addressed by its program. These policies shall be available to the legally responsible person for any child referred for placement.

2. The provider shall have operational and program policy and procedure manuals that are current and clearly stated in writing to ensure the practices of the provider are in keeping with its stated purpose and with minimum requirements for child placement.

3. The provider policies and procedures shall cover such areas as:

- a. personnel;
- b. admission;
- c. social services related to child placement;
- d. financial arrangements;
- e. medical care;
- f. personal care and supervision for children;
- g. discipline;
- h. resource development and utilization;
- i. social services related to post-placement;
- j. abuse and neglect;
- k. confidentiality;
- l. records;

- m. complaints; and
- n. grievances.

4. The provider shall develop written policies and procedures regarding employees of the provider serving as a foster parent or respite care provider.

5. The provider shall develop written policies and procedures that address the prevention or appearance of:

- a. a conflict of interest; or
- b. misuse of influence.

I. Location and Equipment

1. The provider shall provide suitable space for the following purposes:

a. office and reception areas which provide comfort, safety, privacy, and convenience for children and staff;

b. areas for confidential interviewing with parent(s) and children and visitation between parent(s) and children if applicable to the program;

c. storage areas for personnel and child records which provide controlled access, retrieval, and confidentiality.

2. The provider shall maintain suitable equipment in good working condition for the operation of the office and the functioning of the staff.

3. The provider shall provide furnishings which are clean and safe.

4. The provider shall assist children and families in arranging transportation necessary for implementing the child's service plan.

5. The provider shall have means of transporting children which are equipped with safety seats in accordance with the laws and standards.

6. The provider and staff shall maintain and operate vehicles used for transporting children in safe condition, in conformity with appropriate motor vehicle laws and standards.

7. The provider shall carry liability insurance or determine that it is carried on all offices and vehicles used for providing services and transporting children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§7311. Provider Responsibilities

A. Human Resources

1. Policies and Procedures. The provider shall have written policies and procedures that include:

a. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members to include contract services and volunteers;

b. written job descriptions for each staff position including volunteers;

c. health screening of all staff in accordance with public health guidelines to include screening for communicable diseases;

d. an employee grievance process;

e. abuse and neglect reporting procedures that require all employees to report any incidents of abuse or neglect whether that abuse or neglect is done by another staff member, a family member, a child, or any other person; and

f. preventing discrimination.

2. Personnel Requirements

a. The provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to perform the following functions:

- i. administrative;
- ii. fiscal;
- iii. clerical;
- iv. child services;
- v. record keeping and reporting;
- vi. social service; and,
- vii. ancillary services.

b. The provider shall ensure that all staff members are properly certified or licensed as legally required and appropriately qualified for their position.

c. Personnel can work in more than one capacity as long as they meet all of the qualifications of the position and have met the trainings requirements.

d. In all instances, child placement staff shall include a person meeting the qualifications of a supervisor of placement services.

e. A staff person shall be delegated supervisory authority and responsibility in the short-term absence of the supervisor of placement services for illness, vacation, jury or military duty, professional seminars and meetings or in short-term periods when the position is vacant.

f. A person serving as acting supervisor shall meet the qualifications of supervisor of placement services. If there is no one on staff who meets the qualification, the provider may meet the minimum requirements for licensing by entering into an agreement with another provider for supervision or by entering into a contractual agreement with a private practitioner who meets the qualifications and is a board certified social worker.

3. Personnel Qualifications

a. Director. The director shall meet one of the following qualifications:

i. a bachelor's degree in a human service field or business administration, public administration, childcare administration plus three years experience relative to the population being served. One year of administrative experience in social services may be substituted for two years of regular experience. A master's degree plus two years of social service experience may be substituted for the three years of experience. An alternative may be a bachelor of social work (BSW) degree or professional equivalent with three years experience working with children, one year of which may be experience in administration; or

ii. a master's degree in health care administration or in a human service related field; or

iii. in lieu of a degree, six years of administrative experience in health or social services, or a combination of undergraduate education and experience for a total of six years.

4. Personnel Job Duties

a. The director shall be responsible for:

- i. implementing and complying with policies and procedures adopted by the governing body;
- ii. adhering to all federal and state laws and standards pertaining to the operation of the provider;
- iii. address areas of non-compliance identified by annual survey and complaint investigations;

iv. directing the program;

v. representing the provider in the community;

vi. delegating appropriate responsibilities to other staff including the responsibility of being in charge of the provider during their absence;

vii. recruiting qualified staff and employing, supervising, evaluating, training and terminating employment of staff;

viii. providing leadership and carrying supervisory authority in relation to the provider;

ix. providing consultation to the governing body in carrying out their responsibilities, interpreting to them the needs of children, making needed policy revision recommendations and assisting them in periodic evaluation of the provider's services;

x. preparing the annual budget for the governing body's consideration, keeping the body informed of financial needs, and operating within the established budget;

xi. supervising the provider's management including building, maintenance and purchasing;

xii. participating with the governing body in interpreting the provider's need for financial support;

xiii. establishing effective communication between staff and children and providing for their input into program planning and operating procedures;

xiv. reporting injuries, deaths and critical incidents involving children to the appropriate authorities;

xv. supervising the performance of all persons involved in any service delivery/direct care to children; and,

xvi. completing an annual performance evaluation of all staff. For any person who interacts with children, a provider's performance evaluation procedures shall address the quality and quantity of their work.

5. Orientation

a. The provider's orientation program shall include the following topics for all staff within 15 working days of the date of employment:

i. philosophy, organization, program, practices and goals of the provider;

ii. specific responsibilities of assigned job duties;

iii. administrative procedures;

iv. children's rights;

v. detecting and reporting suspected abuse and neglect;

vi. confidentiality; and

vii. reporting incidents.

b. All staff shall sign a statement of understanding certifying that such training has occurred.

c. A new employee shall not be given sole responsibility until training is completed.

6. Annual Training

a. The provider shall ensure that all staff receives training on an annual basis in the following topics:

i. administrative procedures and programmatic goals;

ii. children's rights;

iii. detecting and reporting suspected abuse and neglect;

iv. confidentiality; and

v. reporting incidents.

b. All staff shall sign a statement of understanding certifying that such training has occurred.

c. The provider shall maintain sufficient information available to determine content of training. This information shall be available for review.

7. Volunteers

a. Providers who utilize volunteers to perform staff functions shall:

- i. have orientation, training, and be given a job description for the duties they are to perform;
- ii. have a criminal background check as required in R.S. 15:587.1 and R.S. 46:51.2;
- iii. have a completed state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46:1414.1.

B. Record Keeping

1. Administrative Records

a. The provider shall have an administrative file that shall contain, at a minimum, the following:

- i. a written program plan describing the services and programs offered by the provider;
- ii. organizational chart of the provider;
- iii. all leases, contracts and purchase-of-service agreements to which the provider is a party;
- iv. insurance policies. Every provider shall maintain in force at all times a comprehensive general liability insurance policy. This policy shall be in addition to any professional liability policies maintained by the provider and shall extend coverage to any staff member who provides transportation for any resident in the course and scope of his/her employment;
- v. all written agreements with appropriately qualified professionals, or a state provider, for required professional services or resources not available from employees of the provider; and,
- vi. written documentation of all residents' exits and entrances from provider property not covered under summary of attendance and leave. Documentation must include, at a minimum, date, time and destination.

2. Personnel Records

a. The provider shall have a personnel file for each employee that shall contain, at a minimum, the following:

- i. the application for employment, including the resume of education, training, and experience, if applicable;
- ii. a criminal background check in accordance with state law;
- iii. evidence of applicable professional or paraprofessional credentials/certifications according to state law;
- iv. documentation of any state or federally required medical examinations or testing;
- v. documentation of employee's orientation and annual training received;
- vi. employee's hire and termination dates;
- vii. documentation of current driver's license for operating provider or private vehicles in transporting residents;
- viii. annual performance evaluations to include his/her interaction with residents, family, and other providers;

ix. personnel action, other appropriate materials, reports and notes relating to the individual's employment with the provider; and,

x. annual state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator.

b. Staff shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

c. The personnel file of staff shall be retained for at least three years after termination of employment.

3. Accounting Records

a. The provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

b. The provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

c. All records shall be maintained in an accessible, standardized order and format, and shall be retained and disposed of according to state and federal law.

d. The provider shall have sufficient space, facilities and supplies for providing effective accounting record keeping services.

4. Confidentiality and Retention of Case Records

a. The provider shall have written policies and procedures for the maintenance, security and retention of records. The provider shall specify who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released and disposition or destruction of closed service record materials. Records shall be the property of the provider, and the provider, as custodian, shall secure records against loss, tampering or unauthorized use or access.

b. The provider shall maintain the confidentiality of all children's records to include all court related documents, as well as, educational and medical records. Every employee of the provider has the obligation to maintain the privacy of the child and his/her family and shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to other children in the provider or any other unauthorized person.

c. When the child is of majority age and not interdicted, a provider shall obtain the child's written, informed permission prior to releasing any information from which the child or his/her family might be identified, except for authorized state and federal agencies.

d. When the child is a minor or is interdicted, the provider shall obtain written, informed consent from the legal guardian(s) prior to releasing any information from which the child might be identified, except for accreditation teams and authorized state and federal agencies.

e. The provider shall, upon written authorization from the child or his/her legal guardian(s), make available information in the record to the child, his/her counsel or the child's legal guardian(s). If, in the professional judgment of the administration of the provider, it is felt that information

contained in the record would be injurious to the health or welfare of the child, the provider may deny access to the record. In any such case, the provider shall prepare written reasons for denial to the person requesting the record and shall maintain detailed written reasons supporting the denial in the child's file.

f. The provider may use material from the child's records for teaching and research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided names are deleted, other identifying information are disguised or deleted, and written authorization is obtained from the child or his/her legal guardian(s).

g. All records shall be retained and disposed of in accordance with state and federal laws. Any person who violates the requirement of confidentiality shall be fined not more than five hundred dollars or imprisoned for not more than ninety days or both.

h. The provider must maintain the original records in an accessible manner for a period of five years following the death or discharge of a child.

i. In the event of a change of ownership, the child records shall remain with the provider.

j. If the provider closes, the owner of the provider within the state of Louisiana shall store the child records for five years.

k. The provider is responsible for training all staff at least annually in confidentiality of information and records.

C. Incidents

1. Critical Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating and analyzing all critical incidents.

a. The provider shall report any of the following critical incidents to the Child Protection Unit located in the parish in which the provider is located. The Child Protection Unit shall be responsible for notifying the DCFS Licensing Section, when it is identified that a potential non-compliance of a licensing standard has occurred:

- i. abuse;
- ii. neglect;
- iii. injuries of unknown origin; or
- iv. death.

b. The provider shall report any of the following critical incidents to the DCFS Licensing Section:

- i. attempted suicide;
- ii. serious threat or injury to the child's health, safety or well-being, i.e. elopement or unexplained absence of a child;
- iii. injury with substantial bodily harm while in seclusion or during use of personal restraint; or
- iv. unplanned hospitalizations, emergency room visits, and walk-in or other outpatient emergency care visit.

c. The director or designee shall:

- i. immediately verbally notify the legal guardian of the incident;
- ii. immediately verbally notify the appropriate law enforcement authority in accordance with state law;
- iii. submit the mandated critical incident report form within 24 hours of the incident to the appropriate unit as identified above based on the type of critical incident;
- iv. submit a final written report of the incident, if indicated, to the appropriate unit identified above based on

the type of critical incident as soon as possible but no later than five working days;

v. submit a final written report of the incident to the legal guardian as soon as possible but no later than five working days; and

vi. conduct an analysis of the incident and take appropriate corrective steps to prevent future incidents from occurring.

vii. maintain copies of any written reports or notifications in the child's record.

2. Other Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating and analyzing all documenting, reporting, investigating and analyzing all other accidents, incidents and other situations or circumstances affecting the health, safety or well-being of a child or children.

a. The provider shall initiate a detailed report of any other unplanned event or series of unplanned events, accidents, incidents and other situations or circumstances affecting the health, safety or well-being of a child or children excluding those identified in C.1.a. above within 24 hours of the incident. At a minimum, the incident report shall contain the following:

- i. date and time the incident occurred;
- ii. a brief description of the incident;
- iii. where the incident occurred;
- iv. any child or staff involved in the incident;
- v. immediate treatment provided, if any;
- vi. symptoms of pain and injury discussed with the physician;
- vii. signature of the staff completing the report;
- viii. name and address of witnesses;
- ix. date and time the legal guardian was notified;
- x. any follow-up required;
- xi. preventive actions to be taken in the future; and
- xii. any documentation of supervisory and administrative reviews.

b. A copy of all written reports shall be maintained in the child's record.

D. Abuse and Neglect

1. The provider shall have a written policy and procedure for detecting and reporting suspected abuse or neglect that:

a. describes communication strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, mandated reporting requirements to the child protection provider and applicable laws;

b. ensures the child is protected from potential harassment during the investigation;

c. addresses when an examination by a medical professional is indicated;

d. ensures that any staff member who abuses or neglects a child will be disciplined;

e. ensures the staff member involved in the incident does not work directly with the child involved in the allegation(s) until an internal investigation is conducted by the provider or the child protection unit makes an initial report;

f. ensures the staff member that may have been involved in the incident is not involved in conducting the investigation;

g. ensures that confidentiality of the incident is protected.

2. Any case of suspected child abuse or neglect shall be reported according to the guidelines outlined in the Children's Code Articles Ch.C. 609 and Ch.C. 610.

E. Children's Rights

1. Provider Responsibility

a. The provider shall have written policies and procedures that ensure each child's rights are guaranteed and protected.

b. None of the child's rights shall be infringed upon or restricted in any way unless such restriction is necessary to the resident's individual service plan. When individual rights restrictions are implemented, the provider shall clearly explain and document any restrictions or limitations on those rights, the reasons that make those restrictions medically necessary in the child's individual service plan and the extent and duration of those restrictions. The documentation shall be signed by provider staff, the child and the child's legal guardian(s) or parent(s), if indicated. No service plan shall restrict the access of a child to legal counsel or restrict the access of state or local regulatory officials to a resident.

c. Children with disabilities have the rights guaranteed to them under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq. and regulations promulgated pursuant to the ADA, 28 C.F.R. Parts 35 and 36 and 49 C.F.R. Part 37; §504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, and regulations promulgated pursuant thereto, including 45 C.F.R. Part 84. These include the right to receive services in the most integrated setting appropriate to the needs of the individual; to obtain reasonable modifications of practices, policies, and procedures where necessary (unless such modifications constitute a fundamental alteration of the provider's program or pose undue administrative burdens); to receive auxiliary aids and services to enable equally effective communication; to equivalent transportation services; and to physical access to a provider's facilities.

2. Privacy

a. A child has the right to personal privacy and confidentiality. Any records and other information about the child shall be kept confidential and released only with the child's or legal guardian's expressed written consent or as required by law.

b. A child shall not be photographed or recorded without the express written consent of the child and the child's legal guardian(s). All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the child.

c. A child shall not participate in research projects without the express written consent of the child and the child's legal guardian(s).

d. A child shall not participate in activities related to fundraising and publicity without the express written consent of the child and the child's legal guardian(s).

3. Contact with Family and Collaterals

a. A child has the right to consult and have visits with his/her family (including but not limited to his or her mother, father, grandparents, brothers, and sisters), legal guardian(s) and friends subject only to reasonable rules. The reasons for any special restrictions shall be recorded in the child's service plan and explained to the child and his or her

family. The service plan manager shall review the special restrictions every 30 days and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's service plan. No service plan shall restrict home visits without approval from the legal guardian.

b. A child has the right to telephone communication. The provider shall allow a child to receive and place telephone calls in privacy subject only to reasonable rules and to any specific restrictions in the child's service plan. The service plan manager shall formally approve any restriction on telephone communication in a child's service plan. The service plan manager shall review the special restrictions every 30 days and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's service plan. The cost for long distance calls shall not exceed the usual and customary charges of the local phone company provider. There shall be no restrictions on communication between a child and the child's legal counsel.

c. A child has the right to send and receive mail. The provider shall allow children to receive mail unopened, uncensored and unread by staff unless contraindicated by the child's service plan. The service plan manager shall review this restriction every 30 days. No service plan shall restrict the right to write letters in privacy and to send mail unopened, uncensored and unread by any other person. Correspondence from a child's legal counsel shall not be opened, read or otherwise interfered with for any reason. Children shall have access to all materials necessary for writing and sending letters and, when necessary, shall receive assistance.

d. A child has the right to consult freely and privately with legal counsel, as well as, the right to employ legal counsel of his/her choosing.

e. A child has the right to communicate freely and privately with state and local regulatory officials.

4. Safeguards

a. A child has the right to be free from mental, emotional, and physical abuse and neglect and be free from chemical or mechanical restraints. Any use of personal restraints shall be reported to the child's legal guardians(s).

b. A child has the right to live within the least restrictive environment possible in order to retain their individuality and personal freedom.

c. Children shall not be subjected to corporal punishment or cruel, severe, unusual, degrading or unnecessary punishment.

5. Civil Rights

a. A child's civil rights shall not be abridged or abrogated solely as a result of placement in the provider's program.

b. A child shall not be denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, color, religion, national origin, sexual orientation, physical limitations, political beliefs, or any other non-merit factor. Facilities must comply with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. (ADA).

6. Participation in Program Development.

a. A child has the right to be treated with dignity in the delivery of services.

b. A child has the right to receive preventive, routine and emergency health care according to individual

need and that will promote his or her growth and development.

c. A child has the right to be involved, as appropriate to age, development and ability, in assessment and service planning.

d. A child has the right to consult with clergy and participate in religious services in accordance with his/her faith. The provider shall have a written policy of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the child and the child's legal guardian(s). When appropriate, the provider shall determine the wishes of the legal guardian(s) with regard to religious observance and make every effort to ensure that these wishes are carried out. The provider shall, whenever possible, arrange transportation and encourage participation by those children who desire to participate in religious activities in the community.

F. Prohibited Practices

1. The provider shall have written policies and procedures regarding its discipline and behavior management program. The provider shall ensure its policy:

- a. is maintained in writing and current;
- b. is available to the child and the child's parent or custodian;
- c. includes:
 - i. the goal and purpose of the provider's discipline and behavior management program;
 - ii. approved methods of discipline and behavior management; and,
 - iii. a list of persons authorized to administer discipline and behavior management methods to children in foster care; and
 - iv. the provider's method of monitoring and documenting implementation of the policy.

2. The provider shall maintain a list of prohibited practices that shall include the following:

- a. use of a chemical or mechanical restraint;
- b. corporal punishment such as slapping, spanking, paddling or belting;
- c. marching, standing or kneeling rigidly in one spot;
- d. any kind of physical discomfort except as required for medical, dental or first aid procedures necessary to preserve the resident's life or health;
- e. denial or deprivation of sleep or nutrition except under a physician's order;
- f. denial of access to bathroom facilities;
- g. verbal abuse, ridicule or humiliation, shaming or sarcasm;
- h. withholding of a meal, except under a physician's order;
- i. requiring a resident to remain silent for a long period of time;
- j. denial of shelter, warmth, clothing or bedding;
- k. assignment of harsh physical work;
- l. punishing a group of residents for actions committed by one or a selected few;
- m. withholding family visits;
- n. extensive withholding of emotional response;
- o. denial of school services and denial of therapeutic services; and

p. other impingements on the basic rights of children for care, protection, safety, and security.

3. The child, where appropriate, and the child's legal guardian(s) shall receive a list of the prohibited practices. There shall be documentation of acknowledgement of receipt of the list of prohibited practices by the child and, where appropriate, the child's legal guardian(s) in the child's record.

G. Grievance Process

1. The provider shall have a written grievance policy and procedure for the child designed to allow them to make complaints without fear of retaliation. The child shall be informed of the advocacy services available.

a. The provider shall make every effort to ensure that all child(ren) are aware of and understand the grievance procedure.

b. The child's records shall contain a record of any grievances and their resolutions.

H. Quality Improvement

1. The provider shall have a written policy and procedure for maintaining a quality improvement program to include:

- a. systematic data collection and analysis of identified areas that require improvement;
- b. objective measures of performance;
- c. periodic review of resident records;
- d. quarterly review of incidents to include documentation of the date, time and identification of residents and staff involved in each incident; and
- e. implementation of plans of action to improve in identified areas.

2. Documentation related to the quality improvement program shall be maintained for at least two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§7313. Foster Care Services

A. Provider Responsibilities

1. Type of Services

a. The provider may provide any or all of the following types of foster care services in a certified foster home:

- i. basic foster care services;
- ii. specialized foster care services;
- iii. therapeutic foster care services; and
- iv. respite care services.

2. Number of Children

a. The foster home shall have no more than eight dependents including foster children and their own children and shall care for a maximum of six foster children at any given time with the exception of a sibling group, who may remain together.

b. A maximum of two children under two years of age can be placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.

3. Background Checks

a. The provider shall perform a state and national criminal background check on the applicant(s) and any member of the applicant's household in accordance with the

R.S. 46:51.2 for any crime enumerated under R.S. 15:587.1 and Public Law 105-89.

b. An inquiry of the state central registry for members of the household 18 years of age and older shall be conducted. No person who is recorded on the state central registry with a valid (justified) finding of abuse or neglect of a child can reside in the home. The parent(s) and all other members of the household, 18 years of age or older, shall sign a release for a clearance with the State Central Registry. If the applicant(s) or any other adult living in the home of such applicant resided in another state within the proceeding five years, the provider shall request and obtain information from that state's child abuse and neglect registry.

4. Personnel Qualifications

a. Supervisor. The supervisor shall meet the following qualifications:

i. a master's degree from an accredited school of social work;

ii. two years experience in child placement;

iii. in all instances, child placement staff shall include a person meeting the qualifications of a supervisor of placement services;

iv. a staff person shall be delegated supervisory authority and responsibility in the short-term absence of the supervisor of placement services for illness, vacation, jury or military duty, professional seminars and meetings or in short-term periods when the position is vacant; and

v. a person serving as acting supervisor shall meet the qualifications of supervisor of placement services. If there is no one on staff who meets the qualification, the agency may meet the minimum requirements for licensing by entering into an agreement with another CPA for supervision or by entering into a contractual agreement with a private practitioner who meets the qualifications and is a licensed clinical social worker.

b. Child Placement Worker. The Child Placement Worker (CPW) shall meet the following qualifications:

i. have a minimum of a bachelor's degree in social work or any bachelor's degree plus one year of social service experience;

ii. a child placement worker located in a branch office apart from the supervisor of placement services shall have a master's degree from an accredited school of social work;

iii. in providers where the child placement staff is comprised of one placement worker, this person shall meet the qualifications of the supervisor of placement services.

c. Child Placement Worker (CPW) Assistant. The CPW assistant shall:

i. be at least 18 years of age;

ii. have a high school diploma or equivalency; and

iii. have one year of experience providing basic child welfare support services to children.

5. Personnel Job Duties

a. The supervisor shall be responsible for:

i. supervising staff providing services in the provider program areas;

ii. guides employees in the assessment of services or placement needs of children; the development of psychosocial assessment of case goals/objectives and/or case

plans for children and their families; and the implementation of the case plan;

iii. determines work assignments and periodically monitors workers' productivity and activity;

iv. may serve as a consultant to other supervisors or employees;

v. may design and deliver training curricula or on-the-job training opportunities;

vi. gathers and analyzes data in order to design and implement recruitment campaigns to recruit potential adoptive and foster family resources to meet the placement needs of children in provider custody; and

vii. reviews and approves foster home studies, certifications and placements.

b. The CPW shall be responsible for:

i. assessing, developing, and executing a plan to achieve permanence for the child including return to the family, adoptions, transfer of custody, independent living, or other alternative plans;

ii. providing services to a caseload of children removed from their homes by court order, voluntary surrender, or voluntary placement agreement and placed in a foster home or a more restrictive setting;

iii. overseeing the placement to ensure the child's well-being, assesses probability of return, and plan for the child's permanence;

iv. developing and implementing a recruitment plan for certifying perspective foster and adoptive families;

v. preparing and conducting extensive orientation and training for potential foster and adoptive homes;

vi. examining and evaluating information gathered about families, housing, and environment in relation to provider criteria and licensing regulation for certification of perspective adoptive and foster homes;

vii. complete home studies;

viii. upon completion of written home studies, recommend approval or denial of certification for perspective adoptive and foster homes based on a combined evaluation and assessment process;

ix. re-evaluating for continued annual re-certification for foster and adoptive homes. Develops and implements a corrective action plan to correct deficiencies; and

x. maintaining listing of all foster and adoptive homes in area and recommends appropriate resources to workers placing children.

c. The CPW assistant shall be responsible for:

i. assisting professional staff in providing services to the children;

ii. instructing children in the practical application of improved standards of housekeeping, shopping, personal hygiene, medical and childcare, and other necessary home management skills;

iii. lifting or assisting children into the transit with their personal belongings and any medically needed equipment such as a wheel chair, an oxygen tank, a walker, etc.;

iv. observing and reporting children's behavior to professional staff to aid in the assessment and treatment plan of the case;

v. monitoring family visitation between caretaker and child(ren) with parents, as required;

- vi. preparing narrative reports and maintaining visitation log as required;
- vii. scheduling and arranging child transportation for follow-up visits;
- viii. effectively communicating with children to defuse potentially dangerous situations such as physical/verbal confrontations between children and/or towards provider staff;
- ix. completing various forms and reports; and
- x. may be responsible for vehicle maintenance and documentation of such.

6. Child's Record

- a. The provider shall maintain a record for each child placed, which contain (if applicable):
 - i. identifying information including the name, address, sex, race, nationality, birth date and birth place of the child;
 - ii. the provider's written authorization to care for the child;
 - iii. a copy of the home study;
 - iv. the current name, address, telephone number and marital status of the parent(s) and/or custodian(s) of the child;
 - v. the name, address, and telephone number of siblings if placed elsewhere and significant relatives or others considered in the case plan;
 - vi. copies of legal documents verifying status of the child including birth certificate, court orders or dispositions, voluntary surrenders for adoption, final decree of adoption;
 - vii. the medical history, circumstances health record, and available psychological and psychiatric reports or specialist evaluations;
 - viii. the social assessment and background of the parent(s) and family;
 - ix. summary which reflects the dates of contact with the child, initial assessment and case plan, all subsequent assessments and case plans, content of the supervisory visits;
 - x. a record of the provider's contacts with the child's family, including copies of correspondence with other interested persons and organizations;
 - xi. home study summary and plan indicating the circumstances leading to the decision to place the child, the provider's involvement with the parent(s), including services offered, delivered, or rejected;
 - xii. educational information records, evaluations and reports;
 - xiii. summary of case reviews which reflect the contacts with and the status of all family members in relation to the case plan as well as the achievements or changes in the goals;
 - xiv. summary of any administrative or outside service reviews on the progress of each child toward goal determination;
 - xv. summary of the child's contacts with family members which reflect the quality of the relationships as well as the way the child is coping with them;
 - xvi. a record of the child's placements with names of care-givers, addresses, begin and end dates of care. Signed placement agreements shall be filed in the record;

- xvii. chronological record, noting significant events and contacts with the child and documentation of supervisory visits;
- xviii. documentation of compliance with the case plan;
- xix. the basis for selection of the home or residential provider for the specific child; and
- xx. summary of case disposition, date of discharge, name, address of person(s) or provider to whom child was discharged and the reason for discharge.

7. Parent(s) Record

- a. The provider shall maintain a record for each child placed, which contain (if applicable):
 - i. identifying information for each parent including name, address, telephone number, birth date, race, religion, the family composition, and interested others;
 - ii. effort to maintain child in own home;
 - iii. reason for placement;
 - iv. the social history;
 - v. the medical history, including any psychological or psychiatric reports and specialists reports;
 - vi. strengths and needs of the family and the services required;
 - vii. worker's assessment, home study, initial and subsequent case plans, including conditions for return of child;
 - viii. verification of custody of child;
 - ix. signed agreements between the provider and parent(s) or custodian (for voluntary placements);
 - x. chronological record, noting significant events and dates of contact with parent(s) and progress toward goals;
 - xi. written summary of visits between parent(s) and child;
 - xii. case review reports;
 - xiii. discharge summary.
 - xiv. the application;
 - xv. references from at least three sources;
 - xvi. criminal record check reports;
 - xvii. a summary of contacts from application until placement;
 - xviii. correspondence;
 - xix. copies of legal documents verifying marital status;
 - xx. summary containing the placement decision, replacement and post-placement contacts with the family and the child adopted;
 - xxi. a copy of the information given to the adoptive parent(s) concerning the child(ren) placed or to be placed with them; and
 - xxii. disposition summary for certified homes at decertification stating the reason.

8. Staffing Requirements

- a. Supervisors of placement services shall be responsible for not more than six full time child placement workers and/or aides and volunteers.
- b. Child placement worker case loads shall be limited to allow for all required contracts with the parent(s), children, foster families, and collateral parties. The provider shall maintain a maximum average case load size of 25 active placement cases.

9. Interstate Compact on the Placement of Children

a. The provider accepting any child who resides in another state shall show proof of compliance with the terms of the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the compact officers of each state involved.

b. The provider shall send written notice to the administrator of the Interstate Compact on the Placement of Children on forms provided by the department before placing into or receiving a child from another state. No interstate placement shall occur without prior approval from the compact administrator from the receiving state.

c. The provider shall conduct or accept only a state approved home study for interstate foster home placements.

d. The provider shall conduct or accept only a state approved home study for interstate adoptive placements.

e. If a child makes a brief visit out of state, not accompanied by provider personnel, the provider shall obtain prior consent from designated department staff.

f. A provider shall comply with subsection (a) of this section if a child placed with the provider visits or receives respite care in another state for a period to exceed:

- i. 30 days; or
- ii. the child's school vacation period.

B. Certification of a Foster Home

1. Recruitment of an Applicant

a. The provider's staff shall recruit a prospective foster home and approve the applicant for participation as a foster home if the provider meets all of the required standards.

b. The provider shall have a written plan for ongoing recruitment of foster homes which includes the methods of recruitment, resources to be used, time-related goals for applicant recruitment, designated staff, and funding to implement the plan.

2. Home Study

a. The provider shall complete a home study on a foster home applicant(s) prior to placement of a child in the home.

b. The applicant(s) shall be allowed the opportunity to review a copy of their home study whether the application was approved or denied for certification. Any quotations from reference letters or other third party letters or telephone reports from agencies or professionals shall be deleted. Identifying information regarding the child's biological family shall be removed, unless a release of information is obtained from the birth parent(s).

c. With written permission of the applicant(s), the provider may forward a copy of the home study to another child placement provider for placement consideration or re-application to another child placing provider.

d. The home study shall include verification of the following:

- i. marital status;
- ii. verification the applicant is legally married or single;
- iii. citizenship/age requirement; and
- iv. proof of the applicant's:

(a). identity, such as a federally or state-issued photo identification card;

(b). United States citizenship, such as a birth certificate, or legal alien status, such as a permanent child card, as described in 8 U.S.C. 1151 as evidence.

3. That they meet the following age requirements unless otherwise specified:

- a. at least 21 years of age; and
- b. less than 65 years of age.

4. If the foster parent(s) is a relative, the foster parent(s) shall be considered if:

- a. between 18 and 21 years of age or over 65 years of age; and
- b. is able to meet the needs of the child to be placed in the applicant's home;
- c. income;
- d. verification that the applicant has sufficient income, separate from foster care reimbursement, to meet the needs of the family;
- e. references;
- f. three personal references who are not related to the applicant and one reference who is related to the applicant but does not live in the home;
- g. health;
- h. a statement for each member of the applicant's household that shall be signed by a licensed physician or licensed health care professional verifying that the individual:

- i. is free of a communicable or infectious disease; and
- ii. has no illness or condition that would present a health, to include past and present mental health, or safety risk to a child placed in the applicant's home;
- iii. is physically able to provide necessary care for a child;

i. the home study shall also include:

- i. at least two home consultation visits and a third visit which may be a home or office visit; separate face to face interviews with each age appropriate member of the household and an interview with an adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history;
- ii. discussion of motivation or origin of interest in foster care; the child(ren) requested in regard to the number, age, sex, characteristics; or acceptability in regard to health or developmental conditions or other special needs;
- iii. history of any previous application for adoption. The provider shall document the attempt to obtain a copy of any previous home study from the responsible provider. If an applicant was approved to foster or adopt a child by another provider or the department and the applicant's home was closed, verification of the closure and a statement to indicate whether the closure was at the request of the applicant or the provider;
- iv. background information and social information of applicant(s) and all members of the household to include but not limited to:

- (a). personality in general and in relation to being an adoptive family;
- (b). family background, customs, relationship patterns, formative experiences with adoption, and (if immigrants) early adjustment in the new country;
- (c). marriage(s), marital or non-marital relationship(s), nature, quality, and agreement on respective

roles, how are mutual needs met and how would a new child affect the relationship;

(d). children in the family and family interaction patterns and relationships, where/how would a new child fit in and affect family relationships;

(e). hobbies, interests, social contacts, contacts with extended family, integration into/involvement in community, how will these be affected by the addition of a new child;

(f). discussion of past and present mental and physical health of all applicant and family members;

(g). discussion of religious faith, affiliation, practices, attitudes towards religion, openness to religion of others and how parent(s) view the role of religion in rearing children;

(h). an assessment of the attitude of each member of the applicant's household extended family and significant others involved with the family toward the placement of a child into the home;

(i). disciplinary beliefs and practices;

(j). plan for child care if parent(s) work outside of the home; special provisions for meeting needs of specific placement;

(k). attitude and capacity for handling a foster care disruption if that should be necessary; and

(l). if a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

(i). hours of operation;

(ii). type of business; and

(iii). clientele.

5. Training the Foster Home Parent(s)

a. The foster parent(s) shall participate in training provided or approved by the agency to develop and enhance their skills.

b. The provider shall develop and provide orientation and preparation to a prospective foster parent, to include the following:

i. provider program description with mission statement;

ii. information about the rights and responsibilities of the home; and

iii. background information about the foster child and the child's family;

iv. an example of an actual experience from a foster parent that has fostered a child;

v. information regarding:

(a). the stages of grief;

(b). identification of the behavior linked to each stage of grief;

(c). the long-term effect of separation and loss on a child;

(d). permanency planning for a child, including independent living services;

(e). the importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;

(f). family functioning, values, and expectations of a foster home;

(g). cultural competency;

(h). how a child enters care and experiences foster care, and the importance of achieving permanency; and

(i). identification of changes that may occur in the home if a placement occurs, to include:

(i). family adjustment and disruption;

(ii). identity issues;

(iii). discipline issues and child behavior management; and

(iv). specific requirements and responsibilities of a foster parent.

c. The foster parent(s) shall annually participate in a minimum of 15 hours of approved training. The hours may be shared among the adult members of the family, however, each adult shall receive a minimum of five hours; and shall maintain a record of all preparation and training completed.

6. Parent(s) Requirements

a. General Requirements

i. Foster parent(s) shall:

(a). only accept children for family foster care only from a licensed CPA or the state agency;

(b). not care for unrelated adults on a commercial basis nor accept children into the home for day care at the same time they are certified to provide family foster care;

(c). not accept children beyond the maximum capacity allowable for a family foster home;

(d). permit the provider to visit the home;

(e). share with the provider information about the child placed by the provider;

(f). notify the provider prior to:

(i). leaving the state with a child placed by the provider for more than two nights; or

(ii). allowing a child placed by the provider to be absent from the foster home for more than three days;

(g). report, if applicable, within two business days to the provider if there is a:

(i). change in address;

(ii). change in the number of people living in the home;

(iii). insignificant change in circumstance in the foster home; or

(iv). failure of the foster child or foster parent to comply with the supervision plan;

(h). cooperate with the provider regarding the following when the staff arranges between a child and the child's birth family:

(i). visits;

(ii). telephone calls;

(iii). mail; or

(iv). email;

(i). surrender a child or children to the authorized representative of the provider or the state provider, which has custody of the child, upon request;

(j). keep confidential all personal or protected health information as shared by the department or provider according to state law and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(k). support an assessment of the service needs, including respite care, and the development of a service plan of a child placed by the provider;

(l). participate in a case planning conference concerning a child placed by the provider;

(m). cooperate with the support and implementation of the permanency goal established for a child placed by the provider;

(n). provide medical care to a child as needed, including:

(i). administration of medication to the child and daily documentation of the administration; and

(ii). annual physicals and examinations for the child;

(o). comply with general supervision and direction of the provider concerning the care of the child placed by the provider.

(p). be knowledgeable of disciplinary measures and shall:

(i). recognize, encourage, and regard acceptable behavior;

(ii). teach by example and use fair and consistent rules with logical consequences;

(iii). use methods of discipline that are relevant to the behavior;

(iv). supervise with an attitude of understanding, firmness, and discipline;

(v). give clear directions and provide guidance consistent with the child's level of understanding;

(vi). redirect the child by stating alternatives when behavior is unacceptable;

(vii). express themselves so the child understands that the child's feelings are acceptable but certain actions or behavior are not;

(viii). help the child learn what conduct is acceptable in various situations;

(ix). encourage the child to control the child's own behavior, cooperate with others and solve problems by talking things out;

(x). communicate with the child by showing an attitude of affection and concern; and

(xi). encourage the child to consider others' feelings.

b. Exterior Environment Requirements

i. The foster home shall be reasonably safe, in good repair and comparable in appearance and maintenance to other family homes in the community.

ii. The home and the exterior around the home shall be free from objects, materials and conditions which constitute a danger to the children served.

iii. The home shall have a safe outdoor play area which children may use either on the property or within a reasonable distance of the property. Any play equipment on the property shall be safe, well constructed and suitable for the children served.

iv. Any swimming and wading pools areas shall be locked and be made inaccessible to children except when supervised.

c. Interior Environment Requirements

i. Foster parent(s) shall have the necessary equipment for the safe preparation, storage, serving and clean up of meals.

ii. Foster parent(s) shall maintain all cooking and refrigeration equipment in working and sanitary condition.

iii. The home shall have a comfortable dining area furnished with sufficient furniture so that all members of the household can eat together.

iv. The home shall have sufficient living or family room space comfortably furnished and accessible to all members of the family.

v. Sleeping arrangements in a foster home shall be subject to the prior approval of the placing agency.

vi. Foster parent(s) shall permit no more than four children to a bedroom.

vii. The home shall have sufficient bedroom space to allow at least 75 square feet for individual occupant of a bedroom and an additional 55 square feet for each additional occupant.

viii. Providers receiving federal funds may not use standards related to income, age, education, family structure and size or ownership of housing which exclude groups of prospective parents on the basis of race, color, or national origin, where these standards are arbitrary or unnecessary or where less exclusionary standards are available.

ix. Foster parent(s) shall provide each child with his/her own bed and each infant with his/her own crib. The bed shall be no shorter than the child's height and no less than 30 inches wide. It shall have a clean, comfortable, non-toxic mattress with a water proof cover.

x. Foster parent(s) shall not permit children over the age of six years to share a bedroom with a person of the opposite sex.

xi. Children shall not share a bedroom with adults, except when the child needs close supervision due to illness or except at the discretion of the placing agency.

xii. Foster parent(s) shall provide a chest, dresser or other adequate storage space for a child's clothing and personal belongings in the child's bedroom and a designated space for hanging up clothes near the bedroom occupied by the child.

xiii. Bedrooms shall have windows which provide sufficient natural light and ventilation for the health of the children.

xiv. Foster parent(s) shall allow some scope in the decoration of sleeping areas for the personal tastes and expressions of the child.

xv. Foster parent(s) shall provide bed linen and sufficient blankets and pillows for all children.

xvi. The family foster home shall have a minimum of one flush toilet; one wash basin with running water, and one bath or shower with hot and cold water.

xvii. Foster parent(s) shall equip each bathroom with toilet paper, towels, soap and other items required for personal hygiene and grooming.

xviii. Allow each child sufficient privacy with the exclusion of security/video cameras from areas such as the child's bedroom and/or bathroom.

d. Safety Requirements

i. The home shall be well heated and well ventilated.

ii. The foster parent(s) shall:

(a). provide screens for windows and doors used for outside ventilation;

- (b). have a telephone in the home;
- (c). ensure the safe storage of drugs, poisons or other harmful materials;
- (d). store alcoholic beverage out of reach of small children;
- (e). take measures to keep the home and premises free of rodents and insects;
- (f). restrict children's access to potentially dangerous animals. Pets shall have current immunizations;
- (g). store unloaded firearms and ammunition in separate locked places, inaccessible to children; and
- (h). have household first aid supplies for treating minor cuts, burns and other minor injuries.
- e. Fire Safety Requirements
 - i. The home shall be free from fire hazards, such as faulty electric cords and appliances, or non-maintained fireplaces and chimneys.
 - ii. Foster parent(s) living in apartment buildings shall give evidence that the building has been approved for building and fire safety within the last two years.
 - iii. Family foster homes including mobile homes shall have two doors which provide unrestricted exits in case of fire.
 - iv. Foster parent(s) shall:
 - (a). equip the home with operating smoke alarms within 10 feet of each bedroom;
 - (b). place a portable chemical fire extinguisher in the cooking area of the home;
 - (c). establish an emergency evacuation plan and shall practice it at least quarterly with the children to make sure all children understand the procedures;
 - (d). store combustible items away from sources of heat;
 - (e). shield all home heating units and other hot surfaces against accidental contact; and
 - (f). maintain safe conditions with properly installed, maintained and operated solid fuel heating stoves, systems, and fireplaces.
 - f. Sanitation and Health Requirements
 - i. Foster parent(s) shall keep the home clean and free of hazards to the health and physical well being of the family.
 - ii. The home shall have a continuous supply of clean drinking water. If the water is not from a city water supply, the foster parent(s) shall have the water tested and approved by the local health authority.
 - iii. The milk served to children shall either be Grade A and pasteurized or from an approved source.
 - iv. All plumbing in the home shall be in working order.
 - v. The home shall have an adequate supply of hot water for bathing and dishwashing. Hot water accessible to children shall not exceed 120 degrees Fahrenheit at the outlet.
 - g. Daily Living Services Requirements
 - i. Provide structure and daily activities designed to promote the individual, social, intellectual, spiritual, and emotional development of the child(ren) in their home.
 - ii. Assist the foster child(ren) to develop skills and to perform tasks which will promote independence and the ability to care for themselves.

- iii. Cooperate with the provider to help the foster child maintain an awareness of his past, a record of the present and a plan for the future.
- iv. Ask foster children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children.
- v. As appropriate to the child's age and abilities, make every effort to teach good habits of money management, budgeting and shopping.
- vi. Through careful daily monitoring, make every effort to teach a child good habits of personal hygiene and grooming appropriate to the child's sex, age and culture.
- h. Food and Nutrition Requirements
 - i. Provide at least three nutritionally balanced meals daily according to the child's service plan.
 - ii. Provide for any special dietary needs of the foster child placed in their home on the advice of a licensed physician or in accordance with the child's case plan.
 - iii. If applicable, the dietary laws of the child's religion shall be observed in the food provided to the child.
 - i. Clothing Requirements
 - i. Provide each foster child with their own clean, well fitting, attractive, seasonal clothing appropriate to age, sex, individual needs and comparable to other household members and to the community standards.
 - ii. A child's clothing shall be his/her own, not required to be shared.
 - iii. A child's clothing shall go with the child when they leave.
 - iv. Only shoes in good repair and condition shall be provided for the child.
 - v. Allow the foster child(ren) to assist in the choosing of their own clothing whenever possible.
 - j. Personal Belongings Requirements
 - i. Allow the child to bring, possess and acquire personal belongings subject only to reasonable household rules.
 - ii. Personal belongings shall be sent with the child when he/she leaves the home.
 - iii. Ensure that each child is provided with clean towels, washcloths, his/her own toothbrush, his/her own comb or hair brush and other toiletry items suitable to the child's age and sex.
 - k. Money Requirements
 - i. Ensure that the child has the opportunity to have spending money in amounts appropriate to their age and abilities, either through a regular allowance, paid work, employment or money paid directly to the child from other sources.
 - ii. A child's money from any source shall be his/her own and may be subject to restrictions only according to his/her service plan.
 - iii. Children shall not be required to pay for any mandated foster home service, except according to their service plans.
 - iv. Children shall not be required to pay for necessary toiletry items.
 - v. As appropriate to the child's age and abilities, every effort shall be made to teach good habits of money management, budgeting and shopping.

1. Transportation
 - i. The foster parent(s) shall have access to:
 - (a). reliable transportation;
 - (b). school;
 - (c). recreation;
 - (d). medical care; and
 - (e). community facilities.
 - ii. A foster parent(s) who drives shall:
 - (a). possess a valid driver's license;
 - (b). possess proof of liability insurance; and
 - (c). abide by passenger restraint laws.
 - (d). Support System
 - m. Foster parent(s) shall have or develop an adequate support system for supervising and providing care for the child(ren) on an ongoing basis to allow foster parent(s) opportunities for conducting personal business and for enjoying occasional breaks from the responsibility of caring for the child(ren).
 - n. Foster parent(s) shall provide one responsible adult (over age 18) for direct supervision of children or on call at all times.
 - o. Any person given the responsibility for a child on a regular basis must be identified to and approved by the placing agency.

7. Additional Requirements for Specialized Foster Care Services

- a. A foster home providing specialized foster care services shall accommodate the needs of a child who is unable to live with the child's own family and who has one or both of the following:
 - i. an emotional or behavior problem which may include a Diagnostic and Statistical Manual (DSM) diagnosed mental illness, aggressive or destructive behavior, or multiple placement failures and whose needs prevent placement in a basic level foster home; and
 - ii. a medical or developmental problem or condition that requires more time consuming and specialized care with professional oversight based on the child's specific needs but whose needs prevent placement in a basic level foster home.
- b. The foster parent(s) shall have the following educational requirements:
 - i. high school diploma or equivalent; and
 - ii. two years of experience in specialized fields or in parenting a child with special needs.
- c. Specialized foster homes shall not exceed six dependents, including foster children. They shall care for no more than four specialized foster care children, unless an additional child is a sibling.
- d. The provider shall provide a minimum of 30 hours of orientation and preparation for a prospective specialized foster care parent.
- e. The child placement worker shall:
 - i. have the first face-to-face visit with the child and specialized foster care parent on the day of the child's placement or the following work day;
 - ii. have telephone contact twice a month with at least one of the specialized foster care parents of each child on the specialized child placement worker's caseload;
 - iii. visit the specialized foster care parent monthly in the foster home;

- iv. on a monthly basis, visit the foster child face-to-face in the foster home without the foster parent being present;
- v. carry a caseload of not more than 18 specialized foster care children, taking into account:
 - (a). required responsibilities other than the case management of a child in foster care;
 - (b). additional support, contact, and preparation needed by a specialized foster home, due to the extent of the needs of the child served; and
 - (c). the intensity of services provided to the child and the child's family;
- vi. conduct a semi-annual case consultation, including the:
 - (a). foster home;
 - (b). child's placement worker;
 - (c). supervisor; and
 - (d). child and the child's family of origin, to the extent possible;
- vii. identify the support needed by the foster family, including a plan for respite care; and
- viii. document the semi-annual case consultation and revision to a child's service plan as determined by the case consultations.

8. Additional Requirements for Therapeutic Foster Care Services

- f. The foster home parent(s) shall maintain certification in CPR and first aid.
- g. The foster home parent(s) shall complete a minimum of 20 hours of annual training.
- a. A foster home providing therapeutic foster care services shall accommodate the needs of a child who is unable to live with the child's own family and who has one or both of the following:
 - i. serious emotional or behavioral problems and meets one or more of the following criteria:
 - (a). Diagnostic and Statistical Manual (DSM) diagnosed mental illness, imminent release from a treatment provider, aggressive or destructive behavior, at risk of being placed in more restrictive settings, including institutionalization, or numerous placement failures;
 - (b). a medical or developmental problem or condition so serious that it requires extremely time consuming, specialized care and supervision from a trained person, and ongoing, frequent professional oversight, all of which would be a significant burden to a caregiver. These may include, but are not limited to:
 - (i). a chronic and progressive illness or medical condition;
 - (ii). the need for a special service or ongoing medical support; or
 - (iii). a health condition stable enough to be in a home setting only with monitoring by an attending:
 - [a]. health professional;
 - [b]. registered nurse; or
 - [c]. licensed practical nurse.
 - ii. Therapeutic foster homes shall not exceed four dependents, including foster children. They shall care for no more than two therapeutic foster care children, unless an additional child is a sibling.

c. The foster parent(s) shall have the following educational requirements:

- i. high school diploma or equivalent; and
- ii. two years of college or formal education in human services, child development or nursing and two years work experience in specialized field; or
- iii. four years of experience in specialized fields or in parenting a child with special needs.

d. The provider shall provide a minimum of 36 hours of orientation and preparation for a prospective therapeutic foster care parent.

e. The CPW shall:

i. have the first face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement or the following work day;

ii. have another face-to-face visit with the therapeutic foster parent or child within 10 calendar days of the child's placement;

iii. have telephone contact, on a weekly basis with at least one of the specialized foster care parents of each child on the specialized child placement worker's caseload;

iv. visit a therapeutic foster care parent a minimum of two times a month with at least one visit being in the foster home;

v. visit the foster child face-to-face in the foster home without the foster parent being present a minimum of two times a month with at least one visit in the therapeutic foster care home and one visit outside the foster home;

vi. carry a caseload of not more than 12 therapeutic foster care children, taking into account:

(a). required responsibilities other than the case management of a child in foster care;

(b). additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and

(c). the intensity of services provided to the child and the child's family;

vii. conduct a quarterly case consultation, including the:

(a). foster home;

(b). child's CPW;

(c). supervisor; and

(d). child and the child's family of origin, to the extent possible;

viii. identify the support needed by the foster family, including a plan for respite care; and

ix. recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

x. document a quarterly case consultation and revision to a child's service plan as determined by the case consultations.

f. The foster home parent(s) shall maintain certification in CPR and first aid.

g. The foster home parent(s) shall complete a minimum of 24 hours of annual training.

h. If the child is medically-fragile, training on how to care for the specific needs of the child shall be conducted by a licensed health care professional.

i. If the child is medically-fragile, the foster home must be located within a:

i. one hour drive of a medical hospital with an emergency room; and

ii. thirty minute drive of a local medical facility.

9. Requirements for Respite Services

a. The provider shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

b. Respite care shall not be used as a means of placement for a child.

c. A respite care provider shall:

i. be a certified foster home;

ii. receive from the provider or foster parent, preparation for placement of a child, including:

(a). pertinent information regarding the child's history; and

(b). information regarding the service plan of the child;

(c). provide adequate supervision in accordance with the child's service plan; and

(d). give relief to a foster parent caring for a child or provide for an adjustment period for a child.

10. Denial of a Foster Home Request

a. The applicant shall be notified, in writing within 30 days, if the request to become a foster home parent is not recommended if the applicant is unwilling to withdraw the request to become a foster home parent after receiving a recommendation to withdraw.

b. The provider shall enter a dispositional summary in the applicant(s) case record clearly indicating the reason for denial of the application for certification, the manner in which the decision was presented to the family and whether or not they agreed with the decision.

c. If the applicant disagrees with the department's recommendation to not accept the applicant as a foster home, department staff shall review the request to become a foster home parent and issue a final written determination regarding the department's recommendation.

11. Annual Re-evaluation of the Foster Home

a. The provider shall conduct a personal interview in the home.

b. The provider shall assess the following:

i. any change in the home;

ii. the ability of the home to meet the needs of a child placed in the home; and

iii. the home's continued compliance with the required standards.

12. Decertification of a Foster Home

a. A home shall be decertified if:

i. it is determined that the family does not meet the general requirements for a foster home;

ii. a situation exists that is not in the best interest of a child;

iii. sexual abuse or exploitation by the parent or by another resident of the home is substantiated;

iv. substantiated child abuse or neglect by a resident of the household;

v. a serious physical or mental illness develops that may impair or preclude adequate care of the child by the parent; or

vi. a child has not been placed in the home within the preceding two year period; and

vii. the foster home parent requests a voluntary decertification.

b. Upon voluntary request, the parent shall notify the provider, in writing, at least 30 days before the requested decertification date.

c. The provider shall make adequate preparation and arrangements for the care, custody and control of any children in the home.

d. A home may be decertified according to the terms of the contract between the provider and the home.

e. The provider shall confirm, in a written notice to the home parent, the decision to decertify a home. The notice shall be delivered within 30 calendar days of contact with a foster home parent.

f. The written notice for decertification of a home shall include:

i. notice that the provider shall not place a child in the home;

ii. the reason why the home is being decertified; and

iii. effective date.

13. Reapplication for Certification

a. Persons who desire to re-certify their foster home must re-apply. To reapply, a former foster home parent shall:

i. attend an informational meeting; and

ii. submit the:

(a). names of references; and

(b). authorization for all required background checks.

b. If the foster home has been decertified more than five years, a new home study must be completed.

c. If the home has been decertified five years or less and at the time of decertification the home was in good standing and the re-assessments were up-to-date; the home can be re-certified with an addendum to the home study.

d. If the re-assessments were not in compliance, a new home study must be completed.

e. If the home was decertified during an investigation or needing a corrective action plan, a new home study must be completed.

f. A reapplying former foster home parent shall reenroll and complete the required preparation, as specified in the standards, unless the former foster home parent:

i. has previously completed preparation; and

ii. is considered a placement resource for children.

C. Child Placement

1. Admission

a. The provider shall:

i. place a child only in an approved foster home; and

ii. keep a child who has been committed to the Department of Corrections, Office of Juvenile Justice for the commission of a sex crime in a separate foster home from a child committed to the department.

b. The provider shall select a foster home for a child based upon the individual needs of the child, including:

i. the child's assessment;

ii. any information concerning the child's needs in placement; and

iii. measures to support the safety of the child.

c. Generally, the level at which children are placed should represent:

i. the level of supervision to be provided;

ii. the level of support services to be provided or available;

iii. the level of staff training required; and

iv. the level of restrictiveness of the placement to the child.

d. The child shall participate in the process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

e. The provider shall document the placement in the foster home file.

2. The provider shall have a written agreement with the foster home stating the:

a. responsibilities of the provider and the foster parent(s); and

b. terms of each placement which include, but not limited to the following:

i. the child is being placed with the foster parent(s) temporarily;

ii. the family agrees to work in a partnership with the agency to provide foster care services to children in state custody;

iii. the foster parent(s) agrees to keep all personal information about the child or the child's family confidential and not share with reporters, relatives, television (media), or any organization;

iv. the foster parent(s) meets the certification requirements for foster care;

v. the foster parent(s) will be reimbursed each month by the agency a daily board rate;

vi. the foster parent(s) agrees to cooperate with the agency/provider in making a planned move for the child if replacement should be necessary, except in emergency circumstances;

vii. the foster parent(s) will report to the agency(provider) any changes in their circumstances that have an effect on the child or the foster care placement;

viii. the foster parent(s) will not take the child out-of-state or authorize any special medical care or treatment for the child without the consent of the agency(provider); and

ix. the agency (provider) will provide supportive services to the foster parent(s) to promote a healthy parent-child adjustment and bonding.

3. Service Plan

a. The provider shall:

i. within 30 days of a child's placement, develop:

(a). a service plan based upon the individual needs of the child and, if appropriate, the child's family, which addresses the:

(i). visitation, health, and educational needs of the child;

(ii). child's permanency goals and related objectives;

(iii). methods for accomplishing each goal and objective; and

(iv). designation of an individual or individuals responsible for completion of each goal and objective; and

b. review a child's service plan on a semi-annual basis or more frequently as the child's needs or circumstances dictate; and

c. reassess and document semi-annually, in the child's service plan, placement and permanency goals, including independent living services, if indicated.

4. Supervision of the Child

a. The provider shall establish policies and procedures for supervision of a foster home by a worker other than the child placement worker assigned to the foster home to:

i. include:

(a). frequency of an in-home visit with the foster parent;

(b). means of supervision;

(c). methods of supervision; and

(d). personnel conducting the supervision;

ii. ensure a foster child's placement stability and safety; and

iii. be individualized, as needed, for the child or the foster home.

b. The provider shall conduct face-to-face visits with the child as often as necessary to carry out the case plan, but not less than two visits during the first month of care and monthly visits thereafter and document in the case record.

c. The provider shall identify and make available necessary supports to a foster home, including:

i. a plan for respite care; and

ii. 24 hour crisis intervention.

d. The provider shall provide information to a foster parent regarding the behavior and development of the child placed by the provider.

e. The provider shall inform the foster parent of:

i. inappropriate sexual acts or sexual behavior of the child as specifically known to the provider; and

ii. any behaviors of the child that indicate a safety risk for the placement.

f. The provider shall document each effort to:

i. protect the legal rights of the family and the child; and

ii. maintain the bond between the child and the child's family, in accordance with the child's permanency plan.

g. The provider shall assure that the child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;

h. The provider shall be responsible for monitoring the child's school progress and attendance; and

i. The provider shall secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs.

5. Discharge from Care

a. The provider shall discharge the child from care only to the person, persons or agency having legal custody of him or on written authorization of these or the court.

b. The provider shall complete a discharge summary, to be put in the child's records, which should include:

i. the name and address of the person, persons, or agency to whom the child was discharged;

ii. the reason for discharge;

iii. the date of discharge;

iv. the date of entrance;

v. case plan goals achieved while in care;

vi. follow-up recommendations; and

vii. person or agency responsible.

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HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

§7315. Adoption Services

A. Provider Requirements

1. General Requirements

a. The provider shall assure that all expectant parent(s) considering adoption as a permanent plan are advised of the legal statutes relative to their particular situation. The provider should encourage the parent(s) to seek independent legal counsel if so desired.

b. The provider shall avoid the use of coercion in securing surrenders from parent(s). A surrender shall not be executed any earlier than the third day after the birth or placement of the child.

c. The provider shall advise the parent(s) that a valid surrender for adoption to a child placing provider is final and irrevocable and makes the provider legally responsible for selecting the most appropriate permanent placement for the child. Any previous placement agreements or understandings between the provider and the parent(s) are considered preferences which are not legally binding in the absence of a court order and secondary to the child's right to a timely permanent placement.

d. The provider shall not bring pressure on parent(s) to resume parental responsibility after acceptance of the surrender. Where the child is not in a permanent placement and the parent(s) wish to resume parental responsibility, the provider may consider adoptive placement with the parent(s).

e. The provider shall discuss the potential children available for adoption with the prospective adoptive family in compliance with state laws and provider policies on confidentiality and ethical practices. The provider shall have at least one up-to-date appropriate state or Louisiana Adoption Resource Exchange Photo listing of children to show families.

f. The provider shall inform the prospective adoptive parent(s) of the Louisiana Adoption Resource Exchange, a resource within the department for assisting agencies in linking the waiting child(ren) available for adoption with the waiting prospective adoptive parent(s). If the prospective adoptive parent(s) are interested, the provider shall assist them with registration forms provided by the department.

g. The provider shall advise the adoptive parents of the current provisions of their appropriate state or the Louisiana Voluntary Registry within the department to

acilitate reunions between adult adoptees and birth family members.

2. Background Checks

a. The provider shall perform a state and national criminal background check on the applicant(s) and any member of the applicant's household in accordance with the R.S. 46:51.2 for any crime enumerated under R.S. 15:587.1 and Public Law 105-89.

b. An inquiry of the State Central Registry for members of the household 18 years of age and older shall be conducted. No person who is recorded on the State Central Registry with a valid (justified) finding of abuse or neglect of a child can reside in the home. The parent(s) and all other members of the household, 18 years of age or older, shall sign a release for a clearance with the State Central Registry. If the applicant(s) or any other adult living in the home of such applicant resided in another state within the proceeding five years, the provider shall request and obtain information from that state's child abuse and neglect registry.

3. Interstate Placements

a. The provider shall send written notice to the administrator of the Interstate Compact for the placement of children on forms provided by the authorized agency before placing into or receiving a child from another state. No interstate placement shall occur without prior approval from the compact administrator from the receiving state.

4. Intercountry Adoptions

B. Definitions

Birth Certificate—the child's official birth certificate and, if the certificate is not in English, a certified translation of the certificate.

Child—a person under seventeen years of age and not emancipated by marriage.

Foreign Orphan—a foreign-born child who is under the age of 16 at the time a visa petition is filed on his behalf and whose parents have both died or disappeared, or abandoned or deserted him, or who has become separated or lost from both parents; whose sole surviving parent is incapable of providing for the child's care and has in writing irrevocably released the child for emigration and adoption; or who is a child born outside of marriage whose father acknowledges paternity and signs a relinquishment along with the mother.

C. Persons who may petition for inter-country adoption:

1. A United States citizen and spouse jointly or an unmarried United States citizen at least twenty-five years of age may petition for inter-country adoption of a foreign orphan. At least one petitioner shall be a domiciliary of Louisiana. When one joint petitioner dies after the petition has been filed, the adoption proceedings may continue as though the survivor was a single original petitioner.

D. Placement Authority. No foreign orphan who is the subject of an inter-country adoption shall be placed in the home of the prospective adoptive parents prior to their obtaining a certification for adoption.

E. Birth Certificate Requirement

1. Prior to the initiation of any adoption, the petitioners shall obtain a certified copy of the child's birth certificate, and, if the certificate is not in English, a certified translation of the certificate, which shall be attached to the petition for adoption.

2. If a certified copy of the birth certificate and certified translation are not available, the court may make findings on the date, place of birth, and parentage of the adopted person in accordance with the provisions of R.S. 40:79(C)(2).

F. Record of Adoption Decree

1. A person born in a foreign country who is adopted in the state of Louisiana, but who is not a United States citizen, or who is a naturalized United States citizen, and a person born in a foreign country and adopted outside the United States by adoptive parents who are residents of the state of Louisiana at the time of the adoption, may obtain a new birth certificate according to the following conditions, limitations, and procedures:

a. where a certified copy of the original foreign birth certificate of the adopted person, and, if the certificate is not in English, a certified verbatim translation of the certificate are available, the state registrar, upon receipt of the certificate translation and a certified copy of the order or decree of adoption, shall prepare a birth certificate in the new name of the adopted person and shall seal and file the foreign certificate and order or decree of adoption;

b. where the certified copy of the original birth certificate of the adopted person and certified translation are not available, the court having jurisdiction of adoptions in the parish, upon evidence presented by the Department of Children and Family Services from information secured at the port of entry or upon evidence from other reliable sources, may make findings on the date, place of birth, and parentage of the adopted person. Upon receipt of a certified copy of such findings of the court, together with a certified copy of the order or decree of adoption, the state registrar shall prepare a birth certificate in the new name of the adopted person and shall seal and file the certified copy of the findings of the court and the certified copy of the order or decree of adoption;

c. a birth certificate issued pursuant to the provisions of this Subsection shall show specifically the true or probable country, island, or continent of birth. Except as provided in the following Paragraph, the birth certificate shall be annotated with the provision "not proof of United States citizenship";

d. where a certified copy of a certificate of naturalization is received by the state registrar together with the documents required by this Subsection, the date and number of the certificate of naturalization shall be included in the birth certificate, and the birth certificate shall be accepted by all state agencies as evidence of United States citizenship.

G. Types of Adoption. There are two types of inter-country adoptions of foreign orphans in Louisiana:

1. recognition of a foreign decree of adoption;
2. adoption of a foreign orphan.

H. Services in inter-country placements shall be provided by the state or licensed CPA authorized by the department to provide child placement in foster care and adoption services in Louisiana and shall comply with applicable federal and state laws.

1. The provider shall include in its statement of purpose a description of any inter-country placement

services provided by the provider which may include but not be limited to:

(a). provision of intake services to help the family determine if it can parent a child of another country and culture;

(b). facilitation between the family and the foreign placement entity in direct adoptions or between the family and another child placing provider;

(c). link families with regulatory authorities in the United States and/or foreign country;

(d). provision of a home study for family to the U.S. Citizenship and Naturalization Service (USCIS) with accompanying:

(i). placement recommendation;

(ii). certification that family has met the pre-adoptive requirements in the child's proposed state of residence;

(iii). signatures of the person completing the home study, the placement supervisor, and the provider administrator;

(iv). verification that the provider is licensed or authorized to operate in Louisiana;

(e). facilitate the provision of state-approved home studies for Louisiana families residing abroad through International Social Services to enable them to comply with the provisions of the Immigration and Naturalization Act;

(f). selection and preparation for the child(ren) to be placed and/or family;

(g). follow-up and supervision of the child's adoptive placement status;

(h). assistance to the family with legal finalization of the adoption in Louisiana to include:

(i). verification of documents attesting to the child's legal availability for adoption;

(ii). court reports to the department in connection with the petition to finalize the adoption in a Louisiana court;

(i). assistance to the family in obtaining a revised birth certificate for the child; and

(j). post adoption services;

i. the provider shall conduct or accept only a home study conducted in accordance with these regulations for inter-country adoptive placements;

ii. the provider working directly with foreign entities or with out-of-state licensed agencies to arrange for the placement of children shall establish working relationships and agreements in writing which address the service, legal, and financial responsibilities of the two parties;

iii. the following conditions shall be met by the authorized adoption service or person in another country before a child can be placed for adoption in Louisiana:

(a). the child shall be qualified for adoption and be in the permanent custody of an authorized provider, organization or person in the foreign country;

(b). a duly constituted governmental unit or judicial court of the child's country has authorized the provider, organization, or person to arrange the adoption, who shall observe the laws or customs of the foreign country;

(c). there shall be proper emigration and immigration permits; and

(d). there shall be social and medical history of the child, to the extent available;

iv. providers in Louisiana and those authorized agencies placing foreign born children in to Louisiana shall be subject to the proceeding rules. In addition, such providers shall:

(a). be responsible for making another adoptive plan if the placement disrupts prior to finalization of the adoption;

(b). provide foster care until other appropriate legal steps are complete for the child's permanent care if the adoption disrupts;

(c). arrange for needed medical care for a child if the adoptive parents decide not to keep the child;

(d). advise adoptive parents of the necessity to have the child naturalized as a separate action from the adoption, if applicable;

v. a provider working in conjunction with another out-of-state CPA to arrange for international child placement shall ensure that the other provider is licensed in its state;

vi. the provider shall ensure that all actions related to the international placement and adoption of children satisfy the laws and regulations of Louisiana and any other state in which it is authorized to operate, those of the foreign nation involved and the federal immigration laws;

vii. the provider providing international placement services shall provide written information to families that at a minimum:

(a.) describes provider's services and programs;

(b). defines the legal and financial responsibilities of the provider and the family;

(c). defines its relationship with any other foreign or domestic child placing entity;

(d). identifies direct and indirect costs associated with accomplishing the inter-country adoption;

viii. the provider involved with assisting the family to arrange for the child's emigration, immigration or adoption shall:

(a). ensure that all documents related to the child's legal status, emigration, social and medical status and immigration are valid and accurate;

(b). ensure that documents required for the child's adoption or re-adoption in the United States comply with the laws and requirements for adoption in the state in which adoptive parents will file the adoption petition. When documents are not available or are in question the provider shall be responsible for helping the adoptive parents correct these circumstances;

(c). ensure that families are aware of their responsibility to notify USCIS of changes in the child's residence after the child's adoption and prior to the child's naturalization;

ix. the provider shall send written notice to the department on plans to place a Louisiana child in another country or when approval is given to USCIS for a Louisiana family to adopt a foreign born child;

x. the provider which provides inter-country adoption services to the family shall:

(a). notify USCIS and the department when the child's legal adoption has been finalized so files can be updated;

(b). notify the USCIS and the department when the child's legal adoption has not been finalized within six months of the time provided by state law;

(c). notify the USCIS and the department when custody and/or residence of the child changes prior to finalization of the adoption;

xi. the provider working with an out of state provider to place a foreign born child in Louisiana shall give written notice to the administrator of the Interstate Compact on the Placement of Children before placing a child into or receiving a child from another state. No placement shall occur without prior approval from the compact administrator of the receiving state. A child adopted through the court of jurisdiction in a foreign country or entering Louisiana directly from the foreign country for purposes of adoption are not subject to the Interstate Compact on the Placement of Children;

xii. the provider shall comply with all applicable provisions of the Intercountry Adoption Act, Public Law 106-279.

I. Personnel Qualifications

1. Supervisor. The supervisor shall meet one of the following qualifications:

i. a master's degree from an accredited school of social work; and

ii. two years experience in child placement;

iii. in all instances, child placement staff shall include a person meeting the qualifications of a supervisor of placement services;

iv. a staff person shall be delegated supervisory authority and responsibility in the short-term absence of the supervisor of placement services for illness, vacation, jury or military duty, professional seminars and meetings or in short-term periods when the position is vacant;

v. a person serving as acting supervisor shall meet the qualifications of supervisor of placement services. If there is no one on staff who meets the qualification, the agency may meet the minimum requirements for licensing by entering into an agreement with another CPA for supervision or by entering into a contractual agreement with a private practitioner who meets the qualifications and is a Board Certified Social Worker.

J. Child Placement Worker. The child placement worker (CPW) shall meet the following qualifications:

1. have a minimum of a bachelor's degree in social work or any bachelor's degree plus one year of social service experience;

2. a child placement worker located in a branch office apart from the supervisor of placement services shall have a master's degree from an accredited school of social work;

3. in providers where the child placement staff is comprised of one placement worker, this person shall meet the qualifications of the supervisor of placement services.

K. Child Placement Worker (CPW) Assistant. The CPW assistant shall:

1. be at least 18 years of age;

2. have a high school diploma or equivalency; and

3. have one year of experience providing basic child welfare support services to children.

L. Personnel Job Duties

1. The supervisor shall be responsible for:

a. supervising staff providing services in the provider program areas;

b. guiding employees in the assessment of services or placement needs of children; the development of psychosocial assessment of case goals/objectives and/or case plans for children and their families; and the implementation of the case plan;

c. determining work assignments and periodically monitors workers' productivity and activity;

d. may serve as a consultant to other supervisors or employees;

e. may design and deliver training curricula or on-the-job training opportunities;

f. gathering and analyzing data in order to design and implement recruitment campaigns to recruit potential adoptive and foster family resources to meet the placement needs of children in provider custody;

g. reviewing and approving home studies, certifications and placements.

M. The CPW shall be responsible for:

1. assessing, developing, and executing a plan to achieve permanence for the child including return to the family, adoptions, transfer of custody, independent living, or other alternative plans;

2. providing services to a caseload of children removed from their homes by court order, voluntary surrender, or voluntary placement agreement and placed in a foster home or a more restrictive setting;

3. overseeing the placement to ensure the child's well-being;

4. probability of return, and plan for the child's permanence;

5. developing and implementing a recruitment plan for certifying perspective foster and adoptive families;

6. preparing and conducting extensive orientation and training for potential foster and adoptive homes;

7. examining and evaluating information gathered about families, housing, and environment in relation to provider criteria and licensing regulation for certification of perspective adoptive and foster homes;

8. upon completion of written home studies, recommending approval or denial of certification for perspective adoptive and foster homes based on a combined evaluation and assessment process;

9. re-evaluating for continued annual re-certification for foster and adoptive homes;

10. develops and implements a corrective action plan to correct deficiencies.

11. maintaining listing of all foster and adoptive homes in area and recommends appropriate resources to workers placing children.

N. The CPW assistant shall be responsible for:

1. assisting professional staff in providing services to the children;

2. instructing children in the practical application of improved standards of housekeeping, shopping, personal hygiene, medical and childcare, and other necessary home management skills;

3. lifting or assisting children into the transit with their personal belongings and any medically needed equipment such as a wheel chair, an oxygen tank, a walker, etc.;

4. observing and reporting children's behavior to professional staff to aid in the assessment and treatment plan of the case;

5. monitoring family visitation between caretaker and child(ren) with parents, as required;

6. preparing narrative reports and maintaining visitation log as required;

7. scheduling and arranging child transportation for follow-up visits;

8. effectively communicating with children to defuse potentially dangerous situations such as physical/verbal confrontations between children and/or towards provider staff;

9. completing various forms and reports;

10. may be responsible for vehicle maintenance and documentation of such.

O. Case Record

1. The provider shall maintain a record from the time of the application for services through the completed legal adoption and termination of provider services for:

a. a child accepted for care;

b. the child's family; and

c. an adoptive applicant.

2. The case record shall contain material on which the provider's decision may be based and shall include or preserve:

a. information and documents obtained as required by the court;

b. information about the child and the child's family;

c. a narrative or summary of the services provided with a copy of legal and other pertinent documents; and

d. information gathered during the intake process including the following:

i. a description of the situation that necessitated placement of the child away from the child's family, or surrender of parental rights;

ii. a certified copy of the order to surrender parental rights and committing the child to the provider for the purpose of adoption;

iii. verification of the child's birth record and the registration number;

iv. a copy of the child's medical record up to the time of adoption finalization;

v. a copy of the required home study with verification of all supporting documents;

vi. date of adoptive placement;

vii. a statement of the basis for the selection of this adoptive home for the child;

viii. a record of after-placement services with dates of:

(a). visits;

(b). contacts;

(c). observations;

(d). filing of petition;

(e). granting of judgments; and

(f). other significant court proceedings relative

to the adoption;

(i). child's adoptive name; and

(ii). verification of preparation and orientation training.

3. The provider alone shall have full access to the adoptive parent(s) information.

4. Adoption case records shall be:

a. maintained indefinitely following final placement of a child; and

b. sealed and secured from unauthorized scrutiny in accordance with state law.

5. The provider shall submit microfilm/micro fished adoptive case records to the department, if:

a. the provider closes; and

b. no other operational governing entity exists.

P. Certification of an Adoptive Home

1. Recruitment of an Applicant

a. The provider's staff shall recruit a prospective adoptive home and approve the applicant for participation as an adoptive home if the provider meets all of the required standards.

b. The provider shall have a written plan for ongoing recruitment of adoptive homes which includes the methods of recruitment, resources to be used, time-related goals for applicant recruitment, designated staff, and funding to implement the plan. The provider shall engage in active recruitment of potential adoptive parents who reflect the racial and ethnic diversity of children needing placement.

c. The provider shall provide information to the prospective adoptive parent(s) about:

i. the adoption process;

ii. the provider's policies and practices, legal procedures and the approximate time the process will take;

iii. adoptive standards;

iv. types of children available;

v. the fees, structure, and the availability of a subsidy if applicable.

d. The provider shall provide services to adoptive applicants to assist them in making an informed decision about adoption. The home study should be an opportunity for applicant(s) and provider placement workers to participate in a joint, mutual assessment and evaluation of their potential for meeting the needs of the children available for adoption.

2. Home Study

a. The provider shall complete a home study on adoptive home applicant(s) prior to placement of a child in the home.

b. The applicant(s) shall be allowed the opportunity to review a copy of their home study whether the application was approved or denied for certification. Any quotations from reference letters or other third party letters or telephone reports from agencies or professionals shall be deleted. Identifying information regarding the child's biological family shall be removed, unless a release of information is obtained from the birth parent(s).

c. With written permission of the applicant(s), the provider may forward a copy of the home study to another child placement provider for placement consideration or re-application to another child placing provider.

d. The home study shall include verification of the following:

i. marital status:

(a). verification the applicant is legally married or single;

- ii. citizenship/age requirement:
 - (a). proof of the applicant's:
 - (i). identity, such as a federally or state-issued photo identification card;
 - (ii). United States citizenship, such as a birth certificate, or legal alien status, such as a permanent child card, as described in 8 U.S.C. 1151 as evidence;
 - iii. be at least 18 years of age;
 - iv. income:
 - (a). verification that the applicant has sufficient income, separate from foster care reimbursement, to meet the needs of the family;
 - v. references:
 - (a). three personal references who are not related to the applicant and one reference who is related to the applicant but does not live in the home;
 - vi. health:
 - (a). a statement for each member of the applicant's household that shall be signed by a licensed physician or licensed health care professional verifying that the individual:
 - (i). is free of a communicable or infectious disease;
 - (ii). has no illness or condition that would present a health, to include past and present mental health, or safety risk to a child placed in the applicant's home; and
 - (iii). is physical able to provide necessary care for a child;
- e. The study shall also include:
 - i. at least two home consultation visits and a third visit which may be a home or office visit;
 - ii. separate face to face interviews with each age appropriate member of the household and an interview with an adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history;
 - iii. discussion of motivation or origin of interest in adoption care, the child(ren) requested in regard to the number, age, sex, characteristics or acceptable in regard to health or developmental conditions or other special needs;
 - iv. history of any previous application for adoption. The provider shall document the attempt to obtain a copy of any previous home study from the responsible provider. If an applicant was approved to foster or adopt a child by another provider or the department and the applicant's home was closed, verification of the closure and a statement to indicate whether the closure was at the request of the applicant or the provider;
 - v. background information and social information of applicant(s) and all members of the household to include but not limited to:
 - (a). personality in general and in relation to being an adoptive family;
 - (b). family background, customs, relationship patterns, formative experiences with adoption, and (if immigrants) early adjustment in the new country;
 - (c). marriage(s), marital or non-marital relationship(s), nature, quality, and agreement on respective roles, how are mutual needs met and how would a new child affect the relationship;
 - (d). children in the family and family interaction patterns and relationships, where/how would a new child fit in and affect family relationships;

- (e). hobbies, interests, social contacts, contacts with extended family, integration into/involvement in community, how will these be affected by the addition of a new child;
- vi. discussion of past and present mental and physical health of all applicants and family members.
- vii. discussion of religious faith, affiliation, practices, attitudes towards religion, openness to religion of others and how parent(s) view the role of religion in rearing children;
- viii. assessment of the attitude of each member of the applicant's household extended family and significant others involved with the family toward the placement of a child into the home;
- ix. discussion of disciplinary beliefs and practices;
- x. plan for child care if parent(s) work outside of the home; special provisions for meeting needs of specific special needs placement;
- xi. attitude and capacity for handling an adoptive disruption if that should be necessary;
- xii. attitudes and capacities to parent an adoptee, general attitude toward birth-parent(s) and the reason the child is in need of adoption; understanding and acceptance of the adoptee's separate background, heritage and identity, (if applicable) need for sibling and/or family contact; readiness and capacity to discuss adoption with the child and deal with adoption related issues that arise; adjustment of previously adopted children (if applicable);
- xiii. for individuals or couples wishing to adopt whose good health may not continue throughout the minority of the child or whose life expectancy may be shorter than the minority years of the child, there shall be established a plan for guardianship of the child in the event that incapacity or death precedes the child's reaching the age of majority;
- xiv. if a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:
 - (a). hours of operation;
 - (b). type of business; and
 - (c). clientele.

Q. Training the Adoptive Parent(s)

1. The adoptive parent(s) shall participate in training provided or approved by the agency to develop and enhance their skills.
2. The provider shall develop and provide orientation and preparation to a prospective adoptive parent, to include the following:
 - a. provider program description with mission statement;
 - b. information about the rights and responsibilities of the home; and
 - c. background information about the adoptive child and the child's family.
 - d. an example of an actual experience from an adoptive parent that has adopted a child;
 - e. information regarding:
 - i. the stages of grief;
 - ii. identification of the behavior linked to each stage of grief;
 - iii. the long-term effect of separation and loss on a child;

iv. permanency planning for a child, including independent living services;

v. the importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;

vi. family functioning, values, and expectations of a foster home;

vii. cultural competency;

viii. how a child enters care and experiences adoptive care, and the importance of achieving permanency;

ix. identification of changes that may occur in the home if a placement occurs, to include:

(a). family adjustment and disruption;

(b). identity issues; and

(c). discipline issues and child behavior management; and

(d). specific requirements and responsibilities of an adoptive parent.

3. Parent(s) Requirements

a. General Requirements

i. Adoptive parent(s) shall:

(a). accept children for adoption only from a licensed CPA or the state agency;

(b). not care for unrelated adults on a commercial basis nor accept children into the home for day care at the same time they are certified to provide adoptive care;

(c). not accept children beyond the maximum capacity allowable for an adoptive home;

(d). permit the provider to visit the home;

(e). share with the provider information about the child placed by the provider;

(f). notify the provider prior to:

(i). leaving the state with a child placed by the provider for more than two nights; or

(ii). allowing a child placed by the provider to be absent from the adoptive home for more than three days;

(g). report, if applicable, within two business days to the provider if there is a:

(i). change in address;

(ii). change in the number of people living in the home;

(iii). significant change in circumstance in the home; or

(iv). failure of the adoptive child or parent to comply with the supervision plan;

(h). cooperate with the provider regarding the following when the staff arranges between a child and the child's birth family:

(i). visits;

(ii). telephone calls;

(iii). mail; or

(iv). email;

(i). surrender a child or children to the authorized representative of the provider or the state provider, which has custody of the child, upon request;

(j). keep confidential all personal or protected health information as shared by the department or provider according to state law and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(k). support an assessment of the service needs, including respite care, and the development of a service plan of a child placed by the provider;

(l). participate in a case planning conference concerning a child placed by the provider;

(m). cooperate with the support and implementation of the permanency goal established for a child placed by the provider;

(n). provide medical care to a child as needed, including:

(i). administration of medication to the child and daily documentation of the administration; and

(ii). annual physicals and examinations for the child;

(o). comply with general supervision and direction of the provider concerning the care of the child placed by the provider;

(p). for individuals or couples wishing to adopt whose good health may not continue throughout the minority of the child or whose life expectancy may be shorter than the minority years of the child, there shall be established a plan for guardianship of the child in the event that incapacity of death precedes the child's reaching the age of majority;

(q). be knowledgeable of disciplinary measures and shall:

(i). recognize, encourage, and regard acceptable behavior;

(ii). teach by example and use fair and consistent rules with logical consequences;

(iii). use methods of discipline that are relevant to the behavior;

(iv). supervise with an attitude of understanding, firmness, and discipline;

(v). give clear directions and provide guidance consistent with the child's level of understanding;

(vi). redirect the child by stating alternatives when behavior is unacceptable;

(vii). express themselves so the child understands that the child's feelings are acceptable but certain actions or behavior are not;

(viii). help the child learn what conduct is acceptable in various situations;

(ix). encourage the child to control the child's own behavior, cooperate with others and solve problems by talking things out;

(x). communicate with the child by showing an attitude of affection and concern; and

(xi). encourage the child to consider others' feelings.

4. Exterior Environment Requirements

a. The adoptive home shall be reasonably safe, in good repair and comparable in appearance and maintenance to other homes in the community.

b. The home and the exterior around the home shall be free from objects, materials and conditions which constitute a danger to the children served.

c. The home shall have a safe outdoor play area which children may use either on the property or within a reasonable distance of the property. Any play equipment on the property shall be safe, well constructed and suitable for the children served.

d. Any swimming and wading pools areas shall be locked and be made inaccessible to children except when supervised.

5. Interior Environment Requirements

a. Adoptive parent(s) shall have the necessary equipment for the safe preparation, storage, serving and clean up of meals.

b. Adoptive parent(s) shall maintain all cooking and refrigeration equipment in working and sanitary condition.

c. The home shall have a comfortable dining area furnished with sufficient furniture so that all members of the household can eat together.

d. The home shall have sufficient living or family room space comfortably furnished and accessible to all members of the family.

e. Sleeping arrangements in an adoptive home shall be subject to the prior approval of the placing agency.

f. Adoptive parent(s) shall permit no more than four children to a bedroom.

g. Providers receiving federal funds may not use standards related to income, age, education, family structure and size or ownership of housing which exclude groups of prospective parents on the basis of race, color, or national origin, where these standards are arbitrary or unnecessary or where less exclusionary standards are available.

h. Adoptive parent(s) shall provide each child with his/her own bed and each infant with his/her own crib. The bed shall be no shorter than the child's height and no less than 30 inches wide. It shall have a clean, comfortable, non-toxic mattress with a water proof cover.

i. Adoptive parent(s) shall not permit children over the age of six years to share a bedroom with a person of the opposite sex unless the children are inclusive of the same sibling group.

j. Children shall not share a bedroom with adults, except when the child needs close supervision due to illness or except at the discretion of the placing agency.

k. Bedrooms shall have windows which provide sufficient natural light and ventilation for the health of the children.

l. Adoptive parent(s) shall provide bed linen and sufficient blankets and pillows for all children.

m. The home shall have a minimum of one flush toilet; one wash basin with running water, and one bath or shower with hot and cold water.

n. Adoptive parent(s) shall equip each bathroom with toilet paper, towels, soap and other items required for personal hygiene and grooming.

o. Adoptive parent(s) shall allow each child sufficient privacy with the exclusion of security/video cameras from areas such as the child's bedroom and/or bathroom.

6. Safety Requirements

a. The home shall be well heated and well ventilated.

b. The adoptive parent(s) shall:

i. provide screens for windows and doors used for outside ventilation;

ii. have a telephone in the home;

iii. ensure the safe storage of drugs, poisons or other harmful materials;

iv. store alcoholic beverage out of reach of small children;

v. take measures to keep the home and premises free of rodents and insects.

vi. restrict children's access to potentially dangerous animals. Pets shall have current immunizations;

vii. store unloaded firearms and ammunition in separate locked places, inaccessible to children;

viii. have household first aid supplies for treating minor cuts, burns and other minor injuries.

7. Fire Safety Requirements

a. The home shall be free from fire hazards, such as faulty electric cords and appliances, or non-maintained fireplaces and chimneys.

b. Adoptive parent(s) living in apartment buildings shall give evidence that the building has been approved for building and fire safety within the last two years.

c. Adoptive homes including mobile homes shall have two doors which provide unrestricted exits in case of fire.

d. The adoptive parent(s) shall:

i. equip the home with operating smoke alarms within 10 feet of each bedroom.

ii. place a portable chemical fire extinguisher in the cooking area of the home.

iii. establish an emergency evacuation plan and shall practice it at least quarterly with the children, if applicable, to make sure all children understand the procedures.

iv. store combustible items away from sources of heat.

v. shield all home heating units and other hot surfaces against accidental contact.

vi. maintain safe conditions with properly installed, maintained and operated solid fuel heating stoves, systems, and fireplaces.

8. Sanitation and Health Requirements

a. Adoptive parent(s) shall keep the home clean and free of hazards to the health and physical well being of the family.

b. The home shall have a continuous supply of clean drinking water. If the water is not from a city water supply, the adoptive parent(s) shall have the water tested and approved by the local health authority.

c. All plumbing in the home shall be in working order.

d. The home shall have an adequate supply of hot water for bathing and dishwashing. Hot water accessible to children shall not exceed 120 degrees Fahrenheit at the outlet.

9. Daily Living Services Requirements. The adoptive parent(s) shall:

a. provide structure and daily activities designed to promote the individual, social, intellectual, spiritual, and emotional development of the child(ren) in their home;

b. assist the adoptive child(ren) to develop skills and to perform tasks which will promote independence and the ability to care for themselves;

c. help the adoptive child maintain an awareness of his past, a record of the present, and a plan for the future;

d. ask adoptive children to assume work responsibilities reasonable for their age and ability and commensurate with those expected of their own children;

e. make every effort to teach good habits of money management, budgeting, and shopping as appropriate to the child's age and abilities;

f. make every effort to teach a child good habits of personal hygiene and grooming appropriate to the child's sex, age and culture through careful daily monitoring;

10. Food and Nutrition Requirements. The adoptive parent(s) shall:

a. provide at least three nutritionally balanced meals daily according to the child's service plan;

b. provide for any special dietary needs of the adoptive child placed in their home on the advice of a licensed physician or in accordance with the child's case plan.

11. Clothing Requirements. The adoptive parent(s) shall:

a. provide each adoptive child with their own clean, well fitting, attractive, seasonal clothing appropriate to age, sex, individual needs and comparable to other household members and to the community standards;

b. a child's clothing shall be his/her own, not be required to be shared;

c. a child's clothing shall go with the child when they leave;

d. only shoes in good repair and condition shall be provided for the child;

e. allow the foster child(ren) to assist in the choosing of their own clothing whenever possible.

12. Support System

a. The adoptive parent(s) shall have or develop an adequate support system for supervising and providing care for the child(ren) on an ongoing basis to allow the parent(s) opportunities for conducting personal business and for enjoying occasional breaks from the responsibility of caring for the child(ren).

b. The adoptive parent(s) shall provide one responsible adult (over age 18) for direct supervision of children or on call at all times.

c. Any person given the responsibility for a child on a regular basis must be identified to and approved by the placing agency.

R. Updating Home Study

1. For families who have had an adoptive placement and who wish to apply for adoption of another child, the original home study may be updated.

2. If more than a year has passed since the family was certified for adoption, the provider shall complete an update prior to placement of a child in the home including updated background checks.

3. Applications for a second child shall not precede the finalization of the adoption of any unrelated children placed previously.

S. Denial of an Adoption Home Request

1. The applicant shall be notified, in writing, within 30 days if the request to become an adoptive home parent is not recommended for one of the following reasons:

a. the applicant is unwilling to withdraw the request to become an adoption parent after receiving a recommendation to withdraw; or

b. the applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the department.

2. The applicant shall enter a dispositional summary in the applicant(s) case record clearly indicating the reason for denial of the application for certification, the manner in which the decision was presented to the family and whether or not they agreed with the decision.

3. If the applicant disagrees with the department's recommendation to not accept the applicant as an adoption home, department staff shall review the request to become an adoption home parent and issue a final written determination regarding the department's recommendation.

T. Decertification of an Adoption Home.

1. A home shall be decertified if:

a. it is determined that the family does not meet the general requirements for an adoption home;

b. a situation exists that is not in the best interest of a child;

c. sexual abuse or exploitation by the parent or by another resident of the home is substantiated;

d. substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;

e. a serious physical or mental illness develops that may impair or preclude adequate care of the child by the parent; or

f. a child has not been placed in the home within the preceding two year period.

2. A home may be decertified according to the terms of the contract between the provider and the home.

3. If it is necessary to decertify a home, the reason shall be stated by the provider in a personal interview with the family.

4. The provider shall confirm, in a written notice to the home parent, the decision to decertify a home. The notice shall be delivered within 30 calendar days of the interview with a adoption home parent.

5. The written notice for decertification of a home shall include:

a. notice that the provider shall not place a child in the home;

b. the reason why the home is being decertified; and

c. effective date.

U. Reapplication for Certification

1. Persons who desire to re-certify their adoption home must re-apply. To reapply, a former adoption home parent shall:

a. attend an informational meeting; and

b. submit the:

i. names of references; and

ii. authorization for criminal records background check.

2. If the adoption home hasn't been certified for more than five years, a new home study must be completed.

3. If the adoption home hasn't been certified for five years or less and at the time of the de-certification, the home was in good standing and the re-assessments were up-to-date, the home can be certified with an addendum and updated forms.

4. If the re-assessments were not in compliance, a home study must be completed.

5. If the home was de-certified during an investigation or needing a Corrective Action Plan, a home study must be completed.

V. Child Placement

1. Placement Authority

a. Prior to adoptive placement, the provider shall establish the availability of a child through the following procedures:

i. acceptance of legally executed voluntary surrender(s) from the parent(s);

ii. if the parent is surrendering the child, prior to the execution of the surrender, a surrendering parent shall participate in a minimum of two counseling sessions relative to the surrender;

iii. the provider shall execute an affidavit attesting that the surrendering parent attended a minimum of two sessions, and stating whether the surrendering parent appeared to understand the nature and consequences of his intended act. The affidavit of the counselor shall be attached to the act of surrender;

iv. if, in the opinion of the provider, there is any question concerning the parent's mental capacity to surrender, the basis for these concerns shall be stated in the affidavit. If indicated, the affidavit shall contain a specific recommendation for any further evaluation that may be needed to ascertain the parent's capacity.

v. if he is a major, any surrendering father of a child may waive the counseling. In this case, the provider shall execute an affidavit attesting to the father's waiver and that he appeared to understand the nature and consequences of his intended act. The affidavit shall be attached to the act of surrender.

vi. court order(s) of abandonment against the parent(s);

vii. court ordered termination of parental rights against the parent(s); or

viii. documentation of death of parent(s);

ix. any combination of the above.

b. A child's biological parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

c. If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the provider shall remove the child from the home.

2. Assessment of the Child for Placement

a. A child shall not be placed for adoption until the adoptive home has been certified.

b. The child shall participate in the placement process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

c. The provider shall obtain the following, if applicable:

i. a developmental history of the adoptive child to include:

(a). birth and health history;

(b). early development;

(c). characteristic ways the child responds to people and situations;

(d). any deviation from the range of normal development;

ii. the experiences of the child prior to the decision to place the child for adoption;

iii. maternal attitude during pregnancy and early infancy;

iv. continuity of parental care and affection;

v. out-of-home placement history;

vi. separation experiences; and

vii. information about the mother, all fathers and family background:

(a). that may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

(b). including an illness of the biological mother or father, siblings, grandparents, great-grandparents, or cousins;

viii. a social history of the biological or legal parent, to include:

(a). name;

(b). date of birth;

(c). nationality;

(d). education;

(e). religion or faith; and

(f). occupation;

(g). race;

(h). height;

(i). eye color;

(j). weight;

(k). complexion.

d. Information obtained from observation of the child by a:

i. social services worker; or

ii. foster parent; or

iii. physician or other licensed health care professional;

e. Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of determining the father's parental rights and hereditary rights. If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of necessary information, the provider shall document information, to the extent possible, from the existing case record.

3. Selection of a Home

a. The provider shall select an adoptive family for a child based on the assessment of the child's needs, as well as, an assessment of the prospective family's ability to meet those needs.

b. The provider may assess a child's racial, cultural ethnic and religious heritage and preserve them to the extent possible without jeopardizing the child's right to care and a permanent placement.

c. Selection of a family shall be based on three broad criteria:

i. the best interest of the child is the primary consideration;

ii. the existence of psychological parent-child bonds between the child available for adoption and significant adults in the child's life;

iii. the ability of the family to meet the needs of the child.

d. The following factors regarding selection of a family shall be carefully considered:

i. placement of siblings as a family group is usually the preferred placement choice unless contraindicated by:

(a). assessment of the nature of sibling relationships;

(b). the likelihood that placement would be unduly delayed by waiting for a family who will accept all of the children in a sibling group;

(c). the existence of significant affectionate attachment between a child and foster parent(s) who wish to adopt only the member of the sibling group already placed in the home. The provider may agree to this when an assessment indicates that the child's psychological bond to the foster parent(s) is so strong that it is more important to the child than the sibling relationship(s). In this situation an assessment must be made of the foster parent(s) willingness to maintain sibling contact after finalization of the adoption;

ii. the prospective family's willingness and ability to provide for the medical, educational, and psychological services identified as being needed by the child;

iii. the family's ability to accept the child's background and his mental, physical and psychological imitations/strengths;

iv. the probable impact of such factors such as life style, expectations, culture and perception of family life on the ability of the family and the child to bond to each other.

e. Adoption of a child by foster parent(s) shall be considered when:

i. the foster parent(s) are interested in adopting the child;

ii. an assessment indicates that foster parent adoption is the most desirable permanent plan for the child;

iii. the child has lived with the foster family for a period of time and the child and family have formed affectionate and healthy ties;

iv. removal and placement would be likely to cause lasting emotional damage to the child;

v. foster parent(s) meet certification standards for adoptive homes.

f. Adoption by a relative(s) shall be considered when:

i. the relative(s) is interested in adopting the child;

ii. an assessment indicates that this plan is in the best interest of the child;

iii. the child and relative(s) have formed affectionate and healthy ties;

iv. the relative(s) meets certification standards for adoptive homes.

g. Birthparent(s) may be considered for permanent placement of the child when:

i. the birthparent(s) is interested in adopting the child;

ii. an assessment indicates that this plan is in the best interest of the child;

iii. the child and birthparent(s) have the capacity to form an affectionate and healthy parent-child relationship;

iv. the parent(s) meets the certification standards for adoptive homes. Waivers may be considered for certification criteria where in the best interest of the child.

h. The provider having legal custody of the child may select an adoptive family for placement of the children if legal availability has not been established under the following conditions.

i. The provider has reasonable assurance that the child's availability will be established and legal procedures have been initiated or made a part of the case plan, pending implementation.

ii. Professional evaluation indicates that the establishment of a parent child bond at the earliest possible age is in the best interest of the child.

iii. The adoptive family meets the requirements for certification as a family foster home and has been certified as such prior to placement.

iv. The foster/adoptive family has been advised of the legal risks involved and is willing to enter into this case plan under a written family foster agreement stipulating the special provisions in §7313.U.3.

i. The provider shall not place a second child in a home for adoption until a previously placed child's adoption has been finalized except where the second child is a sibling to the first child and the placement is in the best interest of both children.

4. Placement Agreement with Adoptive Parent(s)

a. The provider shall have a signed agreement with each adoptive parent which includes the following.

i. The child's availability for adoption has been established.

ii. The child is being placed with the adoptive parent(s) for purposes of adoption.

iii. The adoptive parent(s) meets the certification requirements for adoption.

iv. The child remains in the custody of the provider until the adoption is finalized.

v. The family assumes financial responsibility for the child except in special needs placements approved by the department for an adoption subsidy or in accordance with special provisions for financial responsibility as included in the agreement.

vi. The number of supervisory visits in the first six months of placement to assess the progress of the placement.

vii. The provider and family agree to finalize the adoption after six months barring unforeseen circumstance that warrant removal of the child or to extend the placement agreement for another time-limited period not to exceed 18 months in all.

viii. The family agrees to cooperate with the provider in making a planned move for the child if replacement should be necessary except in emergency circumstances.

ix. The family will not petition the court for adoption until the provider has given written consent.

x. The family will report to the provider any changes in their circumstances that have an effect on the child or the adoption.

xi. The family will not take the child out-of-state or authorize any special medical care or treatment for the child without the consent of the provider.

xii. The provider will provide supportive services to the family to promote a healthy parent-child adjustment and bonding.

5. Preparation of the Prospective Adoptive Parent

a. The provider shall prepare the prospective adoptive family for the placement of the particular child(ren).

b. Preparation shall include:

i. visitation with the child in accordance with the child's age, level of understanding and preparation needs;

ii. thorough discussion and agreement on any special provisions of placement.

c. During preparation, the provider shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

6. Supervision of the Child

a. The provider placing a child shall remain responsible for the child until a final decree has been granted.

b. The child and family shall be seen within three weeks of placement and once every two month period thereafter and a visit within 30 days prior to the final decree.

c. At least two of the supervisory visits shall be in the adoptive home and shall include both adoptive parents (if applicable) and all other members of the household.

d. Observations made during the visits shall be used in making recommendations for finalization of the adoption or to assist the family if problems arise that cannot be resolved to the satisfaction of the family and provider. The provider shall assist the family directly and/or refer the family to a provisional resource outside of provider to address the problem(s).

e. In special needs placements, more supervisory visits should be made, at least one each two month period to provide information, assistance and support to the family.

f. Written reports of the supervisory visits shall be dated, sent to the department as part of the confidential report and placed in the child's record and adoptive parent(s) record.

g. The provider shall be available to give the child and adoptive parent(s) assistance, consultation and emotional support with situations and problems encountered in permanent placement.

h. The provider shall ensure continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted.

i. The provider shall be made aware of any change in the adoptive home including health, education, or behavior.

j. The provider shall be responsible for assisting adoptive parents to finalize the adoption or in cases where the adoption cannot be finalized, to develop an alternative permanent plan and placement for the child.

W. Adoption Petition Process

1. The provider shall give written consent to the family for adoption at the end of six months or one year, whichever is applicable, of placement if the family wants finalization and any problems that have arisen during the placement are in a satisfactory stage of resolution.

2. The provider shall submit all documents establishing availability of the child (TPR, surrender or death certificate) and the child's certified birth certificate to the court when filing the adoption petition with the court.

3. Upon notification by the court of the filed petition, the department shall request from the adoption agent, in

writing, any required information that must be part of the confidential report and the date the information is to be submitted. If the child was born in this state, the adoption agent shall also submit a completed Adoption Report to the Clerk of Court office.

4. The provider shall submit the requested information to the department by the date specified in the notification correspondence.

5. Upon receipt of the required information, the department will review it for accuracy and thoroughness. If any required information has not been submitted, the department will notify the provider.

6. Once all of the required information has been received and reviewed by the department, the provider shall be notified, in writing, that the report has been submitted to the court.

7. If all of the required information is not provided, the report submitted to the court will reflect what information is missing that was not provided by the adoption agent.

8. When filing a petition for the adoption of a foreign orphan, the petition shall be accompanied by a certification for adoption, a certified copy of the Immigration and Naturalization Service documentation of orphan status, the original or a certified copy of a valid foreign custody decree, together with a notarized translation, and the original or certified copy of a valid birth certificate, together with a notarized translation, and an affidavit of fees and expenses.

9. When filing a petition for recognition of a foreign decree of adoption, the petition shall be accompanied by a certification for adoption, a certified copy of the Immigration and Naturalization Service documentation of orphan status, documentary proof of citizenship status, the original or a certified copy of a valid foreign custody decree, together with a notarized translation, and the original or certified copy of a valid birth certificate, together with a notarized translation, and an affidavit of fees and expenses.

X. Adoption Disruption

1. When it has been identified that there is an adoption disruption, and except in emergency situations, the provider shall assist the adoptive family and child to plan an adoption disruption and replacement of the child in a manner least detrimental to the child and family. After all available resources are used and the family is still thinking about discontinuing the placement, the provider shall hold a planning conference to review the situation. The planning conference shall be attended by the adoptive parents, the child (if and when in the best interest of the child), the placement worker, the placement supervisor and (if applicable) the previous foster care worker/custodian. The planning conference should cover the following:

a. problems in the placement;

b. what resources have been used;

c. what other resources may be helpful;

d. the pros and cons of continuing the placement;

e. deciding whether to disrupt the placement or maintain the placement;

f. if maintaining the placement is the plan, identifying additional services to be used;

g. if disruption is the plan, discussing the placement alternatives for the child;

h. planning how the disruption will occur.

2. The provider shall assist the family in giving the child, of sufficient age of understanding, a reason for the disruption. Where this is not possible, the provider shall inform the child.

3. The provider shall provide services to families who suffer an adoption disruption to deal with their grief and decide if another adoptive placement is an appropriate plan.

Y. Final Decree

1. When a final decree has been rendered by the court, the provider shall review the final decree document for accuracy and ensure that the document has been filed with the applicable Clerk of Court.

2. If the child was born in this state, the provider shall submit the required fee for a revised birth certificate, along with a completed Certificate of Live Birth form PHS 19 and proof of citizenship, if applicable, to the department within 15 working days of the adoption finalization.

3. If the child was born in another state, the adoption agent shall submit a request to the agency responsible for the maintenance of vital records from the state in which the child was born in order to revise the child's birth certificate and ensure that the adoptive family receives a copy of the revised birth certificate.

4. In an inter-country adoption, the court shall issue a judgment recognizing the foreign adoption and rendering a final decree of adoption upon finding that:

a. at least one of the adopting parents is a domiciliary of the state of Louisiana;

b. the original or a certified copy of the foreign adoption decree, together with a notarized transcript, has been filed and is presumed to have been granted in accordance with the law of the foreign country;

c. the child has qualified as a foreign orphan and is in the United States in accordance with applicable Immigration and Naturalization Service regulations;

d. the child is either a permanent resident or a naturalized citizen of the United States;

e. the petitioners have the ability to care for, maintain, and educate the child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:

§7317. Transitional Placing Program

A. General Requirements

1. Program Description

a. A provider shall have a written program description describing:

i. the overall philosophy and approach to independent living;

ii. the long-term and short-term goals;

iii. the types of youth best served;

iv. the provider's approach to service planning;

v. ongoing programs available to the youth during placements; and

vi. any living arrangements provided.

b. The provider must include a written description of direct services, support services, and services to be arranged to achieve the goals of the transitional placing program.

2. Direct services shall include, but are not limited to, the following:

a. services related to education and vocational training e.g., career planning; preparation for the GED or higher education; job readiness; job search assistance; job placement; job follow-up activities; vocational training; tutoring and other remedial education;

b. programs and services in basic independent living skills e.g., money management; home management (housekeeping, etc.); consumer skills; identifying community resources; time management; communication skills; use of transportation; physical and mental health care; locating safe and stable housing; problem solving/decision making; sex education; menu planning and nutrition; cooking;

c. individual and/or group counseling as well as workshops and conferences to promote self-esteem; self confidence; development of interpersonal and social skills; preparation for transition to independence and termination of services; after care.

3. Support services shall include, but not be limited to, the following:

a. vocational assessment or training;

b. GED classes;

c. preparation for college entrance exams;

d. driver's education, if appropriate;

e. counseling.

4. Number of Youth

a. The provider shall ensure that no more than three youth are placed in an apartment.

b. The provider who utilizes communal living arrangements (home situation) housing for four or more must obtain fire and health approval.

c. The provider's arrangements for selecting youth and youth groups for a specific living situation shall make allowance for the needs of each youth for reasonable privacy and shall not conflict with the program plan of any youth of the living situation or with the overall philosophy of the provider.

d. No youth shall be placed together in a living situation except by mutual agreement between the youth. Signed agreements shall be maintained in each record.

5. Personnel Qualifications

a. Child Placement Worker. The Child Placement Worker (CPW) shall meet the following qualifications:

i. have a minimum of a bachelor's degree in social work or any bachelor's degree plus one year of social service experience;

ii. a child placement worker located in a branch office apart from the supervisor of placement services shall have a master's degree from an accredited school of social work;

iii. in providers where the child placement staff is comprised of one placement worker, this person shall meet the qualifications of the supervisor of placement services.

b. Child Placement Worker (CPW) Assistant. The CPW assistant shall:

i. be at least 18 years of age;

ii. have a high school diploma or equivalency; and

iii. have one year of experience providing basic child welfare support services to youth.

6. Personnel Job Duties

- a. The CPW shall be responsible for:
 - i. assessing, developing, and executing a plan to achieve permanence for the youth including return to the family, adoptions, transfer of custody, independent living, or other alternative plans;
 - ii. providing services to a caseload of youth removed from their homes by court order, voluntary surrender, or voluntary placement agreement and placed in a foster home or a more restrictive setting;
 - iii. overseeing the placement to ensure the youth's well-being. Assesses probability of return and plan for the youth's permanency;
 - iv. developing and implementing a recruitment plan for certifying perspective foster and adoptive families;
 - v. preparing and conducting extensive orientation and training for potential foster and adoptive homes;
 - vi. examining and evaluating information gathered about families, housing, and environment in relation to provider criteria and licensing regulation for certification of perspective adoptive and foster homes;
 - vii. upon completion of written home studies, recommending approval or denial of certification for perspective adoptive and foster homes based on a combined evaluation and assessment process;
 - viii. re-evaluating for continued annual re-certification for foster and adoptive homes. Develops and implements a corrective action plan to correct deficiencies;
 - ix. maintaining listing of all foster and adoptive homes in area and recommends appropriate resources to workers placing youth.
- b. The CPW assistant shall be responsible for:
 - i. assisting professional staff in providing services to the youth;
 - ii. instructing youth in the practical application of improved standards of housekeeping, shopping, personal hygiene, medical and childcare, and other necessary home management skills;
 - iii. lifting or assisting youth into the transit with their personal belongings and any medically needed equipment such as a wheel chair, an oxygen tank, a walker, etc.;
 - iv. observing and reporting youth's behavior to professional staff to aid in the assessment and treatment plan of the case;
 - v. monitoring family visitation between caretaker and youth with parents, as required;
 - vi. preparing narrative reports and maintaining visitation log as required;
 - vii. scheduling and arranging youth transportation for follow-up visits;
 - viii. effectively communicating with youth to defuse potentially dangerous situations such as physical/verbal confrontations between youth and/or towards provider staff;
 - ix. completing various forms and reports.
 - x. may be responsible for vehicle maintenance and documentation of such.

7. Advisory Board

- a. The provider shall develop written procedures for a Youth Advisory Board consisting of youth representatives

receiving services to provide feedback relative to program policies, practices, and services.

- i. The Youth Advisory Committee shall be allowed to meet at least monthly.

- ii. The provider shall maintain documented minutes of the Youth Advisory Board and resolutions of problems addressed.

8. Money

- a. A provider shall have a written policy describing how they will manage the youth's money.

- b. A provider shall only accept a youth's money when such management is mandated by the youth's service plan. The provider shall manage and account for money of youth who are minors.

- c. Providers who manage youth's money shall maintain in the youth's file a complete record accounting for his/her money.

- i. The provider shall maintain a current balance sheet containing all financial transactions to include the signature of staff and the youth for each transaction.

- ii. The money shall be kept in an individual account in the name of the youth.

- d. Youth's monetary restitution for damages shall only occur when there is clear evidence of individual responsibility for the damages and the service team approves the restitution. The youth and his/her legal guardian(s) shall be notified in writing within 24 hours of any claim for restitution and shall be provided with specific details of the damages, how, when and where the damages occurred, and the amount of damages claimed. If the amount is unknown, an estimate of the damages shall be provided and an exact figure provided within 30 days. The resident and his/her legal guardian(s) shall be given a reasonable opportunity to respond to any claim for damages. If the provider receives reimbursement for damages either through insurance or other sources, the resident shall not be responsible for restitution.

9. Food Service

- a. When meals are prepared in a central kitchen, the provider shall ensure that menus include the basic four food groups and each youth's nutritional needs are met. Menus shall be maintained on file for at least a month.

- b. If youths develop and prepare their menus and meals, the provider shall give assistance to ensure nutritional standards.

10. Critical Incidents

- a. If the youth is 18 to 21, the provider shall notify the law enforcement agency exercising local authority and jurisdiction.

11. Emergency Preparedness

- a. The provider shall ensure the development of an emergency evacuation policy and safety plan for each youth that is specific for location of the living unit in the event of a fire, natural or national disaster. The youth's record shall document that the youth has acknowledged receiving a copy of this policy and plan at admission.

- b. A provider shall document that all youth are trained in emergency procedures within one week of admission. Such training shall include:

- i. instruction in evacuation from the living situation;

ii. instruction in contacting police, fire and other emergency services; and

iii. instruction in fire and accident prevention.

B. Certification of an Independent Living Unit

1. Requirements for a Living Unit

a. The living unit shall be occupied by only a youth approved to occupy the living unit by the provider.

b. Nonresidents shall be asked to vacate the living unit.

c. Each youth shall have his/her own bed.

d. The provider shall assure and document that the living unit:

i. does not present a hazard to the health and safety of the youth;

ii. is well ventilated and heated; and

iii. complies with state and local health requirements regarding water and sanitation;

iv. is furnished with items to include:

(a). window coverings;

(b). basic local telephone service;

(c). food and kitchenware;

(d). linen;

(e). bedding;

(f). routine supplies.

C. Placement of a Youth

1. Initial Placement

a. The provider shall:

i. place a youth only in an approved foster care setting; and

ii. keep a youth who has been committed to the Department of Corrections, Office of Juvenile Justice for the commission of a sex crime in a separate living arrangement from a youth committed to the department.

2. Service Agreement

a. The provider shall ensure that a written service agreement is completed prior to placement. A copy of the agreement, signed by the provider, the youth, if applicable the legally responsible party and all those involved in its formulation, shall be kept in the youth's record and a copy shall be available to DSS, the youth, and where appropriate, the legally responsible person.

b. The service agreement shall include:

i. a delineation of the respective roles and responsibilities of the provider and where applicable, the referring provider;

ii. specification of all services to be provided including the plan for contact between the youth and provider staff;

iii. facility rules that will govern continued participation in the transitional living program, and consequences of inappropriate behavior of youth while in care;

iv. the provider's expectations concerning the youth and the youth's responsibility;

v. criteria for discharge;

vi. specification of financial arrangements including any fees to be paid by the youth;

vii. authorization to care for the youth;

viii. authorization for medical care;

ix. attendance and absences from the provider to also include curfew times; and

x. criteria for notifying the funding provider of any change of address of the youth and any significant change in the youth's life or program.

c. The provider shall select a living arrangement for a youth based upon the individual needs of the youth based on an assessment of the youth's skills and knowledge.

d. The assessment shall be completed within 10 days of the youth's placement.

e. The assessment tool shall assess the following:

i. money management and consumer awareness;

ii. job search skills;

iii. job retention skills;

iv. use of and access to:

(a). community resources;

(b). housing; and

(c). transportation;

v. educational planning;

vi. emergency and safety skills;

vii. legal knowledge;

viii. interpersonal skills, including communication skills;

ix. health care knowledge, including knowledge of nutrition;

x. human development knowledge, including sexuality;

xi. management of food, including food preparation;

xii. ability to maintain personal appearance;

xiii. housekeeping; and

xiv. leisure activities.

f. The youth shall participate in the intake process and in the decision that placement is appropriate, to the extent that the youth's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the youth's participation.

g. The provider shall document the placement in the provider's file.

h. The assessment will be placed in the youth's record.

3. Service Plan

a. The provider shall:

i. within 30 days of a youth's placement, develop a written service plan based upon the individual needs of the youth and, if appropriate, the youth's family, which addresses the:

(a). educational, job training, housing, and independent living goals;

(b). objectives to accomplish a goal;

(c). methods of service delivery necessary to achieve a goal and an objective;

(d). person responsible for each activity;

(e). specific timeframes to achieve a goal and an objective;

(f). identification of a discharge plan;

(g). plan for aftercare services; and

(h). plan for services from a cooperating provider;

b. review the youth's service plan, placement and permanency goals on a quarterly basis or more frequently as the youth's needs or circumstances dictate.

4. Supervision of the Youth

a. The provider shall have a written plan for providing support and supervision.

b. The provider staff shall have contact with the youth on a daily basis which may include, but is not limited to, a confirmed e-mail or text or telephone contact.

c. The provider staff shall have at least three face-to-face visits weekly. A youth may not be seen less than the above amount unless specified by his/her plan, which has been signed by the parent or legal guardian.

d. All contacts with the youth shall be documented; and

e. There shall be provisions for emergency access by youth to an appropriate provider staff member on a 24-hour basis.

f. The provider shall, through at least monthly visits by staff to the living situation, determine and document that:

i. there is no reasonable cause for believing that the youth's mode of life or living situation presents any unacceptable risks to the youth's health or safety including a review for use of alcohol or illegal contraband;

ii. the living situation is maintained in a clean and safe condition;

iii. the youth is receiving any necessary medical care;

iv. the current provider plan provides appropriate and sufficient services to the youth.

g. Document annual compliance with fire and building codes for any living unit in which the provider places the youth.

5. Discharge Process

a. A provider shall have a written discharge policy detailing the reasons a youth may be discharged.

b. A provider shall, whenever possible, notify the youth's parent(s), tutor or curator as soon as possible or within fourteen working days prior to the planned discharge of a youth.

c. A provider shall compile a complete written discharge summary immediately upon discharge; such summary to be included in the youth's record. When the youth is discharged to another provider, this summary must accompany the youth. This summary shall include:

i. a summary of services provided during involvement in the program;

ii. a summary of growth and accomplishments during involvement;

iii. the assessed needs which remain to be met and alternate service possibilities that might meet those needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section LR 37:

Family Impact Statement

1. What effect will this rule have on the stability of the family? This Rule will improve the stability of the family by providing a least restrictive alternative to residential care for children who are in out-of-home care on a regular or long term basis.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? Parents and guardians of children will have an alternative to restrictive care which enables them to use their authority to make better decisions regarding the care and supervision of their children.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Small Business Statement

The impact of the proposed rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses.

Public Comments

Interested persons may submit written comments by the close of business Thursday, December 23, 2010 to Mr. Guy Sylvester, Administrator, Licensing Section, P. O. Box 3318, Baton Rouge, LA 70821. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on the proposed rule will be held on Wednesday, December 29, 2010 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, First Floor, Room 1-127, Baton Rouge, LA, beginning at 9:00a.m. All interested persons will be afforded an opportunity to submit data, views, arguments, orally and in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least 7 working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Child Placing Agencies

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule expands and clarifies the definition and authority of licensed Child Placing Agencies to include the placement of youth ages 16 to 21. In accordance with Act 64 of the 2010 Regular Session of the Legislature, this rule does the following: (1) repeals LAC Title 48, Part I, Subpart 3 Chapter 41—Child Placing Agencies with and without Adoption Services; (2) repeals LAC Title 67, Part V, Subpart 8 Chapter 65—Transitional Living; and (3) promulgate these previous repealed licensing charters as LAC Title 67, Part V, Subpart 8, Chapter 73—Child Placing Agencies General Provisions.

Previously, agencies that placed youth between the ages of 16 to 21 were licensed under Transitional Living (LAC Title 67, Part V, Subpart 8 Chapter 65). Act 64 repealed the Transitional Living laws and expanded the definition of Child Placing Agencies to include the placement of youth ages 16 to 21. Also, in Act 64, child placing agencies within DCFS shall be exempt from licensure but shall be required to perform its child placing functions in accordance with the licensing

standards. The estimated cost associated with this rule is the cost of publishing that is estimated to be \$15,456.

Rulemaking Costs:

1. October 1, 2010 Emergency Rule - \$168 per page X 23 pages = \$3,864
2. Notice of Intent - \$168 per page X 23 pages = \$3,864
3. 2nd Emergency Rule - \$168 per page X 23 pages = \$3,864
4. Final Rule - \$168 per page X 23 pages = \$3,864

This rule will be published twice as an Emergency Rule, once as a Notice of Intent and a Final Rule. The printing of each publication will cost \$3,864 for a total of \$15,456.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Children and Family Services (DCFS) estimates there will be no effect on revenue collections of state or local governmental units as a result of this rule. The department does not expect any new Child Placing Agencies to be licensed as a result of proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

DCFS estimates that there will be no increased cost or economic benefits to licensed providers. Agencies that placed youth ages 16 to 21 will be licensed under Child Placing Agencies instead of Transitional Living. The cost of licensure will remain unchanged.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition and employment.

Michael Dailey
Deputy Secretary
1011#131

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Civil Service
Board of Ethics**

Local Government Lobbying (LAC 52:I.Chapter 23)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to make amendments to the Rules for the Board of Ethics to bring the rules into compliance with current statutory provisions and Act 1 of the 2008 First Special Legislative Session and Act 472 of the 2008 Regular Legislative Session.

Title 52 ETHICS

Part I. Board of Ethics

Chapter 23. Lobbying Local Government

§2301. General

A. The Lobbying Local Government Act provides that the board shall administer and enforce the provisions of R.S. 33:9661 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2303. Registration and Reporting Forms

A. The staff shall prepare and provide, upon request, the electronic forms for the registration and reporting of local government lobbyists. The forms used shall be provided electronically on the Lobbyist Online Filing System at www.ethics.state.la.us.

B. No registration, report or designation filed by a lobbyist or other person shall be filed with the board unless the registration, report or designation is on the proper electronic form promulgated by the board in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2305. Registration and Reporting; Dating, Numbering and Filing

A. The staff shall establish a procedure for the dating, indexing, and filing of all lobbyist registrations, lobbyist disclosure reports, designations, and employer/principal disclosure reports received by the board through the Lobbyist Online Filing System.

B. The method of determining the date of filing shall be as provided in R.S. 42:1157.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2307. Definitions

The following definitions supplement those contained in R.S. 33:9662 et seq.

Aggregate—the total amount of expenditures made on local government officials within the calendar year.

Employer—any person which employs an individual for the purpose of lobbying.

Principal—any person who retains the services of a lobbyist to represent its interests.

Reportable Expenditure—an expenditure which is required to be reported according to R.S. 33:9666.

Schedule A—refers to part of the promulgated electronic expenditure report form which is used to report the name local government official, his spouse or minor child, his local government agency and the amount spent on the specific individual when such information is required by R.S. 33:9666.

Schedule B—refers to part of the promulgated expenditure report form which is used to report the name of the group or groups of persons invited to a function, the date and location of the function and expenditures made in connection with the function when such information is required by R.S. 33:9666(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2309. Registration

A. Only an individual who has reached the age of majority may register as a lobbyist.

B. A lobbyist shall register as an local government lobbyist with the board through the use of the Lobbying Online Filing System forms provided by the board at its website: www.ethics.state.la.us, within five days of making expenditures of \$500 or more on local government officials in a calendar year for the purpose of lobbying.

C. The individual filing the local government lobbyist registration with the board shall forward to the board an affidavit expressing his or her intent to register as a local government lobbyist in accordance with the provisions of R.S. 33:9661 et seq. If the affidavit confirming the lobbyists willingness to register as a lobbyist is not received within 30

days of the lobbyists registration, the registration will be considered null and void.

D. Any individual who does not make expenditures of \$500 or more on local government officials but who registers as a local government lobbyist with the board shall file expenditure reports as required by the local Government Lobbying Act and shall be liable for any late fees assessed for the late filing of a required report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2311. Reporting; in General

A. A local government lobbyist shall file the required expenditure reports with the board through the use of the Lobbying Online Filing System forms provided by the board at its website: www.ethics.state.la.us.

B. The following are reportable expenditures under R.S. 33:9661 et seq.:

1. the amount spent to purchase food or drink on behalf of an individual local government official;

2. the amount spent on the value of a ticket or other fee or payment made in connection with a civic, non-profit, educational, or political event as permitted by R.S. 42:1123(13).

C. A reportable expenditure should be reported by the lobbyist who would be required to account for the expenditure as an ordinary and necessary expense directly related to the active conduct of the lobbyist's, his employer's or the principal's trade or business.

D. Any expenditure made by a lobbyist on a local government official shall be considered a reportable expenditure, regardless of a pre-existing personal or familial relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2313. Reporting; Additional Disclosure Requirements under R.S. 33:9661 et seq.

A. Any expenditure made in connection with a civic, non-profit, educational, or political event as permitted by R.S. 42:1123(13) shall be included in calculating the aggregate amount spent on an local government official during the reporting period.

B. Any expenditure subject to reporting under R.S. 33:9666(E) shall not be included in calculating the aggregate amount spent on an individual local governmental official for purposes of the reporting required by R.S. 33:9666(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2315. Reporting; Additional Disclosure Requirements under R.S. 33:9666(E)

A. If more than 25 local governmental officials are invited to a reception, social gathering or other function during a reporting period, then R.S. 33:9666(E) requires that the following information be disclosed on Schedule B of the expenditure report:

1. the name of the group or groups of persons invited to the function;
2. the date of which the function was held;

3. the location of the function, including the address of the function;

4. all expenditures made in connection with the function.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2317. Election by Employer or Principal to Report for Lobbyists

A. An employer or principal may elect, pursuant to R.S. 33:9666(F)(2)(a), to file a single expenditure report for his lobbyists.

B. If an employer or principal elects to file such reports, an employer/principal designation must indicate to the board, through the use of the designation section of the Online Lobbying Filing System at www.ethics.state.la.us by January 31. The designation shall be effective for one year and requires the employer or principal to report of all expenditures made by all lobbyists representing its interests during that calendar year.

C. In the event an employer or principal files an expenditure report which does not include a statement of expenditures for one of its lobbyists, the report shall not be timely filed until a complete report disclosing the expenditures of all of its lobbyists is filed.

D. Late fees shall continue to accumulate until a complete report is filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

§2319. Expenditures Made Directly by the Principal or Employer

A. An expenditure made directly by an employer or principal in connection with a reception, social gathering, or other function shall be attributed to and reported by the lobbyist who attends the function. If more than one lobbyist attends the function, then the total amount spent by the employer or principal on the function shall be attributed in equal portions to the lobbyists who attend.

B. If a lobbyist is not present at the time an expenditure is made by an employer or principal, a lobbyist who represents the employer or principal's interests must report the expenditure.

C. An employer or principal who makes such an expenditure is required to provide the following information to the lobbyist no later than two business days after the close of each reporting period:

1. the total amount of the expenditure;
2. the amount of the expenditure that has been attributed to the lobbyist and which must be reported by the lobbyist;
3. the nature of the expenditure;
4. the names of the local government officials involved; and
5. the agencies of the local government officials involved.

D. Failure by the employer or principal to provide the necessary information to its lobbyist regarding such expenditure will cause the employer or principal to be required to register and report as a lobbyist and may subject the employer or principal to penalties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:9661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 37:

Family Impact Statement

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

Public Comments

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, Louisiana 70821, telephone (225) 219-5600, until 4:45 p.m. on December 10, 2010.

Kathleen M. Allen
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Local Government Lobbying

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated cost to implement the local lobbying rules is \$820, which accounts for the cost to publish the Notice of Intent and the rules in the State Register.

The proposed rules provide for registration of persons lobbying local government and the reporting requirements for such lobbyists.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will have no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Affected persons who fail to register or report in a timely manner may be assessed fines or penalties. Persons who do not timely register or file expenditure reports are subject to a \$50 per day late fee (up to a maximum of \$1,500 for each report), as well as other penalties for violations of the law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will have no effect on competition and employment.

Tracy M. Barker
Staff Attorney
1011#074

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**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, the Office of Business Development, and the Louisiana Economic Development Corporation, 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 proposes to amend and adopt its

existing Rules and Regulations relative to its Retention and Modernization Program.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 35. Retention and Modernization Program

§3503. Definitions

A. ...

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

LDEQ—Louisiana Department of Environmental Quality

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 investment may be either voluntary or mandated by law but 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 such as LDEQ, or by any other reasonable means;

iii. the required efficiency increase includes a “green” option for a facility which affects a 10 percent or greater net reduction in nitrogen oxide (NOx) or volatile organic chemicals (VOC) without any increase in other emission sources from a facility in substantial compliance with its Title V Clean Air Act permit for the five preceeding calendar years in which the emission reductions are claimed.

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:37:

§3513. Certification of Tax Credits.

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

1. an audit of qualified expenditures incurred by the employer for modernization, certified by an independent certified public accountant;

a. qualified expenditures that could improve efficiency may include but not be limited to: new automation equipment, computer-driven instrumentation upgrades, NOX or VOC air emission 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. - D. ...

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 37:

Family Impact Statement

It is anticipated that the proposed Rule will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed rule.

Small Business Statement

It is anticipated that the proposed rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested person may submit written comments on the proposed Rules until 5pm January 4, 2011 to Tommy Kurtz the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802 or Tommy.Kurtz@la.gov.

Public Hearing

A public hearing will be held at 10 a.m. on January 5, 2011 at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA to receive comments on this proposed Rule.

Kristy Mc Kearn,
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Retention and Modernization Act

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules because the revisions merely provide additional guidance to applicants.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule clarifies the determination of a modernization, including a "green" option, as verified by a third party, including the Department of Environmental Quality. There is no expected impact or effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule simply clarifies current practice and will not result in an increased workload for applicants or recipients.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment as a result of this rule change.

Kristy McKearn
Undersecretary
1011#123

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Louisiana Filmmakers Grant Fund Program
(LAC 61:I.Chapter 16)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industries Development, 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. 47:6007, hereby proposes to adopt Rules relative to the newly created Louisiana Filmmakers Grant 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 B. Louisiana Filmmakers Grant Fund Program

§1615. Preamble and Purpose

A. The Louisiana Filmmakers Grant Fund Program is vital to support the state's entertainment industry and the state's long-term goals in its master plan for economic development for the State of Louisiana.

B. The purpose of this Chapter is to implement the Louisiana Filmmaker Grants Program as established by R.S. 47:6007.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1616. Definitions

Applicant—the entity or natural person requesting a grant award from LED.

Award—funding approved under this program for eligible activities and expenditures.

Award Agreement—that agreement or contract hereinafter referred to between the applicant, and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Contract—a legally enforceable Award Agreement between LED and the successful applicant governing the terms and the conditions of the award.

LED—Louisiana Department of Economic Development.

Office—Office of Entertainment Industry Development

Program—the Louisiana Filmmakers Grant Fund Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1617. General Principles

A. The following general principles will direct the administration of the program.

1. LED shall serve as the administrators for this Program.

2. LED, through the office, in conjunction with a panel of entertainment industry experts, shall serve as the review panel.

3. Awards are not to be construed as an entitlement and such awards shall be subject to the discretion of LED.

3. LED shall negotiate with each applicant seeking an award, based on the individual merits of each project.

4. Contracts for awards shall contain “clawback” (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be utilized for the approved project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development in cooperation with the Office of Entertainment Industry Development, LR 37:

§1619. Program Descriptions

A. This program is to be used to support Louisiana’s independent filmmakers, domiciled in Louisiana, who make a film in Louisiana, the total cost of which shall not exceed three hundred thousand dollars. The maximum amount of any grant shall not exceed the lesser of 50 percent of the total cost of the film or \$100,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1621. Eligibility

A. An applicant must be a Louisiana resident, with proof of at least 3 years residency.

B. An applicant must be the principal creative author of the production and hold complete artistic, creative and budgetary control.

C. Eligible project formats, may include, but not be limited to: documentary, feature length film, TV pilot, TV series, webisodes, animation, experimental shorts.

D. Ineligible project formats, may include, but not be limited to: reality shows, industrial, commercial, tourism, political campaigns or promotional pieces.

E. 100 percent of the project must be shot in Louisiana.

F. 100 percent of the project must post in Louisiana.

G. 100 percent of the crew must be Louisiana residents.

H. 75 percent of the talent must be Louisiana residents.

I. Grants will be awarded on a one time basis only and previous award winners will not be allowed to reapply.

J. An applicant shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to its failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceedings, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with LED in which the company is in default and/or is not in compliance.

K. Applicants must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1623. Criteria

A. LED will consider various factors when determining which awards will be funded. Among the factors which may be taken into account in the review of the award requests are the following:

1. availability of funding;

2. recommendation of the office and an entertainment industry expert panel review committee;

3. artistic quality;

4. applicant’s demonstrated ability and creativity;

5. managerial and fiscal ability of the applicant to carry out the proposed project;

5. nature and extent of other revenue, in-kind goods and services, and/or public or private support; and

6. portrayal of Louisiana culture in a positive light.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1625. Application Procedure

A. An applicant may apply for this program by submitting the following information to the office:

1. a written application, including but not limited to, a detailed description of the proposed project, a preliminary budget and a grant request; and

2. supporting information as requested by the office, including but not limited to examples of prior or proposed work.

B. The office 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 and request such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1627. Submission and Review Procedure

A. The office shall accept applications twice a year, between June 1 and July 1 and December 1 – January 1, each calendar year, and upon determination that an

application meets the general principles, eligibility requirements, and criteria for this program, the Office will then make a recommendation to an entertainment industry panel for further review.

B. The entertainment industry panel shall be comprised of representatives from the higher education community with curricula in film, and its members shall be identified on LED's website "LouisianaEntertainment.gov".

C. Each panel member shall complete an independent evaluation of each application and score them based upon a scoring form, to be posted on "LouisianaEntertainment.gov".

D. All panelists shall meet in a closed session to discuss their individual evaluation findings and to form consensus scoring of all proposed projects. The panel shall then recommend the highest scoring project(s) to be issued an award by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

§1629. General Award Provisions

A. Award Agreement

1. Awards will be issued twice a year, by September 1 and March 1 of each calendar year.

2. A written award agreement, contract or cooperative endeavor agreement will be executed between LED and the successful applicant. The contract will specify the performance objectives expected and the compliance requirements to be enforced in exchange for state assistance, which will include, but not be limited to:

a. award amounts may vary at the discretion of LED and shall not exceed the lesser of 50 percent of the total cost of the film or \$100,000.

b. applicants and awardees are not allowed to use monies appropriated by the state of Louisiana as an eligible cost for reimbursement.

c. applicant shall agree to display LED's Louisiana Entertainment logo in the opening credits of the project;

d. applicant shall agree to grant LED rights to screen or use the project for promoting Louisiana's Entertainment industry; and

e. applicant shall agree to provide a service to LED in return for state funding. The service could take many forms, such as free training workshops to Louisiana residents in a specific area of filmmaking; free lectures, seminars or demonstrations, free public screening of completed works, mentoring or internships.

3. LED will disburse funds to the applicant as provided by the Award Agreement or Contract.

4. LED will oversee the progress of the approved project and reimburse the applicant on the basis of the cost reports and supporting documentation certifying the amount expended for which reimbursement is sought. LED may request the applicant at any time and from time to time to submit additional or supporting information.

B. Funding

1. The Louisiana Filmmakers Grant Program offers financial assistance in the form of a performance-based grant

for reimbursement of eligible project costs specified in the award agreement.

2. Eligible project costs may include, but not be limited to:

a. production costs: wages for crew and talent, equipment rental, props, permits and fees, art department, set construction wardrobe; and

b. post production costs: special effects, sound, scoring, video.

3. Ineligible project costs for reimbursement may include, but not be limited to:

a. purchase of equipment or creation of new facilities;

b. operating expenses of privately owned facilities; and

c. hospitality or entertainment costs.

C. Conditions for Disbursement of Funds

1. Funds will not be available for reimbursement to the applicant until an award agreement or contract between the applicant and LED has been finalized and executed.

2. Funds will be available on a reimbursement basis following submission of required documentation to LED by the applicant and will be based upon performance objectives as provided in the contract.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, the applicant shall be required to complete and submit to LED cost reports certifying the amount expended along with progress reports describing the applicant's progress toward the performance objectives specified in its contract with LED.

2. In the event an applicant fails to meet its performance objectives as specified in its contract, LED shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED.

3. In the event an applicant knowingly files a false statement in its application or in a progress report, the applicant 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.

4. LED shall retain the right, for itself and for the Legislative Auditor, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, in cooperation with the Office of Entertainment Industry Development, LR 37:

Kristy McKearn,
DED Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Louisiana Filmmakers
Grant Fund Program**

NOTICE OF INTENT

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

**Motion Picture Investor Tax Credit Program
(LAC 61:I.1607 and 1613)**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will increase accounting and administrative duties at the Department of Economic Development (LED), whose staff will be required to administer the new Louisiana Filmmakers Grant Fund Program. All proceeds from transfer fees for film tax credits will be deposited to the Fund and awarded as grants (other charges) to resident filmmakers. The appropriation in the FY 11 budget provides budget authority of \$100,000 in grant expenditures during FY 11 subject to the actual amount of fees generated. Administrative costs will be incorporated into the current LED budget.

There are no anticipated costs or savings to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

La. R.S. 47:6007 (C) (7) mandates that processing fees received by LED for notice of tax credit transfers shall be directed to the Louisiana Filmmaker Grant Fund and used to support Louisiana's independent filmmakers. These fees have not been assessed in the past. The fees are expected to be assessed in the future and will increase self-generated revenue to the state, which in turn will be used to fund the Louisiana Filmmakers Grant Program administered by LED. The grants will be for reimbursable eligible expenses that take place in the state for resident filmmakers only. This proposed rule deals only with the filmmaker grant program and not the actual fee.

Act 633 of the 2010 Regular Session (Funds Bill) created the Louisiana Filmmakers Grant Fund and the Louisiana Filmmakers Grant Program. The appropriation in the FY 11 state budget for the Fund was \$100,000, but grants will be rewarded based on the amount of actual collections. The proceeds of the fee will appear as a statutory dedication in the LED budget and will presumably pass through the budget as filmmaker grants.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

To the extent that independent filmmakers apply for and are awarded a filmmaker grant, successful applicants may receive a maximum benefit of up to \$100,000. In exchange, applicants must complete all required paperwork, submit any requested information and provide a service to the state related to the film industry such as free training workshops, public screenings, mentoring or internships, etc. Indirectly, those applying for the transfer of film credits will be assessed a processing fee (not addressed in this rule) of \$200 per transferee (to be published as LAC Title 61, Part I, Chapter 16, Subchapter A, Section 1613(A)2.b), the proceeds of which will be used to fund these filmmaker grants. If the fee is not assessed, the grants will not materialize.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

These competitive grants will provide funding to resident filmmakers that will not be available to filmmakers residing outside the state.

Kristy McKearn
DED Undersecretary
1011#124

Robert E. Hosse
Staff Director
Legislative Fiscal Office

The Department of Economic Development, Office of Business Development, Office of Entertainment Industries Development, 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. 47:6007, hereby proposes to amend and adopt its existing rules and regulations relative to its Motion Picture Investor Tax Credit Program.

Whereas the department already has statutory authority to request an audit at the applicants expense, these amended rules will clarify when such an audit may be required and establishes a fee schedule.

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 A. Motion Picture Investor Tax Credit
Program**

§1607. Certification Procedures

A. - D.1.d ...

2. When requesting final certification of credits, the motion picture production company or infrastructure project applicant shall submit to the office the following:

a. a cost report, certified by a state licensed, independent certified public accountant and complying with the minimum standards as required by R.S. 47:6007 D (2) (d). The cost report may be subject to additional audit by the department, the division, or the Department of Revenue, at the applicant's expense.

i. Incorrect Reporting. If an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events, transactions, or other significant information there may be cause for an additional audit.

ii. Related Party Transactions. If an audit contains related party transactions in excess of 20 percent of the total expenditures reported in the submitted audit there may be cause for an additional audit.

iii. Reimbursement of Audit Costs. The department may undertake additional audit at the applicant's expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the department's contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

2.b. - E.2.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Division of Administration, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 35:55 (January 2010), amended LR 37:

§1613 Application of the Tax Credit

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

2. Transfer. Any motion picture investor tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the office, pursuant to R.S. 47:6007(C)(4).

a. A single transfer or sale may involve one or more transferees. Transferors and transferees shall submit to the Office and to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such credits and shall include a processing fee of two hundred dollars per transferee.

b. If the investor tax credits (evidenced by a certification letter) are transferred to the office:

i. on and after January 1, 2007, and prior to December 31, 2008 the state shall make payment to the investor at a value of 72 percent of the face-value of the credits;

ii. on January 1, 2009, and every second year thereafter, the percent of the value of the tax credits paid by the state shall increase 2 percent until the percentage reaches 80 percent;

iii. for state certified productions which receive initial certification on or after July 1, 2009, the state shall make payment to the investor at a value of 85 percent of the face-value of the credits.

A.3. - B.6.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Division of Administration, the Department of Economic Development, Office of Business Development, and the Office of Entertainment Industry Development, LR 35: 57 (January 2010), amended LR 37:

Family Impact Statement

Family Impact Statement: It is anticipated that the proposed Rule amendment will have no significant effect on the: (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Statement

It is anticipated that the proposed rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons should submit written comments on the proposed Rules to Chris Stelly through the close of business on January 5, 2011 at P.O. Box 94185, Baton Rouge, LA 70804-9185 or via email to cstelly@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 10 a.m. on January 6, 2011 at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA.

Kristy McKearn,
DED Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Motion Picture Investor Tax Credit Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change could increase the need for contract auditors at the Department of Economic Development (LED). One or more state certified public accountants also certified in financial forensics or also certified as a fraud examiner will be on contract with the Department of Economic Development (LED) to conduct any audits on an as needed basis. It is anticipated that only a few audits will be required per year, which may increase over time in proportion to the increasing program applications received annually. LED estimates the need for one auditor in FY 10-11, two auditors in FY 11-12 and three auditors in FY 12-13, at a maximum potential cost of \$15,000 per audit. In theory, the applicant will be charged for the cost of the audit so this expenditure could be offset by self-generated revenue. However, the state would be liable for any audit expense above \$15,000 and stand to increase revenue in excess of expenditures if the audit costs less than \$2,000. Any other administrative duties brought about by the proposed rule will be handled by existing departmental staff funded by the existing LED budget.

In addition, the proposed rule change will increase accounting and administrative duties at LED, whose staff will be required to verify accurate submission of the \$200 processing fee per transferee, and administer the new Louisiana Filmmakers Grant Fund Program, however, this too will be handled by existing departmental staff funded by the existing LED budget.

There are no anticipated costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

While La. R.S. 47:6007 already authorizes LED to conduct an audit at the applicant's expense, this revision clarifies when such an audit may be required and establishes a fee structure of \$2,000 minimum and \$15,000 maximum fee per audit. It is anticipated that only a few audits will be required per year, which may increase over time in proportion to the increasing program applications received annually. To the extent the fees are assessed, they will increase self-generated revenue to the state and be used to pay auditors as described in Section I. Should the cost of an audit be lower than \$2,000, state revenue collections may increase in excess of expenditures, and, if the audit costs more than \$15,000, state expenditures would increase as the fee proceeds would not cover the entire cost of the audit. However, these amounts are expected to be minimal.

This proposed rule also establishes a fee structure of precisely \$200 for film tax credit transfers. La. R.S. 47:6007 (C)(4)(b) already authorizes LED to charge a processing fee of "up to \$200" per transferee for each notification of a tax credit submitted to LDR and LED, but the fees have not been assessed in the past. To the extent that the fees are assessed,

they will increase self-generated revenue to the state, which in turn will be used to fund the Louisiana Filmmakers Grant Program pursuant to La. R.S. 47:6007 (C)(7)(a). The net effect to the departmental budget will be an increase in statutory dedication revenue (film credit transfer processing fees) and a similar increase in expenditures (filmmaker grants). The appropriation in the FY 11 budget of \$100,000 provides an estimate of the magnitude of the fee collections and, thus, the filmmaker grants to be issued. However, the actual collections will determine the impact as grants will not be awarded unless the fees have been collected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In cases of incorrect reporting or high percentage of related party transactions, in order for LED to verify the amount, if any, of qualifying expenditures, an applicant may have to reimburse LED for the cost of an additional audit.

To the extent that investors choose to purchase Motion Picture tax credits, investors will incur an additional processing fee of \$200 per transferee. The appropriation in the FY 11 budget of \$100,000 provides an estimate of the cost of the fee to the investors.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Per the audits, there is no anticipated impact on competition and employment due specifically to this rule as all entities performing motion picture production activities are under the same guidelines. Grants to be awarded to resident filmmakers could provide a competitive advantage over out-of-state filmmakers doing business in the state.

Kristy McKearn
DED Undersecretary
1011#125

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—9-12 Transition from 2010 to 2012 (LAC 28:LXXXIII.302)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §302. 9-12 Transition from 2010 to 2012. The proposed changes provide detail for transition of schools in grades 9-12. These proposed changes will provide a process to keep all schools accountable while the current 9-12 assessment program is phased out and End-of-Course tests are phased in. The changes also allow for waivers for any school that is AUS in 2011 due exclusively to the elimination of 9th grade iLEAP.

**Title 28
EDUCATION**

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

**Chapter 3. School Performance Score Component
§302. 9-12 Transition from 2010 to 2012**

A. - C. ...

D. The 2011 baseline SPS for 9-12 and the 9-12 component of combination schools shall be comprised of 70 percent assessment index calculated using 2010 iLEAP

results, 2010 and 2011 GEE results, and 30 percent graduation index from the 2009 and 2010 cohorts.

E. - I. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2241 (October 2010), amended LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System—9-12 Transition from 2010 to 2012

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Proposed changes in Bulletin 111, Chapter 3 provide detail for transition of schools in grades 9-12. These proposed changes will provide a process to keep all schools accountable while the current 9-12 assessment program is phased out and End-of-Course tests are phased in. The changes also allow for waivers for any school that is an Academically Unacceptable School in 2011 due exclusively to the elimination of 9th grade iLEAP.

The proposed rule changes will result in no cost or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#045

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment
Standards and Practices
(LAC 28:CXI.Chapters 3, 7, 17, 18, 19, 20, 33, and 35)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §305. Test Security Policy, §315. Emergencies During Testing, §701. Overview of Assessment Programs in Louisiana, §1700. Sunset Provision, §1810. Geometry Test Structure, §1813. Performance Standards, §1817. EOCT Achievement Level Descriptors, §1823. Rescores, §1829. EOCT Transfer Rules, §1831. College and Career Diploma, §1900. Sunset Provision, §2000. Sunset Provision, §3307. Limited English Proficient Students, §3501. Approved Home Study Program Students, and §3511. Migrant Students.

The document will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security; Chapter 7, Assessment Program Overview; Chapter 17, Integrated LEAP (iLEAP); Chapter 18, End-of-Course Tests (EOCT); Chapter 19, LEAP Alternate Assessment, Level 1 (LAA 1); Chapter 20, LEAP Alternate Assessment, Level 2 (LAA 2); Chapter 33, Assessment of Special Populations; and Chapter 35, Assessment of Students in Special Circumstances. New policy language updates and edits were made to chapters 3, 7, 18, 33, and 35. New policy language additions were made to Chapters 17, 18, and 19.

**Title 28
EDUCATION**

Part CXI. Bulletin 118 Statewide Assessment Standards and Practices

Chapter 3. Test Security

§305. Test Security Policy

A.1. - 3.k. ...

4. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the state's test security policy. A copy of the policy and a Statement of Assurance regarding the LEA's test security policy must be submitted annually to the LDE, Division of Assessments and Accountability. This statement must include the name of the individual designated by the district superintendent or institution to procure test material. The policy shall provide:

4.a. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:217 (February 2009), LR 37:

§315. Emergencies During Testing

A. - A.7 ...

B. End-Of-Course Tests (EOCT) Emergency Plan

1. Each school district shall develop and adopt a district test security policy disaster plan for EOC testing that is in compliance with the state's test security policy. A Statement of Assurance regarding the LEA's EOC disaster plan must be submitted annually to the LDE, Division of Assessment and Accountability. This statement must provide the steps to be followed in the event of a major disaster that results in the disabling of computers during EOC testing such as the following:

- a. fire;
- b. lightning;
- c. flooding; and
- d. others.

2. If online testing is disrupted by emergencies, lost Internet connections, lost power, or computer crashes and students are unable to continue testing on the same day, the school test coordinator should document what occurred as a testing irregularity and notify the district test coordinator. If the student will be unable to return to testing by the end of the day after the disruption, the district test coordinator must immediately notify the LDE, Division of Assessments and Accountability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007), LR 34:66 (January 2008), LR 35:218 (February 2009), LR 37:

Chapter 7. Assessment Program Overview

§701. Overview of Assessment Programs in Louisiana

A. Norm-Referenced and Criterion-Referenced Testing Programs Since 1986

Name of Assessment Program	Assessment Population	Administered
Kindergarten Screening		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987–
Norm-Referenced Tests (NRTs)		
California Achievement Test (CAT/F)	grades 4, 6, and 9	spring 1988–spring 1992 (no longer administered)
California Achievement Test (CAT/5)	grades 4 and 6 grade 8	spring 1993–spring 1997 spring 1997 only (no longer administered)

Name of Assessment Program	Assessment Population	Administered
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	grades 4, 6, 8, 9, 10, and 11	spring 1998 (no longer administered)
ITBS ITED (form M)	grades 3, 5, 6, and 7 grade 9	spring 1999–spring 2002 (no longer administered)
ITBS ITED (form B)	grades 3, 5, 6, and 7 grade 9	spring 2003–spring 2005 (no longer administered)
Criterion-Referenced Tests (CRTs)		
National Assessment of Educational Progress (NAEP)	grades 4, 8, and 12	spring 1990–
Louisiana Educational Assessment Program (LEAP)	grades 3, 5, and 7	spring 1989–spring 1998 (no longer administered)
Graduation Exit Examination ("old" GEE)	grades 10 and 11	spring 1989–spring 2003 (state administered) fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	grades 4 and 8	spring 1999–
LEAP (Science and Social Studies)	grades 4 and 8	spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	grade 10	spring 2001–
GEE (Science and Social Studies)	grade 11	spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	fall 2007–
EOCT	Algebra I	spring 2008–
EOCT	English II	fall 2008–
EOCT	English II	spring 2009–
EOCT	Geometry	fall 2009–
EOCT	Geometry	spring 2010–
EOCT	Biology	fall 2010
EOCT	Biology	spring 2011
Integrated NRT/CRT		
Integrated Louisiana Educational Assessment Program (iLEAP)	Integrated Louisiana Educational Assessment Program (iLEAP)	Integrated Louisiana Educational Assessment Program (iLEAP)
iLEAP	Grade 9	Spring 2010 (last administration of grade 9 iLEAP)
Special Population Assessments		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11.	spring 2000–2007
LAA 1	ELA and Mathematics (grade spans 3–4; 5–6; 7–8; 9–10); Science (grades 4, 8, and 11)	Revised spring 2008–

Name of Assessment Program	Assessment Population	Administered
LAA 1 ELA and Mathematics	Grade 9	Spring 2010 (last administration of grade 9 LAA 1)
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	grades 4, 8, 10, and 11	spring 2006–
LAA 2 ELA and Mathematics	grades 5, 6, 7, and 9	spring 2007–
LAA 2 ELA and Mathematics	Grade 9	Spring 2010 (last administration of grade 9 LAA 2)
LAA 2 Science and Social Studies	grades 4 and 8	spring 2008–
Louisiana Alternate Assessment-B (LAA-B) ["out-of-level" test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3–11.	spring 1999–spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K–12	spring 2005–

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:218 (February 2009), LR 37:

Chapter 17. Integrated LEAP
Subchapter A. General Provisions
§1700. Sunset Provision

A. Beginning academic year 2010-2011, grade 9 iLEAP tests will no longer be administered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Chapter 18. End-of-Course Tests
Subchapter C. EOCT Test Design
§1810. Geometry Test Structure

A. The Geometry EOC test includes three sessions, all of which will be administered online:

1. 25-item multiple-choice session in which students may not use calculators;
2. 3-item constructed-response session, in which students may use calculators; and
3. 25-item multiple-choice session in which students may use calculators.

B. Student responses to multiple-choice items will be computer-scored.

C. Student responses to the constructed-response items will be scored by the contractor.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Subchapter D. Achievement Levels and Performance Standards

§1813. Performance Standards

A. - B.2. ...

3. Geometry Scaled-Score Ranges

English II	
Achievement Level	Scaled-Score Ranges
Excellent	731-800
Good	700-730
Fair	665-699
Needs Improvement	600-664

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:

Subchapter E. Achievement Level Descriptors

§1817. EOC Achievement Level Descriptors

A. - B. ...

C. Geometry Achievement Level Descriptors

7.	use angle relationships to find the measure of a missing angle;
8.	solve one-step, real-world problems using proportional reasoning;
9.	identify the type of transformation performed on a geometric figure;
10.	use discrete math (elections, fair games, flow maps, color maps, etc.) and a given set of conditions to determine possible outcomes; and
11.	identify a correct informal proof.
Needs Improvement	
Students at this achievement level are generally working toward the ability to:	
1.	use angle relationships to find the measure of a missing angle;
2.	solve one-step, real-world problems using proportional reasoning;
3.	identify the type of transformation performed on a geometric figure;
4.	use discrete math (elections, fair games, flow maps, color maps, etc.) and a given set of conditions to determine possible outcomes; and
5.	identify a correct informal proof.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Subchapter F. EOC Administrative Rules

§1823. Rescores

A. - D. ...

1. The test has a scaled score ten points below the Fair achievement level.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:977 (May 2010), amended LR 37:

§1829. EOC Transfer Rules

A. ...

1. A transfer student is not required to take the EOC tests for courses he/she already successfully completed for Carnegie credit.

2. A transfer student shall be required to take the EOC test for courses he/she previously took but did not pass.

3. A transfer student may choose to take an EOC test for a course he/she already successfully completed if he/she scored *Needs Improvement* on an EOC test in another course and the student must pass the EOC test for one of the EOC pairs.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:978(May2010), amended LR 37:

§1831. College and Career Diploma

A. Refer to *Bulletin 741: Louisiana's Handbook for School Administrators*.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Excellent	
Students at this achievement level generally have exhibited the ability to:	
1.	define and use trigonometric ratios to solve problems involving right triangles;
2.	understand and apply the Pythagorean Theorem in multi-step problems;
3.	calculate permutations and combinations to solve multi-step, real-world problems;
4.	solve problems in coordinate geometry involving distances;
5.	simplify radical expressions;
6.	compare inductive reasoning strategies;
7.	write equations of parallel lines;
8.	solve real-life and mathematical problems involving angle measure using parallel and perpendicular relationships; and
9.	find arc lengths of circles.
Good	
Students at this achievement level generally have exhibited the ability to:	
1.	solve multi-step problems using properties of radii, chords, secants, and tangents of a circle;
2.	write an equation of a line of best fit;
3.	calculate the probability of a simple, conditional event;
4.	solve real-world and mathematical problems involving volume and surface area of spheres;
5.	write conditional statements and make logical conclusions;
6.	build a function that models a relationship between two quantities;
7.	perform and/or analyze dilations of geometric figures;
8.	use similarity criteria for triangles to solve multi-step problems;
9.	make conjectures using properties of quadrilaterals; and
10.	analyze and use proportional relationships to solve real-world and mathematical problems.
Fair	
Students at this achievement level generally have exhibited the ability to:	
1.	use the Triangle-Sum Theorem to solve simple real-world and mathematical problems;
2.	calculate the volume of a solid when given a diagram;
3.	calculate a missing side length using similar triangles;
4.	identify a geometric solid when given a set of attributes;
5.	describe or interpret patterns in measurement data;
6.	derive a rule for a pattern in a number sequence;

Chapter 19. LEAP Alternate Assessment, Level 1

Subchapter A. Background

§1900. Sunset Provision

A. Beginning academic year 2010-2011, grade 9 LAA 1 tests will no longer be administered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1-17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Chapter 20. LEAP Alternate Assessment, Level 2

Subchapter A. Background

§2000. Sunset Provision

A. Beginning academic year 2010-2011, grade 9 LAA 2 tests will no longer be administered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1-17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Chapter 33. Assessment of Special Populations

§3307. Limited English Proficient Students

A. - C.1.e. ...

D. Native-language versions of state assessments are not provided for limited English proficient (LEP) students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq. and R.S. 17:24.4 (F)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1562 (July 2005), amended by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), LR 33:264 (February 2007), LR 33:1010 (June 2007), LR 36:983 (May 2010), LR 37:

Chapter 35. Assessment of Students in Special Circumstances

§3501. Approved Home Study Program Students

A. - D. ...

E. Students and state-approved home study programs may take the *i*LEAP tests in grades 3, 5, 6, and 7.

F. - G. ...

H. Students enrolled in state-approved home study Programs are not eligible to participate in LAA 1, LAA 2, ELDA, or EOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1-17:236.2, R.S. 17:6 (A) (10) (11) (15), R. S. 17:10, R. S. 17:22 (6), R. S. 17:391.1-17:391.10, R. S. 17:411.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), LR 33:264 (February 2007), LR 36:983 (May 2010), LR 37:

§3511. Migrant Students

A. Migrant students shall take the appropriate assessment for their enrolled grade during the scheduled assessment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted,

amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 118—Statewide Assessment Standards and Practices**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

New and updated policy language will be added to Chapter 3, Test Security, regarding EOCT emergencies that may occur during testing. In Chapter 7, Assessment Program Overview, the testing chart will be edited to reflect the addition of Biology as an EOC test and list spring 2010 as being the last statewide administration of grade 9 *i*LEAP, grade 9 LAA 1, and grade 9 LAA 2 assessments. Policy language, Sunset Provision, will be added to the following chapters in *Bulletin 118*: Chapter 17, Integrated Louisiana Educational Assessment Program (*i*LEAP); Chapter 19, LEAP Alternate Assessment, Level 1 (LAA 1); and Chapter 20, LEAP Alternate Assessment, Level 2 (LAA 2) to reflect the final administration of grade 9 assessments in each of these testing programs. Chapter 18, End-Of-Course Tests (EOCT), is being updated to add new policy language regarding the geometry EOC test structure, scale-score ranges, and achievement level descriptors; to reflect the new scale- score range required for an EOCT rescore (10 scale score points); provide new policy language for EOCT transfer rules; and add a new policy topic, College and Career Diploma. Chapter 33, Assessment of Special Populations, which addresses special education students and limited English proficient student, will be edited to provide information about native-language versions of statewide assessments. Chapter 35, Assessments of Students in Special Circumstances, policy language will be updated to state that approved home study program students may not participate in EOC assessments and new policy language will be added, §3511, that provides information about migrant students. The proposed rule change will have no implementation cost to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections at the state or local governmental levels.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#046

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.Chapters 1-5 and 9-31)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 126—Charter Schools: Chapters 1 - 35*. The update will update the Bulletin to bring it into compliance with updates made to law. The update will bring Bulletin 126 into compliance with updates made to law. The update will enhance the current charter application process to require that the due diligence review include an examination of nonprofit and management organization performance, including the performance of schools operated within the state that have closed. Additionally, there will be a set of required timelines for the voluntary relinquishment of charter schools and possible penalties for not adhering to these timelines. Charter schools will also be required to notify the Board when a contract with a management organization is terminated and provide a plan for the continued operation of the school. If such a plan is deemed inadequate, the Recovery School District can be given interim authority to operate the school. Failure to adhere to the requirements may lead to the non-profit board being disqualified from operating another charter school in Louisiana for up to five years. Lastly, it will require board approval for changes in over 60 percent of a charter school board of directors as material amendments and require that the charter school notify the board of any non-material amendments made to the charter.

**Title 28
EDUCATION**

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§103. Definitions

A. - E. ...

F. *Management Organization*—an organization contracted by the charter operator to directly manage a charter school.

G. *Charter School*—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana Charter School Law to provide a learning environment that will improve pupil achievement.

H. *Charter School Application*—the proposal submitted to BESE, which includes but is not limited to, responses to questions concerning a charter school’s education program; governance, leadership, and management; financial plan; and facilities.

I. *Charter School Law*—Louisiana Laws, R.S. 17:3971 et seq., governing the operation of a charter school.

J. *Chartering Authority*—a local school board or the State Board of Elementary and Secondary Education.

K. *Core Subject*—core subject shall include those subjects defined as core subjects in Bulletin 741.

L. *Department of Education* or *LDE*—the Louisiana Department of Education.

M. *Department of Education Office of Parental Options* or *OPO*—the unit within the Department of Education responsible for the administration of the state charter school program and for providing oversight of the operation of charter schools chartered by BESE.

N. *Hearing Officer*—the individual assigned by BESE to perform adjudicatory functions at charter school revocation hearings.

O. *Local School Board*—any city, parish, or other local public school board.

P. *Public Service Organization*—any community-based group of 50 or more persons incorporated under the laws of this state that meets all of the following requirements:

1. has a charitable, eleemosynary, or philanthropic purpose; and is qualified as a tax-exempt organization under Section 501(c) of the United States Internal Revenue Code and is organized for a public purpose.

Q. *State Superintendent*—the Superintendent of Education, who is the chief administrative officer of the Louisiana Department of Education, and who shall administer, coordinate, and supervise the activities of the department in accordance with law, regulation, and policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:

§109. Limit on the Number of Charter Schools

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), repealed LR 37:

Chapter 3. Charter School Authorizers

§303. BESE Authorizing Responsibilities

A. - A.1. ...

2. to review each proposed charter in a timely manner to determine whether each charter school application complies with the Charter School Law and this bulletin and whether the application is valid, complete, financially well-structured, educationally sound, whether it provides for a master plan for improving behavior and discipline in accordance with R.S. 17: 252, whether it provides a plan for collecting data in accordance with R.S. 17:3911, and offers potential for fulfilling the purposes of the Charter School Law. BESE shall engage in an application review process that complies with the latest Principles and Standards for Quality Charter School Authorizing, as promulgated by the National Association of Charter School Authorizers, and

shall provide for an independent evaluation of the charter proposal by a third party with educational, organizational, legal, and financial expertise.

3. – 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:

§306. Local School Board Authorizing Responsibilities

A. Local school boards, as the authorizer of Type 1 and Type 3 charter schools, have the following authorizing responsibilities:

1. except as otherwise provided herein relating to local school systems in academic crisis, to review and formally act upon each charter proposal within 90 days of its submission and in the order in which submitted In conducting such a review, the local school board shall determine whether each proposed charter complies with the law and rules, whether the proposal is valid, complete, financially well-structured, and educationally sound, whether it provides for a master plan for improving behavior and discipline in accordance with R.S. 17:252, whether it provides a plan for collecting data in accordance with R.S.17:3911, and whether it offers potential for fulfilling the purposes of the law;

2. engage in a transparent application review process that complies with the latest Principles and Standards for Quality Charter School Authorizing, as promulgated by the National Association of Charter School Authorizers, and shall provide for an independent evaluation of the charter proposal by a third party with educational, organizational, legal, and financial expertise;

3. make public through its website, and in printed form upon request, the guidelines for submitting a charter proposal, all forms required for submission of a charter proposal, the timelines established for accepting and reviewing charter proposals, the process that will be used to review charter proposals submitted to the board, and the name and contact information for a primary point of contact for charter proposals;

4. prior to approving a charter for a Type 1 or Type 3 school, to hold a public meeting for the purpose of considering the proposal and receiving public input. Such meeting shall be held after reasonable efforts have been made by the local school board to notify the public of the meeting and its content.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:

§307. Local School Board Duties

A. Local school boards have the following duties relating to charter schools:

1. to report any charter entered into to BESE within two business days following the approval; and to report the number of schools chartered, the status of those schools, and any recommendations relating to the charter school program to BESE no later than July 1 of each year;

2. provide each charter school with the criteria and procedures that will be used when considering whether to renew a school's charter;

3. to notify the chartering group in writing of any decisions made relative to the renewal or nonrenewal of a school's charter not later than January 31 of the year in which the charter would expire. A notification that a charter will not be renewed shall include written explanation of the reasons for such non-renewal;

4. to make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase at up to fair market value. In the case of a Type 2 charter school created as a result of a conversion, the facility and all property within the existing school shall also be made available to that chartering group In return for the use of the facility and its contents, the chartering group shall pay a proportionate share of the local school board's bonded indebtedness to be calculated in the same manner as set for in R.S. 17:1990(C)(2)(a)(i). If such facilities were constructed at no cost to the local school board, then such facilities, including all equipment, books, instructional materials, and furniture within such facilities, shall be provided to the charter school at no cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3982, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:

Chapter 5. Charter School Application and Approval Process

§503. Eligibility to Apply for a Type 2 Charter School

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

c. the local school board has made no final decision within 90 days after the submission of a proposal; and

A.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:3982, R.S. 17:3983, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1360 (July 2008), amended LR 37:

§507. Existing Public Schools Converting to Charter Schools

A. Prior to applying for a Type 2 charter school, which proposes to be a school converted from a preexisting public school to a charter school, BESE shall require an applicant to receive approval from the professional faculty and staff of the pre-existing school and the parents or guardians of children enrolled in the school.

B. Prior to applying for a Type 3, or Type 4 charter school, which proposes to be a school converted from a preexisting public school to a charter school, the chartering authority may require an applicant to receive approval from the professional faculty and staff of the pre-existing school and the parents or guardians of children enrolled in the school.

C. Approval of the professional faculty and staff requires a favorable vote of the majority of the faculty and staff who are certified by BESE and who were employed at the pre-existing school. The number needed for approval shall be determined by the number of professional faculty and staff assigned to the pre-existing school on October 1 preceding the election.

1. An election must be held for the purpose of voting to convert a preexisting public school to a charter school.

2. Employees eligible to vote in an election are members of the faculty and staff who are employed at the pre-existing school and who are certified by BESE.

3. Each eligible employee may cast only one vote.

4. The election must be held by secret ballot.

D. Approval by the parents or guardians requires a favorable vote of the majority of the voting parents or guardians of pupils enrolled in the school.

1. An election must be held for the purpose of voting to convert a pre-existing public school to a charter school.

2. The number of votes cast by the parents or guardians in an election must equal at least 50 percent of the number of students enrolled in the school at the time of the election.

3. Only one vote may be cast by one parent or guardian for each student enrolled in the school at the time of the election.

4. The election must be held by secret ballot.

E. An election of the professional faculty and staff or of the parents and guardians may be repeated in any school for approval of the same or a different charter proposal; however, such an election may not occur more than once in any school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:

§512. Application Process for Locally Authorized Charter Schools

A. Application Cycle

1. A local school board may accept charter school proposals until February 28 of each year and shall provide notification of its final decision to the chartering group. Notifications of charter proposals denied shall include written explanation of the reasons for such denial.

2. If the local school board does not reach a final decision within 90 days after the submission of the proposal, the chartering group may submit its proposal to BESE for its review as a Type 2 charter proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:

§513. Stages of Application Cycle for BESE-Authorized Charter Schools

A. - C. ...

D. Due Diligence Review. A due diligence review shall be performed on each charter school application/applicant. It may include, but not be limited to, background and reference checks of nonprofit corporation board members and individuals and agencies associated with the charter application; analysis of school performance and nonprofit corporation and management company performance, and performance associated with charter schools previously operated within the state that have since closed; and school site visits for existing operators.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), mended LR 37:

§515. Charter School Application Components

A. The BESE charter school application shall be prepared as a Request for Applications. Each request for applications shall consist of sections that provide applicants with information on charter schools in Louisiana, an explanation of the application process and timelines, charter school application questions, and any other information which is necessary for an applicant to be able to respond to the charter application questions.

B. All BESE requests for applications must be approved by BESE prior to the release of the request. In cases of a Type 5 charter operator voluntarily relinquishing its charter, the State Superintendent of Education may issue an Emergency Request for Applications and BESE shall be notified of such action within two business days.

C. The charter school application questions contained in the BESE request for applications shall consist of questions in the following areas: executive summary, education program, governance, leadership and management, financial plan, and facilities.

D. The charter school application questions for all types of charter schools shall address the following:

1. a statement of the school's role, scope, and mission;

2. admission requirements, if any, that are consistent with the school's role, scope, and mission may be established in accordance with that permitted in Charter School Law and this bulletin;

3. a description of the jurisdiction within which a pupil shall reside or otherwise be eligible to attend a public school in order to be eligible for admission;

a. beginning with the 2011-2012 school year, a description of the geographic boundaries circumscribing the neighborhood immediately surrounding the charter school from which students residing within may be given preference for enrollment in accordance with R.S. 17:3991;

4. a description of the school's recruitment, enrollment, and admission process;

5. a financial and accounting plan sufficient to permit a governmental audit;

6. a description of how the proposed charter school fulfills one or more of the purposes specified in the Charter School Law and this bulletin;

7. a description of the education program offered by the school and how that program will meet the needs of the at-risk pupils to be served, including a discussion of the school's proposed curriculum;

8. a description of how the charter school will meet the needs of students with exceptionalities;

9. the specific academic and other educational results to be achieved, the timelines for such achievement, and how results will be measured and assessed;

10. an agreement to provide a report at the end of each semester to parents of pupils enrolled in the school, the community, the local school board, and the state board indicating progress toward meeting the performance objectives as stated in the charter;

11. the organizational, governance, and operational structure of the school, including its policies regarding its compliance with applicable public body laws;

12. policies, programs, and practices to ensure parental involvement;

13. staffing plan, including the number of teachers and employees;

14. personnel policies and employment practices applicable to the school's officers and employees;

15. manner in which teachers and other school employees will be evaluated;

16. school rules and regulations applicable to pupils, including disciplinary policies and procedures, that incorporate research-based discipline practices, such as positive behavior interventions and supports, restorative justice principles in accordance with R.S. 17:252.;

17. information concerning the school location and the adequacy of its facilities and equipment. Such information shall include a statement of the procedures to be followed and disposition of facilities and equipment should the charter be terminated or not renewed;

18. management and accounting practices to be employed;

19. provisions regarding liability issues;

20. types and amounts of insurance coverage provided;

21. a requirement that curriculum shall be focused on the intellectual domain with intellectual development defined as acquisition of discrete technical and academic skills;

22. a requirement that charter schools regularly assess the academic progress of their pupils, including the participation of such pupils in the state testing programs, and the sharing of such information with parents;

23. a requirement that a pupil shall have a mastery of grade-appropriate skills before the pupil can be recommended for promotion or promoted;

24. provisions regarding the safety and security of the school;

25. provisions regarding electronic communications by an employee of the charter school to a student enrolled at the charter school;

26. provisions regarding the inspection and operation of all fire prevention and safety equipment at the school; and

27. a plan for collecting data in accordance with R.S. 17:3911.

E. Type 1 and Type 2 charter school applications shall describe how the charter school will serve the percentage of at-risk students defined in the Charter School Law and in Section 2713 of this bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:

§517. Consideration of Charter Applications and Awarding of Charters by BESE

A. - B. ...

C. BESE shall carefully review each Type 2, Type 4, and Type 5 charter school application it receives and may approve a charter application only after it has made a specific determination that the proposed school will be operated in compliance with all applicable state and federal laws, rules, and regulations; that the accounting and financial practices to be used are sound and in accordance with generally accepted standards for similar entities; and that the educational program to be offered will comply with all requirements of the Charter School Law and be based on

generally accepted education research findings applicable to the pupils to be served, including but not limited to school discipline practices and policies that incorporate positive behavior interventions and supports, restorative justice, and other research-based discipline practices and classroom management strategies and otherwise conform to the other model master discipline plan required in accordance with R.S. 17:252.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:

§518. BESE Pre-Opening Procedures Following Approval

A. Following charter application approval by BESE, approved nonprofit corporations must complete pre-opening requirements approved by BESE prior to executing a charter contract and prior to opening a school.

B. The pre-opening requirements of BESE approved charter schools shall be developed by the Department of Education Office of Parental Options and presented for BESE's approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:

§519. Pre-Opening Procedures Following Approval

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), repealed LR 37:

Chapter 9. Opening of Charter School

§901. Timeline for Charter School Opening

A. A charter school shall begin operation by not later than 24 months after the final approval of the charter, unless such charter school is engaged in desegregation compliance issues and, therefore, must begin operation by not later than 36 months.

B. If a charter school fails to begin operation within the time periods set forth in §901.A, the charter for that school shall be automatically revoked although a new charter may be proposed in a subsequent application cycle.

C. A charter school, once approved, may begin operation only in July, August, or September of a given year.

D. A charter school shall not begin operation sooner than eight months after approval of the charter school has been granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:

Chapter 11. Ongoing Review of Charter Schools

§1101. Charter School Evaluation

A. - B. ...

C. BESE shall receive a report on the review of Type 2, Type 4, and Type 5 charter schools in January of each year. This annual review will be used in charter contract extension determinations.

1. During its renewal term, each charter school will be subject to regular site visits and contract review on a schedule established by the Department of Education.

a. A charter school under long-term renewal (five or more years), whose academic performance declines for three consecutive years, will be subject to a formal evaluation and contract review by LDOE. Based on the results of its evaluation, the department may recommend one of the following actions:

- i. the charter school be placed under a Memorandum of Understanding (MOU) that outlines specific recommendations for improving performance; or
- ii. revocation.

D. - D.1....

2. Charter schools are required to administer all state assessments and are subject to the Louisiana School and District Accountability System. The evaluation of a charter school's performance in its early years differs from the evaluation of existing public schools because the data necessary for certain types of accountability determinations to be made does not yet exist. However, data produced in a charter school's first years of existence is used in a manner that enables chartering authorities to track student performance by the assignment of an assessment index. An assessment index represents student performance on state assessments, as opposed to student performance on state assessments combined with other data like attendance and dropout rates. Each charter school will receive an assessment index until sufficient data exists for the school to receive a school performance score (SPS). Each charter school will receive its assessment index or school performance score (SPS), as applicable, when scores are released statewide.

D.3. - E. ...

1. Charter schools are required to engage in financial practices, financial reporting, and financial audits as set forth in Charter School Law, this bulletin, and the charter. The requirements imposed by law, regulation, and contract ensure the proper use of public funds and the successful fiscal operation of the charter school.

E.2. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:

Chapter 13. Charter Term

§1305. Fourth Year Review of Charter Schools on Contract Probation

A. A charter school granted a one-year extension and placed on probation after its third year of operation pursuant to §1303.B.2 shall comply with all conditions of probation established by BESE and the Department of Education, Office of Parental Options.

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:

Chapter 15. Charter Renewal

§1501. Renewal of Charter

A. At the conclusion of a charter school's fifth year of operation and the expiration of its initial charter contract, a

charter operator no longer has a continuing right to operate a charter school.

B. A charter school may apply for a renewal of its charter in compliance with processes and timelines established by its authorizer.

C. No charter shall be renewed unless the charter operator seeking renewal can demonstrate, at a minimum, using standardized test scores, improvement in the academic performance of pupils over the term of the charter school's existence.

D. A charter may be renewed for additional periods of not less than three nor more than ten years after thorough review by the approving chartering authority of the charter school's operations and compliance with charter requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:

§1502. BESE Processes for Charter Renewal

A. For BESE Authorized charters, The Department of Education Office of Parental Options shall make a recommendation to BESE as to whether a charter renewal application should be approved.

B. A BESE-Authorized charter school may be renewed at the discretion of BESE if all requirements set forth in law and policy for the renewal of a charter have been met.

C. The process for renewing a school charter shall be the same as for initial charter approval, with a thorough review by BESE of the charter school's operations, student academic performance, and compliance with charter requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008) amended LR 37:

§1503. Charter Renewal Process and Timeline

A. - B. ...

1. Each charter school is required to make demonstrable improvements in student performance over the term of its charter contract.

a. BESE will rely on data from the state's assessment and accountability program as objective and verifiable measures of student achievement and school performance. Student performance is the primary indicator of school quality; therefore, BESE will heavily factor each charter school's student performance data in all renewal decisions.

B.2. - 4. ...

5. A BESE-authorized charter school receiving an academically unacceptable performance label based on performance on the state's assessment and accountability program based on year four test data (or the year prior to the submission of a renewal application for subsequent renewals) will not be eligible for renewal, unless one of these conditions are met:

B.5.a. - C. ...

1. Each charter operator is required to engage in financial practices, financial reporting, and financial audits to ensure the proper use of public funds and the successful fiscal operation of the charter school. The evaluation financial performance indicator standards shall be measured as follows.

2. - 3. ...

4. A charter contract will not be renewed if the charter has failed to demonstrate over the term of its charter, the fundamental ability to operate a fiscally sound charter school, as evidenced by repeated failure to adhere to the financial standards articulated in this Section.

5. BESE Standards for Financial Performance

a. BESE will reduce the renewal term by a year for any charter school otherwise recommended for renewal in any of the following instances, but no term shall be less than three years:

b. a charter school that is not current in all financial reporting at the time of its renewal application or at the time of the department's renewal recommendation;

c. a charter school that has failed to submit at least half of its required financial reports timely or sufficiently in the 12 months immediately preceding the department's renewal recommendation to BESE;

d. a charter school with a "major finding" in either student count audit or financial audit in the most recent reporting period; or

e. a charter school projecting a deficit in its most recent year end general fund balance.

Repealed

6. A charter contract will be non-renewed if the charter has failed to demonstrate over the term of its charter, the fundamental ability to operate a fiscally sound charter school, as evidenced by repeated failure to adhere to the financial standards articulated above.

D. - D.3. ...

E. Initial Renewal for BESE-Authorized Charter Schools

1. - 4. ...

F. Subsequent Renewal for BESE-Authorized Charter Schools

1. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:

Chapter 17. Revocation

§1701. Reasons for Revocation

A. An authorizer may revoke a school's charter any time prior to the expiration of a charter operator's five-year term following initial approval or prior to the expiration of its subsequent renewal, if such is granted pursuant to Chapter 15 of this bulletin, upon a determination that the charter school or its officers or employees did any of the following:

1. committed a material violation of any of the conditions, standards, or procedures provided for in the approved charter;

2. failed to meet or pursue within the agreed timelines any of the academic and other educational results specified in the approved charter;

3. failed to meet generally accepted accounting standards of fiscal management;

4. violated any provision of law or BESE policy applicable to a charter school, its officers, or employees.

B. BESE may also revoke a schools charter if:

1. the health, safety, and welfare of students is threatened;

2. failed to meet the minimum standards for continued operation pursuant to R.S. 17:10.5, after four years of operation; or

3. any other reasons for revocation listed as such in a charter school's charter contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:

§1703. Revocation Proceedings

A. Recommendation to Revoke Charter for BESE-Authorized Charter Schools

1. - 4. ...

B. Revocation Hearing for BESE-Authorized Charter Schools

1. - 2. ...

3. Following the Department of Education's recommendation to revoke a charter, BESE shall determine if it will commence a revocation proceeding.

C. Hearing Officer for BESE-Authorized Charter Schools

1. - 2. ...

D. Revocation Hearing Notice for BESE-Authorized Charter Schools

1. - 5. ...

E. Issuance of Subpoenas for BESE-Authorized Charter Schools

1. - 4. ...

F. Presentation and Evaluation of Evidence at Revocation Hearing for BESE-Authorized Charter Schools

F.1. - G. ...

1. A charter may be revoked upon an affirmative vote of six members of BESE or by an affirmative vote of at least a majority of the local board membership.

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:

Chapter 18. Voluntary Relinquishment of a BESE-Authorized Charter

§1801. Voluntary Relinquishment of a BESE-Authorized Charter

A. If the operator of a BESE authorized charter school determines that it can no longer operate the charter school, it shall relinquish the charter to BESE at least 90 days prior to the beginning of the next school year.

B. Failure to relinquish a charter at least 90 days prior to the beginning of the next school year may result in BESE declining to accept a charter application submitted by that operator to BESE for up to five years. If at any time during this period, members of such charter operator's board form a majority of board membership for a different charter operator, BESE may decline to accept a charter application submitted by such charter operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:

Chapter 19. Amendments to BESE-Authorized Charters

§1903. Material Amendments for BESE-Authorized Charter Schools

A. - A.12. ...

13. change in membership of the charter operator's board of directors that exceeds 60 percent or more of its members within any six month period; and

14. any changes not specifically identified as a non-material amendment.

B. ...

C. The charter operator shall submit a request for a material amendment to its charter in compliance with all timelines and pursuant to all guidance, forms, and/or applications developed and set forth by the Department of Education, Office of Parental Options.

D. The Department of Education's Office of Parental Options shall make recommendations to BESE on each material amendment request it receives from a charter operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:

§1905. Non-Material Amendments for BESE-Authorized Charter Schools

A. - A.2. ...

3. amendments to the charter operator's by-laws; and

4. changes in any option expressed in the charter contract exhibits with respect to Teachers' Retirement System of Louisiana.

B. A non-material amendment will be effective following approval by the board of directors of the charter school.

C. The charter operator shall provide BESE with written notification of a non-material amendment to its charter within five days of board approval in compliance with all requirements set forth by the Department of Education, Office of Parental Options. Such notification shall be accompanied by a resolution of the school's board of directors, signed by the board's president.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:

§1907. Other Charter Amendments for BESE-Authorized Charter Schools

A. The charter operator shall provide BESE with written notification of all charter amendments not provided in §1703 and §1705 in compliance with all requirements set forth by the Department of Education, Office of Parental Options.

B. The Department of Education, Office of Parental Options shall determine if the reported amendment requires BESE approval of the amendment pursuant to §1703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:

Chapter 21. Charter School Governance

§2101. Board of Director Composition

A. The members of the board of directors shall receive no compensation other than reimbursement of actual expenses incurred while fulfilling duties as a member of such a board.

B. A charter school shall be prohibited from employing, in any manner, any member of the governing or management board of such school.

C. Not more than 20 percent of the members of any governing or management board of a charter school shall be members of the same immediate family. Members of the same immediate family shall include a board member and any other board members to whom he is related as defined in R.S. 42:1102(13) and any other board members to whom any of them are so related.

D. Board of Director Composition for BESE-Authorized Charter Schools

1. The board of directors of each charter operator shall consist of no fewer than seven members. Each charter operator shall be in full compliance with the provisions of this Subsection no later than January 1, 2009.

2. The board of directors of each charter operator should consist of members with a diverse set of professional skills and practical work experience in the areas of education, public/non-profit and/or for-profit administration or operations, community development, finance, and law.

3. The board of directors of each charter operator should be representative of the community in which the charter school is located and no fewer than 60 percent of its members shall reside in the community in which the charter school is located. Community, for the purposes of this paragraph, shall consist of the parish in which the school is located and immediate neighboring parishes and, for Type 2 charter schools, any parish that is included in the charter school's attendance zone.

4. The board of directors of each charter operator shall consist of no more than one person from the same immediate family, as defined by the Louisiana Code of Governmental Ethics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:

§2103. Board Member Responsibilities

A. - F. ...

G. Each member of the governing authority or management board of a charter school shall annually file a financial statement in accordance with R.S. 42:1124.3

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008) amended LR 37:

§2105. Board Member Training for BESE-Authorized Charter Schools

A. The board of directors of each charter operator shall develop an annual training schedule with respect to the operation of a non-profit organization and the management of a charter school in compliance with requirements set forth

by the Department of Education, Office of Parental Options.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008). Amended LR 37:

§2107. Prohibitions

A. - E. ...

F. A charter school shall not be supported by or affiliated with any religion or religious organization or institution; however, a charter school may receive from any such organization or institution support or student services including but not limited to mentoring, volunteering, fund-raising, or tutoring.

G. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:

Chapter 23. Charter School Funding

§2301. State Funding

A. The per pupil amount provided to a Type 1, 2, 3, or 4 charter school shall be computed at least annually and shall be equal to no less than the per pupil amount received by the school district in which the charter school is located from the following.

B. Initial allocation of the per pupil amount each year shall be based on estimates provided by the Louisiana Department of Education using the most recent local revenue data and projected pupil counts available. Allocations may be adjusted during the year to reflect actual pupil counts.

C. For the purposes of funding, each Type 1, Type 3, and Type 4 charter school shall be considered an approved public school of the local school board entering into the charter agreement and shall receive a per pupil amount each year from the local school board based on the October 1 membership count of the charter school and any other membership count authorized pursuant to the Minimum Foundation Program formula adopted each year.

D. Type 5 charter schools shall receive a per pupil amount each year pursuant to formulas developed by the RSD which may include differentiated funding for certain students, including students identified as being eligible for special education services, and based on the October 1 membership count of the charter school and any other membership count authorized pursuant to the Minimum Foundation Program formula adopted each year.

E. Type 2 charter schools approved prior to July 1, 2008 shall receive a per pupil amount from the Louisiana Department of Education each year based on the October 1 membership count of the charter school and using state funds specifically provided for this purpose. In order to provide for adjustments in allocations made to Type 2 charter schools as a result of changes in enrollment, BESE may provide annually for a February pupil membership count to reflect any changes in pupil enrollment that may occur after October 1 of each year. Type 2 charter schools authorized by the State Board of Elementary and Secondary Education after July 1, 2008, shall receive a per pupil amount each year as provided in the Minimum Foundation Program approved formula.

1. Any allocation adjustment made pursuant to this Paragraph shall not be retroactive and shall be applicable for the period from March 1 through the end of the school year. The provisions of this Paragraph relative to an allocation adjustment shall not be applicable to any Type 2 charter school that has had an increase or decrease in student enrollment of 5 percent or less in any school year for which the February membership count occurs.

F. A charter authority may annually charge each charter school it authorizes a fee in an amount equal to two percent of the per pupil allocation that is received by a charter school for administrative overhead costs incurred by the chartering authority for considering the charter application and any amendment thereto, providing monitoring and oversight of the school, collecting and analyzing data of the school, and for reporting on school performance. Such fee amount shall be withheld from the per pupil amount in monthly increments and shall not be applicable to any federal money or grants received by the school. Administrative overhead costs shall not include any cost incurred by the charter authority to provide purchased services to the charter school.

1. At least 30 days prior to the beginning of each fiscal year, each charter school shall be provided by its chartering authority with a projected budget detailing anticipated administrative overhead costs and planned uses for fees charged for such costs.

2. By no later than 90 days following the end of each fiscal year, each charter school shall be provided by its chartering authority or the Recovery School District, if applicable, an itemized accounting of the actual cost of each purchased service provided to the charter school.

G. A charter school may contract with the chartering authority, or with the Recovery School District for a Type 5 charter school, for the direct purchase of specific services in addition to those include in administrative overhead costs, included by not limited to food services, special education services, transportation services, custodial and maintenance services, media services, technology services, library services, health services, and health benefits for active and retired employees. Such services shall be provided to the charter school at the actual costs incurred by the chartering authority or Recovery School District as applicable. The amount paid by a charter school for such purchased services shall be in accordance with a written agreement entered into for this purpose by the charter school and the chartering authority or the Recovery School District as applicable. Such agreement shall be negotiated and executed prior to the beginning of each school year. Absent such an agreement as provided by this Subparagraph, the chartering authority or, if applicable, the Recovery School District, shall have no authority to withhold from the charter school any funds relative to providing such services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:

Chapter 25. Charter School Fiscal Responsibilities

§2505. Financial Reporting

A. Each charter operator shall submit quarterly reports to the department listing year-to-date revenues and expenditures through that quarter and budgeted revenues and

expenditures for the fiscal year, using forms provided by the department and on dates specified by the department as set forth below.

Due Date	Financial Report
July 31	Annual Operating Budget Includes actual data for the prior fiscal year ending June 30 along with budgeted data for the current fiscal year starting July 1.
October 31	First Quarter Financial Report Includes budgeted data for the fiscal year along with the YTD actual data through September 30.
January 31	Second quarter Financial Report Includes budgeted data for the fiscal year along with the YTD actual data through September 30.
April 30	Third Quarter Financial Report Includes budgeted data for the fiscal Year along with the YTD actual data through March 31.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:

Chapter 27. Charter School Recruitment and Enrollment

§2701. Students Eligible to Attend

A. ...

B. Type 4 Charter Schools. Only students who would be eligible to attend a traditional public school operated by the local school board holding the Type 4 charter or students from the same areas as those permitted to attend the preexisting school, if a conversion charter, are eligible to attend a Type 4 charter school, unless an agreement with another city, parish, or other local school board is reached to allow students to attend the charter school.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:

§2705. Admission Requirements

A. A charter school may have admission requirements that are consistent with the school's role, scope, and mission.

B. Admission requirements imposed by a school must be set forth in the charter school's approved charter and shall be specific and shall include a system for admission decisions which precludes exclusion of pupils based on race, religion, gender, ethnicity, national origin, intelligence level as ascertained by an intelligence quotient examination, or identification as a child with an exceptionality as defined in R.S. 17:1943(4). Such admission requirements may include, however, specific requirements related to a school's mission such as auditions for schools with a performing arts mission or achievement of a certain academic record for schools with a college preparatory mission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 37:

§2711. Lottery Exemptions

A. ...

B. Students previously enrolled in the charter school and their siblings shall be exempt from a lottery, and shall maintain enrollment or be automatically admitted following the charter school's application period.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:

§2713. At-Risk Students

A. Except as otherwise provided by Charter School Law, Type 1 and Type 2 charter schools created as new schools shall maintain an at-risk student population percentage, based on the October 1 pupil membership count, that is equal to the percentage of students eligible for the federal free or reduced lunch program in the district in which the charter school is located or the average of districts from which students served by the charter school reside.

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) R.S. 17:3973, R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:

Chapter 29. Charter School Staff

§2905. Criminal History Review

A. - B.1. ...

2. Not later than 30 days after its being placed on file by the school, the charter operator shall submit a copy of the statement of approval to the Department of Education, Office of Parental Options.

C. - D.1. ...

2. Not later than 30 days after its being placed on file by the school, the charter operator shall submit a copy of any such statement of approval or written documentation from the court to the Department of Education, Office of Parental Options.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:

§2907. Leave of Absence

A. Any employee of a local public school system shall, upon request, be granted a leave of absence in order to be employed in a charter school. The leave of absence shall not exceed three years.

1. The provisions of Paragraph A of this Section shall be in effect through June 30, 2010.

2. A leave of absence granted by a local school board pursuant to the provisions of this Section prior to July 1, 2010 shall continue to be governed by all applicable provisions of this Section.

B. - G. ...

H. The provisions of this Section shall not apply to employees of a Type 4 charter school, as such employees employed by a Type 4 charter school are employees of the local school board entering into the charter. The transfer of an employee of a local school board to a Type 4 charter school shall be governed by the transfer policy of the local school board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1376 (July 2008), amended LR: 37

Chapter 31. Notification Requirements for BESE- Authorized Charter Schools

§3101. Required Notifications

A. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of any conditions that may cause it to vary from the terms of its charter, state law, or BESE policy.

B. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of any circumstance requiring the closure of the charter school including, but not limited to, a natural disaster, such as a hurricane, tornado, storm, flood or other weather related event; other extraordinary emergency; or destruction of or damage to the school facility.

C. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of the arrest of any members of the Charter School's Board of Directors, employees, contractors, subcontractors, or any person directly or indirectly employed by the charter operator for a crime listed in R.S. 15:587.1(C) or any crime related to the misappropriation of funds or theft.

D. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of a default on any obligation, which shall include debts for which payments are past due by 60 days or more.

E. The charter operator shall notify BESE and/or the Department of Education, Office of Parental Options of any change in its standing with the Office of the Louisiana Secretary of State.

F. The charter operator shall immediately notify BESE and/or the Department of Education, Office of Parental Options if its enrollment decreases by 10 percent or more compared to the most recent pupil count submitted to the Department of Education and/or BESE.

G. If the charter operator has contracted with a management organization and such contract is terminated or not renewed, it shall provide written notification to the Department of Education, Office of Parental Options within two business days stating the reasons for the termination of the relationship.

H. For a Type 5 charter school, the charter operator shall submit a formal plan for the continued operation of the school to the state Superintendent of Education within 10 days of written notification of the contract's termination. If no plan is received or the plan received is deemed inadequate by the state Superintendent of Education, the Recovery School District shall have interim authority to operate the school until the charter operator resubmits a plan deemed acceptable by the superintendent.

I. Failure of the board to notify the Office of Parental Options about loss of the management organization within two business days may result in BESE rendering the charter operator or a majority of its board members ineligible to operate a charter school for up to five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 126—Charter Schools

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules update Bulletin 126 to be in compliance with recently enacted laws. Additionally, new policies addressing untimely voluntary relinquishments of charters and terminations of charter contracts with management organizations will enable the Department of Education to manage and hold organizations more accountable during each process. If a charter school voluntarily relinquishes its charter and a suitable replacement could not be found, the school would cease to operate and students would enroll in other schools. To the extent that these students enroll in other public schools, state and local per pupil allocations through the state's Minimum Program Foundation formula could change by an undeterminable amount. Additional changes include requiring board approval for changes in over 60 percent of the composition of a charter school board of directors and require that the board be notified of any non-material amendments made to a schools charter. Lastly, the Bulletin will be revised to use "Office of Parental Options" as the new name for the "Charter Schools Office," reflecting the Department of Education's recent reorganization. The proposed policy is estimated to cost \$164 for advertising in the *Louisiana Register*.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy will have no effect on revenue collections of state and local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed policy changes will not increase costs or provide any new economic benefits to individuals or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy could result in the termination of employment for individuals employed at a charter school that is unable to secure an alternate management organization after termination of a contract with a prior management organization. The number of charter schools that could find themselves in such a situation, and the number of individuals employed by each, cannot be determined.

Beth Scioneaux
Deputy Superintendent
1011#047

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
(LAC 28:CXLV.Chapters 3 and 5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement *Bulletin 129—The Recovery School District: Chapters 3 and 5*. The proposed policy aligns the Recovery School District with *Bulletin 741, Louisiana Handbook for School Administrators*, and outlines the fiscal and internal management of the Recovery School District (RSD).

Chapter 3 outlines the duties of State Superintendent in the administration of the RSD, and that the State Superintendent is subject to BESE's oversight in the administration of the RSD. The RSD is subject to the policies contained in Bulletin 741, Louisiana Handbook for School Administrators (Public Schools). The RSD is allowed to deviate from such policies provided it obtains BESE approval.

Chapter 5 deals with failed schools and their transfer to the RSD. It provides that BESE shall make the final decision for the transfer of academically unacceptable public schools to the RSD and shall make the final decision on the operation of the school so transferred. Chapter 5 defines the criteria for local school districts to be declared Academically in Crisis and how the schools are to be transferred and operated by the RSD. The Chapter also outlines the return of schools to the Local Education Agency (LEA).

Title 28

EDUCATION

Part CXLV. Bulletin 129—The Recovery School District Chapter 3. Overall Governance and Oversight Structure

§301. Duties of the State Superintendent in the Administration of the RSD

A. The state superintendent shall serve as the RSD's governing authority, consistent with authority delegated by the Board of Elementary and Secondary Education (BESE) and statutory authority acknowledged by BESE. The state superintendent is subject to BESE's oversight of his administration of the RSD.

1. BESE's RSD Committee shall serve as the Board's lead group for oversight of the RSD.

B. The state superintendent shall employ/appoint and fix the salaries and duties of employees of the RSD, subject to applicable Civil Service laws, rules, and regulations, and other applicable laws, rules, regulations, and policies.

C. The state superintendent shall make recommendations to BESE for the approval of Type 5 charter schools, subject to the policies and processes approved by BESE.

D. As schools become eligible for transfer to the RSD, the state superintendent shall recommend to BESE the most appropriate mode of operating those schools.

E. As schools under RSD's jurisdiction become eligible for return to their Local Educational Agency (LEA), the state superintendent shall recommend to BESE the most appropriate future path for those schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), R.S. 17:1990.A.(2), R.S. 17:10.5.B, R.S. 17:10.5.C, R.S. 17:10.7.B, and R.S. 17:10.7.C.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§303. Appointment and Qualifications of the RSD Superintendent

A. The state superintendent shall appoint the RSD superintendent with prior approval of BESE.

B. The RSD superintendent shall possess the same qualifications as provided for a school system superintendent in BESE Bulletin 746, *Louisiana Standards for Certification of School Personnel*, as modified by the qualifications in Bulletin 741, *Louisiana Handbook for School Administrators*, at Section 505.B. However, the K-12 population level of Bulletin 741's §505.B need not be present within the RSD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§305. Duties of the RSD Superintendent

A. The RSD superintendent shall administer the RSD, subject to the authority of the state superintendent as governing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§307. Qualifications of Deputy Superintendents of the RSD

A. Deputy superintendents who supervise any part of the instructional program must meet the qualification standards set by Bulletin 746, *Louisiana Standards for Certification of School Personnel*.

B. Deputy superintendents in non-instructional areas, such as finance, management, facilities planning, and ancillary programs, must meet the qualification standards set for school system superintendents by Bulletin 746, *Louisiana Standards for Certification of School Personnel*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§309. Advisory Council(s) to the State Superintendent

A. Statewide Council

1. Within 90 days after the final adoption of this section, the state superintendent shall nominate, subject to BESE's approval, a list of four nominees to serve on the *Statewide RSD Advisory Council to the State Superintendent*. At least two of these nominees shall be members of a school advisory council, as described in §1505.C of this bulletin.

2. The purpose of the Statewide RSD Advisory Council is to provide a vehicle to enhance two-way communication between the state superintendent and the community of stakeholders about the functioning of the RSD statewide. The state superintendent or his designee shall attend the council's meetings.

3. Once BESE has approved the membership of this advisory council, the council and the state superintendent or his designee shall meet at least three times a year. All such meetings shall be held in accordance with the state Open Meetings Law. These meetings shall be held in throughout the state.

4. Within 30 days after each meeting of this advisory council, the RSD shall post a summary of the meeting on the State Department of Education website, send a paper copy of the report to each school under the RSD's jurisdiction, and send an electronic copy to each BESE member and the BESE Executive Director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§311. Applicability of Provisions of Bulletin 741

A. RSD shall be subject to the policies contained in BESE Bulletin 741, *Louisiana Handbook for School Administrators [Public Schools]*, unless otherwise provided in this Bulletin. Bulletin 741 collects BESE policies that govern the operation of public elementary, middle, and secondary schools.

B. Should the RSD superintendent believe it appropriate to deviate from a policy within Bulletin 741, the RSD superintendent shall request that BESE grant it a waiver from that policy.

1. When the RSD requests that BESE waive a Bulletin 741 policy, the RSD superintendent shall follow the procedure set forth in Bulletin 741, §345.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Chapter 5. Failed Schools

§501. Transfer to the Recovery School District

A. A public school may be transferred to the jurisdiction of the RSD if it is determined, as defined by R.S. 17:10.6, to be either academically unacceptable or if it is determined to be in academically in crisis. BESE has established a uniform statewide program for school accountability in BESE Bulletin 111, *The Louisiana School District and State Accountability System*.

1. Academically Unacceptable. A public school determined to be academically unacceptable shall be designated as a failed school and may be transferred to the

RSD subject to approval by BESE. The state superintendent will make a recommendation to BESE regarding the transfer of an academically unacceptable school to the RSD.

a. BESE may approve the transfer of an academically unacceptable school if the failed school meets one or more of the following criteria:

i. the LEA fails to submit a reconstitution plan to BESE for approval; or

ii. BESE finds the LEA's reconstitution plan unacceptable; or

iii. the LEA fails to comply with the reconstitution plan approved by BESE; or

iv. the school is labeled an academically unacceptable school for four consecutive years.

b. When the state superintendent makes a recommendation to BESE to transfer an academically unacceptable school to the jurisdiction of the RSD, he will propose performance objectives for the failed school designed to bring the failed school to an acceptable level of performance.

c. The state superintendent, in conjunction with the RSD, shall evaluate any public school deemed to be academically unacceptable to determine the best method to bring the school to an acceptable level of performance as determined by the statewide accountability plan. The state superintendent shall recommend to BESE any of the following methods for operating a school that has been deemed eligible for transferred to the RSD:

i. the failed school may be operated:

(a) as a direct-run RSD school;

(b) as a charter school,

(c) as a university partnership; or

(d) through a management agreement with a management education management organization;

ii. the RSD may enter into a Supervisory Memorandum of Understanding (MOU) with the LEA under the provisions enumerated in Section 503, "Conditional Transfer Using a Supervisory Memorandum of Understanding," below.

d. BESE shall make the final decision for the transfer of an academically unacceptable public school to the RSD and shall make the final decision on the appropriate method of operating the school as enumerated in Section (A)(1)(c), above. BESE shall also make the final decision on the performance objectives for the academically unacceptable school.

2. Academically in Crisis. A local school system in which more than 30 schools are academically unacceptable or more than 50 percent of its students attend schools that are academically unacceptable is academically in crisis. Pursuant to La. R.S. 17:10.7, a public school participating in a Spring cycle of student testing that had a baseline School Performance Score (SPS) below the state average as defined in BESE Bulletin 111, *The School, District, and State Accountability System*, §301, was within an LEA labeled *academically in crisis* as defined in R.S. 17:10.6; and was within an LEA with at least one school eligible for transfer to the RSD under R.S. 17:10.5, was designated as a failing school and was transferred to the RSD by operation of law.

a. The state superintendent, in conjunction with the RSD, evaluated the schools transferred to the RSD pursuant

to La. R.S. 17:10.7 to determine the best of operation to bring the school to an acceptable level of performance. The state superintendent shall recommend to BESE a method of operating the schools transferred to the RSD. BESE shall make the final decision on the operation method of any school transferred to the RSD by operation of law.

b. Acceptable methods of operation for the failed schools include operating as:

- i. a direct-run RSD school;
- ii. a charter-operated school;
- iii. a university partnership school; or
- iv. an education management organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), R.S. 17:1990.A.(2), R.S. 17:10.5.B, R.S. 17:10.6, and R.S. 17:10.7.B.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§503. Conditional Supervisory Memorandum of Understanding

A. As an alternative to a transfer of a failing school to the RSD under the provisions of R.S. 17:10.5, BESE may authorize a conditional transfer requiring the LEA to enter a legally-binding Memorandum of Understanding (MOU) between the RSD and the LEA. The MOU will define the performance objectives for LEA to implement to bring the failing school to acceptable level of performance.

B. Under the terms of the MOU, the LEA will continue to operate the failed school under the supervision of the RSD. In the event the LEA is unable to comply with the terms of the MOU, and/or the LEA fails to implement procedure that bring the school to acceptable levels of performance, then the failing school will be transferred to the RSD, pursuant to the terms of the MOU.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.5.B, R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

§505. Return of Schools to LEA

A. Schools transferred to the jurisdiction of RSD shall remain with the RSD for a period of not less than five years.

1. For a school transferred to the RSD pursuant to R.S. 17:10.5, the school may be returned to its original LEA based upon the RSD's report and recommendation to BESE. The RSD's report shall include the following:

a. the status of the school, the nature of its faculty and administration, the demographics and size of the student body, its organizational and management structure, whether student academic performance has improved, the amount of any improvement, an explanation of why student academic performance has or has not improved, and to what extent performance targets were achieved;

b. the RSD report shall also include a recommendation to as to whether the school should:

- i. remain within the RSD in the same operational status;
- ii. remain within the RSD in a new operational status;
- iii. close, with the reasons why it should close; or
- iv. return to the original LEA, with proposed stipulations and conditions for the return;

c. BESE shall take action on the RSD's recommendation. If BESE determines that the school should continue to remain under the jurisdiction of the RSD, the RSD shall maintain jurisdiction of the school for an additional-five-year period, unless BESE specifies a shorter time.

2. For schools transferred to RSD pursuant to La. R.S. 17:10.7, schools may be returned to their original LEA based upon the RSD's report and recommendation to BESE. The RSD's report shall contain the following:

a. the status of the school, the nature of its faculty and administration, the demographics and size of the student body, its organizational and management structure, whether student academic performance has improved, the amount of any improvement, an explanation of why student academic performance has or has not improved, and to what extent performance targets were accomplished;

b. the RSD report shall include a recommendation as to whether the school should:

- i. remain within the RSD in the same operational status;
- ii. remain within the RSD in a new operational status;
- iii. close with the reasons why it should close; or
- iv. return to the original, with proposed stipulations and conditions for the return.

c. before making a final decision BESE shall hold a public hearing in the jurisdiction of the original LEA relative to whether the schools should continue to remain within the RSD or should be returned to the LEA;

d. should BESE determine that a school or schools remain under the jurisdiction of the RSD, the school shall remain under the RSD's jurisdiction for an additional five-year period

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), R.S. 17:1990.A.(2), R.S. 17:10.5.C, and R.S. 17:10.7.C.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No.

2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed rule affect the functioning of the family? No.

4. Will the proposed rule affect family earnings and family budget? Lacks sufficient information to determine.

5. Will the proposed rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 129— The Recovery School District**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy aligns the Recovery School District (RSD) with BESE Bulletin 741, La Handbook for School Administrators and outlines the fiscal and internal management of the Recovery School District. The cost to publish and distribute the Bulletin will cost approximately \$2,000.

Chapter 3 – Outlines the duties of the State Superintendent in the administration of the RSD, and that the State Superintendent is subject to BESE's oversight in the administration of the RSD. The RSD is subject to the policies contained in BESE Bulletin 741, Louisiana Handbook for School Administrators (Public Schools). The RSD is allowed to deviate from such policies provided it obtains BESE approval.

Chapter 5 deals with failed schools and their transfer to the RSD. It provides that BESE shall make the final decision for the transfer of academically unacceptable public schools to the RSD, and shall make the final decision on the operation of the school so transferred. Chapter 5 defines the criteria for local school districts to be declared Academically in Crisis and how the schools are to be transferred and operated by the RSD. The Chapter also outlines the return of schools to the Local Education Agency (LEA). These policy provisions potentially have an impact on the affected LEA's, as the Minimum Foundation Program (MFP) funds and grants, which were previously disbursed to them will be sent to the RSD in the event the RSD takes over the schools.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy provisions will have no effects on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed policy will have no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#048

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Dropout Prevention and Recovery (LAC 28: CXV.1118)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §1118. Dropout Prevention and Recovery. The revision changes the percent of cohort graduation rate from 70 to 80 percent. Additionally, the policy requires LEAs to "post the four-year cohort graduation rate for each high school in the system and for the system as a whole on its Internet website" and to "send a written notice to the parent or other legal guardian of each high school student the four-year cohort dropout rate of the school in which the student is enrolled and the number of students in the school identified as failing pursuant to the accountability system." This revision reflects the amendments R.S. 17:221.4 to Dropout Prevention and Recovery enacted by Act 557 (SB 753) of the 2010 Regular Session.

Title 28

EDUCATION

Part CXV. **Bulletin 741—Louisiana Handbook for School Administrators**

§1118. **Dropout Prevention and Recovery**

A. LEAs with a cohort graduation rate of less than 80 percent as determined by BESE shall identify specific methods of targeted interventions for dropout prevention and recovery that may include:

1. early intervention for students who are at risk of failing any ninth grade English or math class;
2. alternative programs designed to reengage dropouts;
3. increased availability of advanced placement courses;
4. comprehensive coaching for middle school students who are below grade level in reading and math;
5. teacher advisories such as the use of graduation coaches and other supports that are designed to specifically address the needs of youth most at risk of dropping out of school;
6. strategies specifically designed to improve the high school graduation rate of students at highest risk for dropping out, including but not limited to students who are two or more years below grade level, students with excessive absences, youth in the foster care system, pregnant and parenting youth, Limited English proficient students, and students with special education needs;
7. communicating with students and their parents or legal guardians about the availability of local after-school programs and the academic enrichment and other activities the programs offered;

8. opportunities for credit recovery;
9. opportunities to participate in the Jobs for America's Graduates program.

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

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

C. Each LEA shall:

1. post the four-year cohort graduation rate for each high school in the system and for the system as a whole on its Internet website;
2. send a written notice to the parent or other legal guardian of each high school student that contains the following information:
 - a. the four-year cohort dropout rate of the school in which the student is enrolled;
 - b. the retention rate by grade level for students enrolled in the school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:642 (April 2009), amended LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Dropout Prevention and Recovery

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The revision to Section 1118 of Bulletin 741: Louisiana Handbook for School Administrators changes the percent of cohort graduation rate from 70 to 80 percent. Additionally, the policy requires local school districts to post the graduation rate for each high school in the system and for the system as a whole on its Internet website and to send a written notice to the parent or legal guardian. The estimated implementation cost to the local school districts will be \$91,000 state wide which is approximately \$1,300 per local school district.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated annual cost to the local school districts will be \$91,000 state wide which is approximately \$1,300 per local school district.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#050

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Family and Consumer Sciences Education
(LAC 28: CXV.2379)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2379. Family and Consumer Sciences Education. The proposed amendment reflects the addition of Baking and Pastry Arts I and Baking and Pastry Arts II to the Family and Consumer Sciences course offerings. The action is being proposed to update the Family and Consumer Sciences course offerings. In updating these course offerings students in the Culinary Arts career pathway will be provided the opportunity to concentrate on specialized techniques within the field of baking and pastry.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

§2379. Family and Consumer Sciences Education

A. The Family and Consumer Sciences (FACS) Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory FACS	7-8	-
Family and Consumer Sciences I	9-12	1
Family and Consumer Sciences II	10-12	1
Food Science	10-12	1
Adult Responsibilities	11-12	1/2
Child Development	10-12	1/2
Personal and Family Finance	10-12	1/2
Family Life Education	10-12	1/2
Clothing and Textiles	10-12	1/2
Housing and Interior Design	10-12	1/2
Nutrition and Food	10-12	1/2
Parenthood Education	11-12	1/2
Advanced Child Development*	10-12	1/2
Advanced Clothing and Textiles*	10-12	1/2
Advanced Nutrition and Food*	10-12	1/2
FACS Elective I, II	9-12	1/2-3
*The related beginning semester course is prerequisite to the advanced semester course.		
Occupational Courses		
Clothing and Textile Occupations I	11-12	1-3
Clothing and Textile Occupations II	12	1-3
Early Childhood Education I	11-12	1-3
Early Childhood Education II	12	1-3
Food Services I	11-12	1-3
Food Services II	11-12	1-3
Food Service Technician	11-12	1
Housing & Interior Design Occupations	11-12	1-3
ProStart I	11-12	1-3
ProStart II	12	1-3
Baking and Pastry Arts I	11-12	1-3
Baking and Pastry Arts II	12	1-3
Cooperative FACS Education	12	3

AUTHORITY NOTE: Promulgated in accordance R.S. 17:7; R.S. 17:24.4; R.S. 17:279.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 33:278 (February 2007), LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 741—Louisiana Handbook
for School Administrators—Family and Consumer
Sciences Education**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revision will amend the Family and Consumer Sciences course offerings to offer Baking and Pastry Arts I and Baking and Pastry Arts II. It is estimated that there will be no additional implementation costs to state governmental units except for an estimated \$336 for printing the Bulletin 741 amendment in the *Louisiana Register* as a proposed rule and a final rule. The LEA may choose to offer the new courses to students that may require updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as textbooks, instructional materials or equipment. Each LEA will make its determination.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Secondary Career and Technical students will be the population affected by the rule change. This amendment will allow students to further their career path in the culinary arts by learning specialized techniques in baking and pastry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained and qualified pool from which to select employees.

Beth Scioneaux
Deputy Superintendent
1011#051

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of
School Personnel—Mental Health Professional Counselor
(LAC 28:CXXXI.414)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of

Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §414. Mental Health Professional Counselor. The proposed policy revision provides for an Ancillary Mental Health Professional Counselor certificate which will allow Licensed Psychologists, Licensed Professional Counselors, Licensed Social Workers, and Licensed Marriage and Family Therapists to serve as Mental Health Professional Counselors in schools. Individuals have been serving in Louisiana schools as mental health counselors with no certification in that area.

Title 28
EDUCATION

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

Chapter 4. Ancillary School Service Certificates

§414. Mental Health Professional Counselor

A. Provisional Mental Health Professional Counselor Certificate—valid for two years.

1. Eligibility requirements:

a. hold current Louisiana licensure as a Licensed Professional Counselor in Louisiana (LPC), in accordance with R.S. 37:1101 et seq.; or

b. hold a current Louisiana licensure as a Licensed Marriage and Family Therapist (MFT) in accordance with R.S. 37:1101 et seq.; or

c. hold a current Louisiana licensure as a Licensed Clinical Social Worker (LCSW), in accordance with R.S. 37:2701 et seq.; or

d. hold a current Louisiana certification as a Certified School Psychologist, in accordance with R.S. 17:7.1(D); or current Louisiana licensure as a Psychologist, in accordance with R.S. 37:2351 et seq.; and

e. have two years of mental health counseling experience or providing school psychological services or school social work services within the last five years working directly with children, as verified by a previous or current employer; and

f. have a written request from the Louisiana employing school system indicating that the person will be employed once the certification is granted.

B. Qualified Mental Health Professional Counselor

1. Eligibility requirements:

a. hold current Louisiana licensure as a Licensed Professional Counselor in Louisiana (LPC), in accordance with R.S. 37:1101 et seq.; or

b. hold a current Louisiana licensure as a Licensed Marriage and Family Therapist (LMFT) in accordance with R.S. 37:1101 et seq.; or

c. hold a current Louisiana licensure as a Licensed Clinical Social Worker (LCSW), in accordance with R.S. 37:2701 et seq.; or

d. hold a current Louisiana certification as a Certified School Psychologist, in accordance with R.S. 17:7.1(D); or current Louisiana licensure as a Psychologist, in accordance with R.S. 37:2351 et seq.; and

e. have two years of experience as a provisional mental health professional counselor and the written request of the employing school district.

2. Renewal Guidelines

a. This certificate is valid provided the holder maintains current Louisiana licensure as a LPC, LMFT, LCSW, or Psychologist, or holds a current Louisiana certification as a Certified School Psychologist. A worker who changes employing school systems must provide a copy of his/her current Louisiana license or certificate to serve as a mental health professional counselor.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Mental Health Professional Counselor

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision provides for an Ancillary Mental Health Professional Counselor certificate which will allow Licensed Psychologists, Licensed Professional Counselors, Licensed Social Workers, and Licensed Marriage and Family Therapists to serve as Mental Health Professional Counselors in schools. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#053

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Middle School Specialty Area Endorsements (LAC 28:CXXXI.609)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §609. Requirements to add Middle School (Grades 4-8) Specialty Area Endorsement for English, Mathematics, Science, or Social Studies. The proposed policy revision will allow candidates the option of completing six semester hours in reading or passing the Praxis Teaching Reading exam (#0204) to add-on middle grades: 4-8 subject areas to an existing early childhood, upper elementary/middle school, or special education teaching certificate. This revision in Bulletin 746 will allow more flexibility with the reading requirements for add-on certification purposes.

Title 28

EDUCATION

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

Chapter 6. Endorsements to Existing Certificates Subchapter A. Regular Education Level and Area Endorsements

§609. Requirements to Add Middle School (Grades 4-8) Specialty Area Endorsement for English, Mathematics, Science, or Social Studies

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), special education certificate must achieve the following:

1. passing score for Praxis middle school specialty area exam in the specific content area; or accumulate 30 credit hours in the specialty content area; and
2. passing score for Praxis Principles of Learning and Teaching 5-9 exam; and
3. six semester hours of reading or passing score for Praxis Teaching Reading exam (#0204).

B. Individuals holding a valid secondary certificate (e.g., 6-12, 7-12, 9-12), or an All-Level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1. passing score for Praxis middle school specialty area exam in the specific content area; or accumulate 30 credit hours in the specialty content area; and
2. passing score for Praxis Principles of Learning and Teaching 5-9 exam; and

3. six semester hours of reading.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Middle School Specialty Area Endorsements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision will allow candidates the option of completing six semester hours in reading or passing the Praxis Teaching Reading exam (#0204) to add-on middle grades: 4-8 subject areas to an existing early childhood, upper elementary/middle school or special education teaching certificate. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#056

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State (OS) Certificate (LAC 28:CXXXI.309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §309. Out-of-State (OS) Certificate. The proposed policy revision will reduce the number of years of out-of-state teaching experience from four to three years to qualify for PRAXIS exclusion. This revision will align certification policy with amendments made to R.S. 17:6 in Act 669 of the 2010 Louisiana Legislative Session.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 3 Teaching Authorizations and Certifications
Subchapter A. Standard Teaching Authorizations
§309. Out-of-State (OS) Certificate**

A. - B.5. ...

C. Advancing from OS to Professional Level 1, 2, or 3 Certificate

1. Pass all parts of Praxis exam(s) required for Louisiana certification:

a. present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (Pre-Professional Skills Tests in reading, writing, and mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was issued;

b. if applicant has obtained National Board Certification (NBC) in corresponding areas for which certification is being sought as well as certification/licensure in the state of origin, the examination required for NBC will be accepted to fulfill the testing requirements for certification;

c. a candidate who is certified in another state can qualify for exclusion from the Praxis exam(s) required for Louisiana certification under these criteria:

i. he/she meets all requirements for Louisiana certification except the Praxis exam requirements; has at least three years of successful teaching experience in another state, as determined by the board; and teaches on an OS

certificate for one year in a Louisiana approved public or an approved private school system;

ii. the teacher's Louisiana employing authority verifies that he/she has completed one year of successful teaching experience in a Louisiana approved public or an approved private school and that he/she has been recommended for further employment; and

iii. the employing authority requests that he/she be granted a valid Louisiana teaching certificate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1799 (October 2006), amended LR 33:433 (March 2007), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 35:894 (May 2009), LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State (OS) Certificate

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision will reduce the number of years of out-of-state teaching experience from four to three years to qualify for PRAXIS exclusion. This revision will align certification policy with amendments made to R.S.17:6 in Act 669 of the 2010 Louisiana Legislative Session. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#049

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State Principal Level 2 (OSP2) (LAC 28:CXXXI.723)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §723. Out-of-State Principal Level 2 (OSP2). The proposed policy revision will allow an applicant to request PRAXIS exclusion for issuance of an Out-of-State Principal (OSP2) Level 2 certificate after serving one year as an assistant principal or principal in a Louisiana public school system on an Out-of-State Principal (OSP1) Level 1 certificate. This revision is required to align policy with amendments made to R.S.17:7.1(3) in Act 326 of the 2010 Louisiana Legislative Session.

**Title 28
EDUCATION**

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

Chapter 7. Administrative and Supervisory Credentials

Subchapter B. Out-of-State Administrative Certification Structure

§723. Out-of-State Principal Level 2 (OSP2)

A. This certificate is valid for five years and is renewable every five years, based upon successful completion and verification of required continuing learning units.

1. Eligibility requirements:

a. a valid OSP1 certificate;

b. completion of Louisiana PRAXIS requirements (School Leaders Licensure Assessment (1010) Prior to 12/31/09 or School Leaders Licensure Assessment (1011) Effective 1/1/10 OR qualify for PRAXIS/NTE exclusion [as set forth in R.S. 17:7.1.(A)(7)] by fulfilling the following:

i. minimum of four years of successful experience as a principal in another state, as verified by the previous out-of-state school district(s);

ii. completes one year of employment as an assistant principal or principal in a Louisiana public school system while holding the three-year OSP 1 certificate; and

iii. the local superintendent (or designee) of the employing Louisiana public school system has recommended him/her for continued administrative employment in the following school year.

c. completion of the Educational Leader Induction Program under the administration of the Louisiana Department of Education.

2. Renewal Requirements. To maintain a valid OSP2 certificate, the holder is required to complete 150 continuing learning units of professional development consistent with the Individual Professional Growth Plan (IPGP) over a five year time period, beginning with issuance date of the OSP2 certificate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1825 (October 2006), amended LR 35:2325 (November 2009), amended LR 36:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State Principal Level 2 (OSP2)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision will allow an applicant to request PRAXIS exclusion for issuance of an Out-of-State Principal (OSP2) Level 2 certificate after serving one year as an assistant principal or principal in a Louisiana public school system on an Out-of-State Principal (OSP1) Level 1 certificate. This revision is required to align policy with amendments made

to R.S.17:7.1(3) in Act 326 of the 2010 Louisiana Legislative Session. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#057

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Requirements to Add Early Childhood (Grades PK-3)(LAC 28:CXXXI.605)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §605. Requirements to add Early Childhood (Grades PK-3). This revision in policy specifies that to add Early Childhood PK-3 to an existing teaching certificate, PRAXIS examination #0521 must be completed. This revision is a correction of current Bulletin 746 policy.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 6. Endorsements to Existing Certificates Subchapter A. Regular Education Level and Area Endorsements

§605. Requirements to add Early Childhood (Grades PK-3)

A. Individuals holding a valid elementary certificate (e.g., 1-4, 1-5, 1-6, or 1-8) must achieve one of the following:

1. passing score for Praxis Principles of Learning and Teaching Early Childhood (#0521); or
2. 12 semester hours of combined Nursery School and Kindergarten coursework.

B. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary school certificate (e.g., 6-12, 7-12, 9-12), special education certificate (other than early interventionist), or an All-Level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, music) must achieve the following:

1. passing score for Praxis Elementary Education: Content Knowledge exam (#0014);

2. passing score for Praxis Principles of Learning and Teaching Early Childhood (#0521) OR accumulate 12 credit hours of combined nursery school and kindergarten coursework;

3. nine semester hours of reading coursework.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—Requirements to Add Early Childhood (Grades PK-3)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This revision in policy specifies that to add Early Childhood PK-3 to an existing teaching certificate, PRAXIS examination #0521 must be completed. This revision is a correction of current Bulletin 746 policy. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#055

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Nurse
(LAC 28:CXXXI.411)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §411. School Nurse. The proposed policy revision will align Bulletin 746 requirements with State Board of Nursing requirements by allowing the renewal of ancillary Type B and Type A School Nurse certificates upon completion of 150 contact hours or 15 (CEUs) of professional development. The Type B certificate will no longer require the additional six semester hours of coursework for renewal and the designation that a Type A School Nurse certificate is valid for life of continuous service will be replaced with valid for five years. This revision in Bulletin 746 aligns BESE policy with state guidelines for the renewal of a Register Nurse license.

**Title 28
EDUCATION**

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

**Chapter 4. Ancillary School Service Certificates
§411. School Nurse**

- A. Type C School Nurse—valid for three years.
1. Eligibility requirements:
 - a. current Louisiana licensure as a registered professional nurse; and
 - b. minimum of two years experience as a registered nurse.
 2. Renewal Guidelines. May be renewed once for a three year period, upon presentation of a copy of current Louisiana licensure as a registered professional nurse and upon request of Louisiana employing authority.
- B. Type B School Nurse—valid for five years.
1. Eligibility requirements:
 - a. current Louisiana licensure as a registered professional nurse; and
 - b. three years of experience as a Type C School Nurse.
 2. Renewal guidelines:
 - a. completion of Continuing Professional Development/Education Units (CEUs) (150 contact hours or 15 CEUs) in a variety of activities designed to maintain and expand a school nurse's skills and to ensure the provision of quality services. These CEUs must be earned at the rate of a minimum of 30 contact hours per year and may be

completed through the American Nurses Credentialing Center (ANCC), the State Board of Nursing or district approved professional development; and

b. current Louisiana licensure as a registered professional nurse.

C. Type A School Nurse—valid for five years.

1. Eligibility requirements:
 - a. current Louisiana licensure as a registered professional nurse;
 - b. baccalaureate degree in nursing or a health-related field from a regionally accredited college or university; and
 - c. five years experience as a certified Type B school nurse.

2. Renewal guidelines:

a. completion of Continuing Professional Development/Education Units (CEUs) (150 contact hours or 15 CEUs) in a variety of activities designed to maintain and expand a school nurse's skills, and to ensure the provision of quality services. These CEUs must be earned at the rate of a minimum of 30 contact hours per year and may be completed through the American Nurses Credentialing Center (ANCC), the State Board of Nursing or district approved professional development; and

b. current Louisiana licensure as a registered professional nurse.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 36:1998 (September 2010), LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No.
2. Will the proposed rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed rule affect the functioning of the family? No.
4. Will the proposed rule affect family earnings and family budget? No.
5. Will the proposed rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel—School Nurse**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed policy revision will align Bulletin 746 requirements with State Board of Nursing requirements by allowing the renewal of ancillary Type B and Type A School Nurse certificates upon completion of 150 contact hours or 15 (CEUs) of professional development. The Type B certificate will no longer require the additional six semester hours of coursework for renewal and the designation that a Type A School Nurse certificate is valid for life of continuous service will be replaced with valid for five years. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy will have no effect on revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#052

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of
School Personnel—School Therapists
(LAC 28:CXXXI.421)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §421. Overview. This revision in policy will allow for the two new certification areas of Certified Licensed Occupational Therapist Assistant (COTA) and Physical Therapist Assistant (PTA) to establish compliance with R.S. 37:3001-3014 as administered by the Board of Medical Examiners and R.S. 37:2401-2424 as administered by the Louisiana State Board of Physical Therapy Examiners.

Title 28

EDUCATION

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

Chapter 4. Ancillary School Service Certificates

Subchapter B. School Therapists

§421. Overview

A. – C.2. ...

D. Occupational Therapy

1. Certified Licensed Occupational Therapist Assistant (COTA)—valid for five years; renewable.

a. Eligibility Requirements. A valid COTA license to practice occupational therapy in Louisiana in compliance with R.S. 37:3001-3014, as administered by the Board of Medical Examiners;

b. a COTA must work under the supervision of a Licensed Occupational Therapist;

c. Renewal Guidelines. Applicant must present copy of his/her current licensure, and request by the Louisiana employing authority.

2. Occupational Therapist Provisional Certification—valid for two years.

a. Eligibility Requirements. A temporary license to practice occupational therapy in Louisiana in compliance with R.S. 37:3001-3014, as administered by the Louisiana State Board of Medical Examiners.

b. Renewal Guidelines—nonrenewable.

3. Occupational Therapist Full Certificate—valid for five years; renewable.

a. Eligibility Requirements. A valid license to practice occupational therapy in Louisiana in compliance with R.S. 37:3001-3014, as administered by the Board of Medical Examiners.

b. Renewal Guidelines. Applicant must present copy of current licensure, and request by the Louisiana employing authority.

E. Physical Therapy

1. Physical Therapist Assistant (PTA)—valid for five years.

a. Eligibility Requirements. A valid PTA license to assist in the practice of physical therapy in compliance with R.S. 37:2401-2424, as administered by the Louisiana State Board of Physical Therapy Examiners.

b. A PTA must work under the supervision of a licensed physical therapist.

c. Renewal Guidelines. Applicant must present a copy of his/her current licensure, and request of the Louisiana employing authority.

2. Physical Therapist Provisional Certification—valid for two years.

a. Eligibility Requirements. A temporary license to practice physical therapy in compliance with R.S. 37:2401-2424, as administered by the Louisiana State Board of Physical Therapy Examiners.

b. Renewal Guidelines—nonrenewable.

3. Physical Therapist Full Certificate—valid for five years.

a. Eligibility Requirements: a valid Louisiana license to practice physical therapy in compliance with R.S. 37:2401-2424, as administered by the Louisiana State Board of Physical Therapy Examiners.

b. Renewal Guidelines: Applicant must present a copy of his/her current licensure, and request of the Louisiana employing authority.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1811 (October 2006), amended LR 34:433 (March 2008), LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption,

repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Therapists**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision in policy will allow for the two new certification areas of Certified Licensed Occupational Therapist Assistant (COTA) and Physical Therapist Assistant (PTA) to establish compliance with R.S. 37:3001-3014 as administered by the Board of Medical Examiners and R.S. 37:2401-2424 as administered by the Louisiana State Board of Physical Therapy Examiners. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1011#054

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1530—Louisiana's IEP Handbook for Students with
Exceptionalities
(LAC 28:XCVII.105, 113, 117, and 505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities*: §105. Timelines, §113. IEP Timelines, §117. Placement/Least Restrictive Educational Environments, §505. Alternate Assessment Participation Criteria. Revisions to §105 and §113 eliminate ambiguity and provide clarity pertaining to timelines and IEP amendments. Revisions to §117 reflect the new federal reporting guidelines for the preschool Placement/Least Restrictive Educational Environments. The revisions in §505 reflect the requirement to include End of Course (EOC) in the LAA 2 participation criteria.

Title 28

EDUCATION

Part XCVII. Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities

Chapter 1. Individualized Education Program (IEP)

§105. Timelines

B. Students who have been receiving special education in one LEA in Louisiana who transfer to another LEA within Louisiana shall be enrolled in the appropriate special education program in the receiving LEA with the current IEP or the development of a review IEP within five (5) school days of the transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2331 (November 2009), amended LR 37:

§113. IEP Amendments

A. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with a exceptionality and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may amend or modify the student's current IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2331 (November 2009), amended LR 37:

§117. Placement/Least Restrictive Educational Environments

B. For Students with Exceptionalities: Ages 3-5. In determining the appropriate setting for a preschool-aged student, each setting noted shall be considered; but the list should not be considered a continuum of least restrictive environment. The settings for preschool-aged students, three through five years, are defined as follows:

1. for students with disabilities: ages 3-5:
 - a. attending a regular early childhood program at least 10 hours per week;
 - i. receives the majority of special education and related services in the regular early childhood program;
 - (a). regular early childhood programs include, but are not limited to Head Start, kindergarten, private kindergarten or preschools, preschool classes offered to an eligible pre-kindergarten population by the LEA (e.g., LA 4, Title I); and group child development center or child care;
 - ii. receives the majority of special education and related services in some other location;
 - b. attending a regular early childhood program less than 10 hours per week;
 - i. receives the majority of special education and related services in the regular early childhood program;
 - ii. receives the majority of special education and related services in some other location;
 - c. in early childhood special education - separate class;
 - i. attends a special education program in a class that includes less than 50 percent nondisabled children. Special education programs include, but are not limited to special education classrooms in regular school buildings; trailers or portables outside regular school buildings; child care facilities; hospital facilities on an outpatient basis; and other community-based settings;
 - d. in early childhood special education - separate school;
 - i. receives special education in a public or private day school designed specially for children with disabilities;
 - e. in early childhood special education - residential facility;
 - i. receives special education in a public or privately operated residential school or residential medical facility on an inpatient basis;
 - f. receiving special education and related services at home;
 - i. when the child does not attend a regular early childhood program or special education program, but the child receives some or all of his/her special education and related services in the home. Children who receive special education both in a service provider location and at home should be reported in the home category;
 - g. receiving special education and related services at service provider location;
 - i. when the child receives all of their special education and related services from a service provider and does not attend an early childhood program or a special education program provided in a separate class, separate school, or residential facilities. For example, speech therapy is provided in private clinicians' offices; clinicians' offices located in school buildings; hospital facilities on an outpatient basis, and libraries and other public locations;
 2. for students who are gifted and/or talented ages 3-5;
 - a. attending a regular early childhood program at least 10 hours per week;
 - i. receives the majority of special education and related services in the regular early childhood program;

- (a). regular early childhood programs include, but are not limited to Head Start, kindergarten, private kindergarten or preschools, preschool classes offered to an eligible pre-kindergarten population by the LEA (e.g., LA 4, Title I); and group child development center or child care;
 - ii. receives the majority of special education and related services in some other location;
- b. attending a regular early childhood program less than 10 hours per week;
 - i. receives the majority of special education and related services in the regular early childhood program;
 - ii. receives the majority of special education and related services in some other location;
- c. in early childhood special education - separate class;
 - i. attends a special education program in a class that includes less than 50% nondisabled children. Special education programs include, but are not limited to special education and related services provided in special education classrooms in regular school buildings; trailers or portables outside regular school buildings, and child care facilities;
- d. in early childhood special education - residential facility;
 - i. attends a public or privately operated residential school or residential medical facility on an inpatient basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2331 (November 2009), amended LR 37:

Chapter 5. Participation in Statewide Assessments

§505. Alternate Assessment Participation Criteria

B. LEAP Alternate Assessment, Level 2 (LAA 2)

1. The student scored at the Unsatisfactory level in English language arts and/or mathematics on the previous year's LEAP/iLEAP/GEE or scored Needs Improvement on the English II or English III and/or Algebra 1 or Geometry EOC or participated in the LAA 1 or LAA 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2331 (November 2009), amended LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 1530—Louisiana’s IEP Handbook for Students with Exceptionalities**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The policy changes are to eliminate ambiguity and provide clarity, to reflect the revised federal reporting guidelines by the Office of Management and Budget for the preschool settings for student with disabilities, and for the inclusion of the End of Course achievement level scores in the LAA2 participation criteria.

There will be a cost of \$328 to publish the rule change in The Register. There will be no implementation costs to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local government.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Beth Scioneaux
Deputy Superintendent
1011#058

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

State Superintendent (LAC 28:I.309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I, §309. State Superintendent. Louisiana Administrative Code, Title 28, Part I, Section 309.B contains the qualifications for the state superintendent of education. Act 323 of the 2010 Regular Session of the Louisiana State Legislature revised the qualifications required for the position of state superintendent of education. As a result of Act 323, the Louisiana Administrative Code is being changed to reflect the statutory changes.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 3. Composition and General Authority §309. State Superintendent

A. - A.4. ...

B. Qualifications. The state superintendent shall possess the following qualifications.

1. General:

a. advanced degree in public administration, education, or related area;

b. background in the formulation and implementation of public policy;

c. strong academic background; and

d. qualifications as are adopted by rule by the board for the position of superintendent of a city, parish, or other local public school board, except that any such qualification may be waived by a favorable vote of at least two-thirds of the authorized board membership.

2. Experience:

a. proven record of success in administration;

b. demonstrated ability to achieve positive results;

c. credibility in his/her current profession; and

d. proven record of team building.

3. Professional skills:

a. proven decision-making skills;

b. proven leadership skills;

c. ability to work effectively with the legislature and executive branches of the government, education, business, and civic organizations; and

d. outstanding interpersonal and communication skills.

C. - E.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:21(C), R.S. 17:23(B), R.S. 17:6(B), R.S. 17:21(B), R.S. 17:21(D), R.S. 17:21(A), R.S. 17:1990, R.S. 17:1951, R.S. 17:24(A), R.S. 17:24(B), R.S. 17:24(C), R.S. 17:24(D), R.S. 17:22(2)(f), R.S. 36:645, R.S. 17:22(6), R.S. 17:88(B), R.S. 17:88(D), R.S. 17:92, R.S. 17:10.6(A)(2) and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:410 (March 2008), amended LR 37:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: State Superintendent

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Administrative Code, Title 28, Part I, Section 309.B. contains the qualifications for the state superintendent of education. Act 323 of the 2010 Regular Session of the Louisiana State Legislature revised the qualifications required for the position of state superintendent of education. As a result of Act 323, the Louisiana Administrative Code is being changed to reflect the statutory changes.

This action will have no fiscal effect other than an estimated cost of \$165.00 for advertising in the Louisiana Register.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This action will have no effect on revenue collections of state and local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Jeanette Vosburg
Executive Director
1011#059

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

**Scholarship/Grant Programs—Go Grant Summer Billing
(LAC 28:IV.1205)**

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking will add language to the GO Grant Program eligibility requirements regarding qualified summer sessions that is consistent with the GO Grant Program billing

requirements for qualified summer sessions. To be eligible and for an institution to bill, the student who enrolls in a qualified summer session must be enrolled through the last day to drop and receive a full refund for the summer session.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq. (SG11124NI)

The text of this Notice of Intent can be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in LSA-R.S. 49:972. The proposed Rule will have no adverse impact on small businesses as described in LSA-R.S. 49:965.2 et seq. (SG11124NI)

Public Comments

Interested persons may submit written comments on the proposed changes (SG11124NI) until 4:30 p.m., December 10, 2010, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Scholarship/Grant
Programs—Summer Billing**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendment is simply a technical change to clarify the Go Grant eligibility rules to make it consistent with the Go Grant qualified summer session billing rules and it does not change current eligibility or payment policies. There is no fiscal impact associated with this change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rulemaking will not change the Go Grant Program in a way that would have an impact on a student's financial aid package for postsecondary education.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This change will have no impact on competition or employment.

George Badge Eldredge
General Counsel
1011#014

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary

Criteria Pollutant Emissions Inventory
(LAC 33:III.111, 311, 501, 605, 918, 919, 1513,
2115, 2139, 2141, 2153, and 5107)(AQ300)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.111, 311, 501, 605, 918, 919, 1513, 2115, 2139, 2141, 2153, and 5107 (AQ300).

Applicable facilities within Louisiana are required to submit annual point source emission inventories of criteria pollutants based upon attainment/nonattainment area designations of the National Ambient Air Quality Standards (NAAQS). In 2006, the department launched a new emissions inventory reporting system, the Emissions Reporting and Inventory Center (ERIC). This revision will allow better compatibility between ERIC and the regulations. It will allow flexibility in updating the required elements for reporting in ERIC, as well as make the regulations easier to interpret, enforce, govern, and permit. In addition to the greater compatibility between the regulations and ERIC, additional applicability requirements are included to require facilities in a nonattainment area, or an area adjoining a nonattainment area, with a Standard Oil and Gas Air (SOGA) permit to report emissions in the emissions inventory. The Rule also includes additional requirements for facilities in an ozone nonattainment area. The basis and rationale for this Rule are to comply with the Federal Clean Air Act, as well as the Consolidate Emissions Reporting Rule (40 CFR 51, Subpart A). This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below, unless specifically defined elsewhere.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:70 (January

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2008), LR 35:1101 (June 2009), LR 36:1773 (August 2010), LR 37:

Chapter 3. Regulatory Permits

§311. Regulatory Permit for Emergency Engines

A. - J. ...

K. Emissions Inventory. Each facility subject to LAC 33:III.919 shall include emissions from all emergency engines, including temporary units, authorized by this regulatory permit in its annual emissions inventory.

L. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), LR 37:

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - B.8. ...

C. Scope

1. - 10. ...

11. Emissions shall be calculated in accordance with LAC 33:III.919.G

12. Emissions estimation methods set forth in EPA's Compilation of Air Pollution Emission Factors (AP-42) and other department-accepted estimation methods may be promulgated or revised. As a result of new or revised AP-42 emission factors for sources or source categories and/or department-accepted estimation methods, changes in calculated emissions may occur. Changes in reported emission levels as required by LAC 33:III.919.F due solely to revised AP-42 emission factors or department-accepted estimation methods do not constitute violations of the air permit; however, the department may evaluate changes in emissions on a case-by-case basis, including but not limited to, assessing compliance with other applicable Louisiana air quality regulations.

13. If the emission factors or estimation methods for any source or source category used in preparing the annual emissions inventory required by LAC 33:III.919 differ from the emission factors or estimation methods used in the current air permit such that resulting "calculated" emissions reflect a significant change, notification of the use of updated emission factors or estimation methods shall be included in the Title V Annual Certification, as specified in the affected permit. The notification shall include the old and new emission factor or estimation method reference source and the date, volume, and edition (if applicable); the raw data for the reporting year used for that source category calculation; and applicable emission point and permit numbers that are impacted by such change. The notification shall include any other explanation, as well as the facility's intended time frame to reconcile the emission limits in the applicable permit. The department reserves the right to reopen a permit pursuant to LAC 33:III.529. For purposes of this Paragraph, a significant change is any of the following:

a. a 5 percent increase or decrease in the total potential or actual emissions from the facility;

b. a 50 ton per year increase or decrease in the total potential or actual emissions from the facility; or

c. a 10 ton per year increase or decrease in the potential or actual emissions from any single emission point (stack, vent, or fugitive).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

* * *

Current Total Point-Source Emissions Inventory—the aggregate point-source emissions inventory for either NO_x or VOC from the nine modeled parishes compiled from the emissions inventory records and updated annually in accordance with LAC 33:III.919 plus any banked ERC and pending ERC applications originally included in the base case inventory that have not expired.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 34:1890 (September 2008), LR 37:

Chapter 9. General Regulations on Control of Emissions and Emission Standards

§918. Nonattainment Areas and Adjoining Parishes List

A. For the purposes of the emissions inventory requirements set forth in LAC 33:III.919, the parishes located in the nonattainment areas as of July 1, 2010, as well as the parishes that adjoin the nonattainment areas, are listed in Tables 1-6 in Subsection B of this Section. Any parish designated as a nonattainment area after July 1, 2010, or adjoining a nonattainment area designated after July 1, 2010, may not be listed in Tables 1-6 in Subsection B of this Section, but a facility located in that parish is nevertheless subject to the requirements of LAC 33:III.919.A.1.a. Any facility located in a parish listed as a nonattainment area in Tables 1-6 in Subsection B of this Section and is designated as an attainment area after July 1, 2010, or adjoins a nonattainment area designated as an attainment area after July 1, 2010, shall continue to be subject to the requirements of LAC 33:III.919.A.1.a until otherwise directed by the department.

B. The following tables list all of the parishes located in the nonattainment areas as of July 1, 2010, as well as those parishes that adjoin the nonattainment areas.

Table 1	
Carbon Monoxide (CO) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 2	
Lead (Pb) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 3	
Nitrogen Dioxide (NO ₂) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 4	
Ozone Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
0180	Ascension
0840	East Baton Rouge
1280	Iberville
1740	Livingston
3120	West Baton Rouge
Parish Code	Adjoining Parishes to Nonattainment Areas
0200	Assumption
0880	East Feliciana
1260	Iberia
2260	Pointe Coupee
2540	Saint Helena
2560	Saint James
2580	Saint John the Baptist
2620	Saint Martin
2840	Tangipahoa
3160	West Feliciana

Table 5	
Particulate Matter (PM10 or PM2.5) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 6	
Sulfur Dioxide (SO ₂) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2083 (October 2007), LR 37:

§919. Emissions Inventory

A. Applicability

1. The provisions of this Section apply to the owner or operator of any facility located in Louisiana that meets any of the following criteria at any time during a reporting year:

a. the facility is located in a nonattainment area or an adjoining parish as listed in LAC 33:III.918.B, Tables 1-6, and the facility emits, has the *potential to emit* as defined in LAC 33:III.502.A, or is permitted to emit a pollutant that meets or exceeds any threshold value listed in Tables 1-6 of Paragraph A.2 of this Section;

b. the facility is located in an attainment parish and the facility emits, has the *potential to emit* as defined in LAC 33:III.502.A, or is permitted to emit a pollutant that meets or exceeds any threshold value listed in Table 7 in Paragraph A.2 of this Section;

c. the facility is defined as a major stationary source of hazardous air pollutants in Section 112(a)(1) of the federal Clean Air Act (CAA), or a *major source* of toxic air pollutants as defined in LAC 33:III.5103;

d. the facility has a 40 CFR Part 70 (Title V) operating permit regardless of emissions;

e. the facility is located in a nonattainment area or an adjoining parish, and has been issued a standard oil and gas air permit in accordance with LAC 33:III.501 regardless of emissions;

f. the facility is located in a nonattainment area or an adjoining parish, and has been issued a minor source air general permit for crude oil and natural gas production in accordance with LAC 33:III.519, regardless of emissions;

g. the facility has a portable source permit in accordance with LAC 33:III.513, operates at any time during a reporting year in a nonattainment area or an adjoining parish, and meets the applicability criteria of Subparagraph A.1.a of this Section; or

h. the facility is required by rule or permit to submit an emissions inventory.

2. The following tables list emissions threshold values that require the submission of an emissions inventory.

Table 2 Lead (Pb) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH ₃)	10	10
CO	100	100
Lead (Pb)	5	5
NO _x	100	100
PM ₁₀ or PM _{2.5}	100	100
SO ₂	100	100
VOC	100	100

Table 3 Nitrogen Dioxide (NO ₂) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH ₃)	10	10
CO	100	100
Lead (Pb)	5	5
NO _x	10	50
PM ₁₀ or PM _{2.5}	100	100
SO ₂	100	100
VOC	100	100

Table 4 Ozone Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH ₃)	10	10
CO	100	100
Lead (Pb)	5	5
NO _x	25	100
PM ₁₀ or PM _{2.5}	100	100
SO ₂	100	100
VOC	10	50

Table 5 Particulate Matter (PM ₁₀ or PM _{2.5}) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH ₃)	10	10
CO	100	100
Lead (Pb)	5	5
NO _x	10	50
PM ₁₀ or PM _{2.5}	10	50
SO ₂	10	50
VOC	10	50

Table 6 Sulfur Dioxide (SO ₂) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH ₃)	10	10
CO	100	100

Table 1 Carbon Monoxide (CO) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH ₃)	10	10
CO	10	50
Lead (Pb)	5	5
NO _x	100	100
PM ₁₀ or PM _{2.5}	100	100
SO ₂	100	100
VOC	100	100

Table 6		
Sulfur Dioxide (SO ₂) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Lead (Pb)	5	5
NO _x	100	100
PM ₁₀ or PM _{2.5}	100	100
SO ₂	10	50
VOC	100	100

Table 7	
Attainment Areas: Emissions Threshold Values	
Pollutant	Threshold Value (tons/year)
Ammonia (NH ₃)	10
CO	100
Lead (Pb)	5
NO _x	100
PM ₁₀ or PM _{2.5}	100
SO ₂	100
VOC	100

3. The requirements of this Section do not apply to *mobile sources* or *nonpoint sources* as defined in Subsection E of this Section.

B. The applicability of this Section for contiguous *agency interests (AIs)*, as defined in Subsection E of this Section, shall be determined by a threshold value that is the greater of:

1. the sum of the actual emissions;
2. the sum of the potentials to emit; or
3. the sum of permitted emissions for all contiguous AIs.

However, the emissions inventory shall be reported separately for each AI.

C. The owner or operator of any facility meeting the applicability criteria in Subparagraph A.1.a of this Section and located in any parish listed as a nonattainment area in LAC 33:III.918.B, Tables 1-6, but designated as an attainment area after July 1, 2010, or adjoins a nonattainment area designated as an attainment area after July 1, 2010, shall continue to be subject to Subparagraph A.1.a of this Section until otherwise directed by the department.

D. Once a facility meets the applicability criteria of Subparagraph A.1.a, b, c, d, e, f, g, or h of this Section, the owner or operator of the facility shall continue to submit an emissions inventory until otherwise directed by the department.

1. If a facility no longer meets any applicability criteria under Paragraph A.1 of this Section for one full calendar year, the owner or operator may request approval from the department in writing to discontinue submission of an emissions inventory. All such requests shall be submitted to the Office of Environmental Services.

a. An owner or operator who has submitted a request for approval to discontinue submission of an emissions inventory shall continue to submit an emissions inventory unless the owner or operator has received a response of approval from the department.

b. A request for departmental approval to discontinue submission of an emissions inventory will be considered if one or more of the following conditions have been met for one full calendar year:

i. the facility's permit has been rescinded and the most current emissions inventory shows the emissions to be below the applicable reporting thresholds in Paragraph A.2 of this Section;

ii. the facility has been permitted to emit pollutants below the reporting thresholds in Paragraph A.2 of this Section and the current emissions inventory is below the reporting thresholds;

iii. the facility's potential to emit has been below the applicable reporting thresholds in Paragraph A.2 of this Section and the current emissions inventory is below the reporting thresholds;

iv. the facility has not been a major stationary source of hazardous air pollutants in accordance with section 112(a)(1) of the federal Clean Air Act (CAA) or a major source of toxic air pollutants in accordance with LAC 33:III.Chapter 51;

v. the facility does not have a 40 CFR Part 70 (Title V) operating permit;

vi. the facility is located in a nonattainment area or an adjoining parish and does not have a standard oil and gas air permit in accordance with LAC 33:III.501;

vii. the facility is located in a nonattainment area or an adjoining parish and does not have a minor source air general permit for crude oil and natural gas production in accordance with LAC 33:III.519;

viii. the owner or operator of the facility is not required by rule or permit to submit an emissions inventory; or

ix. the facility operates in a nonattainment area or an adjoining parish and does not have a portable source permit as required by LAC 33:III.513.

2. No facility classes or categories are exempted from emissions inventory reporting.

E. Definitions. For the purposes of this Section, the terms below will have the meaning given herein.

Actual Emissions—a calculation, measurement, or estimate, in accordance with Subsection G of this Section, of the amount of a pollutant actually emitted during a calendar year or other period of time.

Agency Interest (AI)—any entity that is being regulated or is of interest to the department. Conceptually, an *agency interest* can be a site, facility, mobile source, area source, a person, or an organization.

Attainment Area—an area of the state that is not listed as a nonattainment area by the U.S. Environmental Protection Agency.

Certified—the status of an emissions inventory once the department has received both the emissions inventory and the certification statement required by this Section.

Contiguous Facilities—facilities under common control separated by 0.25 miles or less.

Control Efficiency—the percentage by which a control system or technique reduces the emissions from a source.

Control System—a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

Emissions Factor—the ratio relating emissions of a specific pollutant to an activity or material throughput level.

Facility—all emissions sources from *stationary point sources*, as defined in LAC 33:III.605, under common control on contiguous property.

NOTE: A facility can be one or more AIs, and each AI must comply individually with Subsection C of this Section.

Flash Gas Emissions—emissions from depressurization of crude oil or condensate when it is transferred from a higher pressure to a lower pressure tank, reservoir, or other type of container.

Fugitive Emissions—emissions that do not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Mobile Source—a motor vehicle, nonroad engine, or nonroad vehicle where:

a. a *motor vehicle* is any self-propelled vehicle used to carry people or property on a street or highway;

b. a *nonroad engine* is an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, and that is not affected by sections 111 or 202 of the CAA; and

c. a *nonroad vehicle* is a vehicle that is run by a nonroad engine and is not a motor vehicle or a vehicle used solely for competition.

National Ambient Air Quality Standard (NAAQS)—a standard established in accordance with section 109 of the CAA, including but not limited to, standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM_{2.5} and PM₁₀), and sulfur dioxide (SO₂).

Nonattainment Area—an area (parish or group of parishes) that has been declared by the administrative authority to be not in compliance with a federal national ambient air quality standard and that is listed in the *Federal Register* as a *nonattainment area*.

Nonpoint Sources (previously known as *area sources*)—collectively represent individual sources that have not been inventoried as specific point or mobile sources. These individual sources treated collectively as *nonpoint sources* are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Ozone Season—except as provided in LAC 33:III.2202, the period from May 1 to September 30, inclusively, of each year.

Process—an operation or function by a source that produces emissions, characterized by a Source Classification Code (SCC).

Release Point—the point where emissions from one or more processes are released into the atmosphere.

Reporting Period—the time frame during the reporting year for which emissions are being reported.

Reporting Year—the year for which an emissions inventory is being submitted.

Routine Operations—operations, not including any start-up/shutdown emissions, that are authorized and/or permitted by the department.

Source—the point at which the emissions are generated, typically a piece of, or a closely related set of, equipment.

F. Requirements

1. Data for emissions inventory and the certification statements shall be collected annually. The owner or operator of each facility that meets the applicability criteria of Paragraph A.1 of this Section shall submit both an emissions inventory and a certification statement required by Subparagraph F.1.c of this Section, separately for each AI, for all air pollutants for which a NAAQS has been issued

and for all NAAQS precursor pollutants in a format specified by the department.

a. Both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section shall include actual emissions in tons per year of ammonia (NH₃), carbon monoxide (CO), lead (Pb), nitrogen oxides (NO_x), particulate matter of less than 10 microns (PM₁₀), particulate matter of less than 2.5 microns (PM_{2.5}), sulfur dioxide (SO₂), and volatile organic compounds (VOC).

i. In addition to the requirements of Subsection C of this Section, the owner or operator of any facility located in the parish of Ascension, East Baton Rouge, Iberville, Livingston, St. Charles, St. James, St. John the Baptist, or West Baton Rouge is required to include actual emissions in tons per year of ethylene and propylene in both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section.

ii. Supporting Information. In order to meet federal emissions inventory requirements and regulations, support modeling analyses, permit projection of future control strategies, allow the measurement of progress in reducing emissions, facilitate preparation of state implementation plans, provide data for setting baselines for future planning, and for answering public requests for information, the emissions inventory shall include the required information listed in the following table. The emissions inventory shall also include all data required by the reporting system and applicable to the facility. The information provided does not constitute permit limits. Submittal of a report of excess emissions above allowable limits under this regulation does not pre-empt the need for compliance with provisions of LAC 33:III.Chapter 5 that require a permit request to initiate or increase emissions; nor does it qualify as a notice of excess emissions.

Supporting Information for Emissions Inventory		
Data Element	Description	Status
I. Inventory Information — Information describing the inventory being submitted.		
Reporting Year	The calendar year for which emissions estimates are calculated	Required
Reporting Period Start Date	The first day of the reporting period	Required
Reporting Period End Date	The last day of the reporting period	Required
II. Facility Information — Information describing the facility (AI) for which the inventory is being submitted. A facility corresponds to one AI Number.		
Facility ID (AI Number)	Unique ID assigned by the department to each facility	Required
Facility Name	Facility name of the AI	Required
Owner	Name of person(s) or entity(ies) that own(s) the facility	Required
Owner Address	Mailing address of owner(s) of the facility	Required
Owner City	City of mailing address of owner(s) of the facility	Required
Owner State	State of mailing address of the owner(s) of the facility	Required
Owner Zip	Zip code of mailing address of the owner(s) of the facility	Required
Owner Phone	Phone number of the owner(s) of the facility	Required
Operator	Name of person(s) or entity(ies) that operate(s) the facility, if different from owner	Optional

Supporting Information for Emissions Inventory		
Data Element	Description	Status
Facility Description	Description of business conducted at facility	Required
Facility Status	Operating status of the facility during the reporting period	Required
Address	Address of facility's physical location	Required
City	City of facility's physical location	Required
Parish	Parish of facility's physical location	Required
State	State of facility's physical location	Required
Zip Code	Zip code of facility's physical location	Required
Longitude (decimal degrees)	Longitude of facility front gate	Optional
Latitude (decimal degrees)	Latitude of facility front gate	Optional
UTM Easting (meters)	UTM easting of facility front gate (Universal Transverse Mercator easting is the distance east from 60 central meridians of 6-degree-wide zones starting at longitude 180 degrees)	Required
UTM Northing (meters)	UTM northing of facility front gate (Universal Transverse Mercator northing is the distance north from the equator)	Required
UTM Zone	Universal Transverse Mercator zone of facility front gate [15 or 16]	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Primary SIC Code	Standard Industrial Classification (SIC) code for the entire facility	Required
Primary NAICS Code	North American Industrial Classification System (NAICS) code for the entire facility	Required
ORIS Code	Four digit number assigned by the Energy Information Agency (EIA) at the U.S. Department of Energy to power plants owned by utilities	Required, where applicable
Comments	Miscellaneous information	Optional
III. Contact Information — Information describing the contact person(s) for each facility (AI).		
Contact Type	Emissions inventory (EI) facility contact person, EI consultant, EI billing party, or other	Required — Both EI billing party and EI facility contact are required.
Name	First and last name of contact person	Required
Title	Contact person's title	Required
Company	Name of company that employs the contact person, if any	Required
Address	Contact person's mailing address	Required
City	Contact person's city	Required
State	Contact person's state	Required
Zip Code	Contact person's zip code	Required
Email	Email address of contact person	Required
Phone	Phone number of contact person	Required
IV. Source Information — Information describing the point at which the emissions are generated; typically a piece of, or a closely related set of, equipment.		
Source ID	Unique identification assigned to the source by the facility and reported consistently over time	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
NEDS ID	The National Emissions Data System (NEDS) point identification for the source from the department's legacy Emissions Inventory System	Optional
Subject Item ID	Subject item identification assigned by the department to the source, if available	Required, where applicable
Source Description	Description of source	Required
Source Type	The type of equipment or unit that generates the emissions. Examples include heaters, boilers, flares, storage tanks, cooling towers, fugitive emissions, and spills.	Required
Permit Number	The number under which the source is permitted by the department.	Required, where applicable
EIQ Number	Emission Inventory Questionnaire (EIQ) number from the permit application	Required, where applicable
Status	Operating status of the source during the reporting period (active, idle, permitted but not built, shutdown)	Required
Permanent Shutdown Date	Date source was permanently taken out of service/no longer operating	Optional
SIC Code	Standard Industrial Classification (SIC) code for the source	Required
NAICS Code	North American Industry Classification System (NAICS) code for the source	Optional
Comments	Miscellaneous information	Optional
Maximum Design Rate (MM BTU/hour)	Maximum design heat input	Required for combustion sources only
Firing Type	Describes the burner type for boilers: front, opposed, tangential, internal, or other	Optional
Serial Number	Serial number of equipment, if available	Optional
Construction Date	Date source was constructed, not put into operation	Optional
Initial Start-up Date	Date source actually started operating	Optional
Maximum Nameplate Capacity (megawatts)	For electrical generators powered by combustion unit(s), the maximum electrical generating output in megawatts (MW) that the generator is capable of producing on a steady-state basis and during continuous operation	Optional
Engine Rating (horsepower)	Power rating in horsepower (HP) for engines	Optional
V. Process Information — Information describing the operation or function by a source that produces emissions, characterized by a Source Classification Code (SCC).		
Process ID	Unique identification for the process assigned by the facility and reported consistently over time	Required
Source ID	Facility-assigned source identification that applies to this process record	Required
Process Description	Description of the emission process	Required
Confidentiality	Flag indicating whether or not a declaration of confidentiality has been requested and granted by the secretary per LAC 33:1.Chapter 5, covering the process information	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
SCC	Source Classification Code (SCC) — a ten-digit EPA-developed code used to associate air pollution estimates with unique, identifiable industrial processes	Required
Material Name	Name of primary material used or produced by this process (the material on which the emissions calculations are based)	Required
Average Annual Throughput	Average annual throughput of material for the process	Required
Annual Throughput Units	Unit of measure for average annual throughput	Required
Average Ozone Season Throughput	Average daily throughput of material for the process during the ozone season	Required for facilities in ozone nonattainment areas
Ozone Season Throughput Units	Unit of measure for average ozone season throughput	Required for facilities in ozone nonattainment areas
Annual Average Ash Content	For solid fuels, the concentration of ash produced by the fuel, expressed as a percentage of total fuel weight averaged over the reporting period for the process	Required
Ozone Season Average Ash Content	For solid fuels, the concentration of ash produced by the fuel, expressed as a percentage of total fuel weight averaged over the emissions inventory ozone season for the process	Optional
Annual Average Sulfur Content	The concentration of sulfur in the fuel, expressed as a percentage of fuel weight averaged over the reporting period for the process	Required
Ozone Season Average Sulfur Content	The concentration of sulfur in the fuel, expressed as a percentage of fuel weight averaged over the emissions inventory ozone season for the process	Optional
Annual Average Heat Content	Total annual heat input for combustion units	Required
Annual Average Heat Content Units	Unit of measure for annual average heat content	Required
Ozone Season Average Heat Content	Ozone season total heat input for combustion units	Required for facilities in ozone nonattainment areas
Ozone Season Average Heat Content Units	Unit of measure for ozone season average heat content	Required
Spring Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the spring season, March through May	Required
Summer Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the summer season, June through August	Required
Fall Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the fall season, September through November	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
Winter Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the winter season, January, February, and December of the same calendar year	Required
Average Hours per Day	The actual number of hours per day for which the process is in operation	Required
Average Days per Week	The actual number of days per week for which the process is in operation	Required
Total Weeks	The actual number of weeks per year for which the process is in operation	Required
VI. Emission Factor — Information describing a ratio relating emissions of a specific pollutant to an activity or material throughput level. The emissions factor describes the calculation for a pollutant emitted by a specific process. The emissions calculation is of the form $E = A * EF$, where E is the emissions, A is the material or activity rate, and EF is the emission factor. The emission factor is required when using an emissions factor to calculate emissions.		
Process ID	Facility-assigned process identification to which the emission factor applies	Required
Pollutant	Pollutant for which the emission factor applies	Required
Emission Factor	Emission factor numeric value for the specified pollutant	Required
Emissions Units	The numerator unit for the emission factor (i.e., the unit of the emissions calculated by the factor).	Required
Material or Activity	Material name for emission factor	Required
Material or Activity Rate	The denominator unit for the emission factor (i.e., the unit for the material throughput).	Required
Emission Factor Source	Source of the emission factor (stack test, AP-42, etc.)	Required
VII. Control System Information — Information describing the system where control measures are applied at or to a source or process to reduce the amount of a pollutant released into the environment. The information describes the control equipment chain (series of one or more control devices) that is used to control or abate emissions from a source. The control system information is required when control efficiency is used to calculate emissions.		
Control System ID	Unique identification assigned to the control system by the facility and reported consistently over time	Required
Subject Item ID	Subject item identification assigned by the department to the control equipment, if available	Required, where applicable
Control System Description	Description of the control equipment chain	Required
Primary Device Type	Type of primary control device (e.g., flare, scrubber, condenser, and vapor recovery unit)	Required
Secondary Device Type	Secondary control device in series, not intended for backup or alternate control devices. Required if the control system has more than one control device in series.	Required, where applicable
VIII. Control Efficiency — Information describing the percentage by which a control system or technique reduces the emissions from a source. The control efficiency is required when control efficiency is used to calculate emissions.		
Control System ID	Unique identification assigned to the control system by the facility and reported consistently over time	Required
Pollutant	Pollutant for which the control efficiency applies	Required
Primary Device	Emission reduction efficiency of	Optional

Supporting Information for Emissions Inventory		
Data Element	Description	Status
Efficiency	the primary control device (percent)	
Secondary Device Efficiency	Emission reduction efficiency of the secondary control device (percent)	Optional
Total Efficiency	Net emission reduction efficiency of all emissions collection devices (percent)	Required
IX. Release Point Information — Information describing the point where emissions from one or more processes are released into the atmosphere.		
Release Point ID	Unique identification assigned to the release point by the facility and reported consistently over time	Required
Subject Item ID	Subject item identification assigned by the department to the release point, if available	Required, where applicable
Release Point Description	Description of emissions release point	Required
Release Point Type	Release point type (e.g., vertical stack, horizontal stack, gooseneck stack, and area)	Required
Height (feet)	Physical height of release point above the surrounding terrain	Required
Diameter (feet)	Diameter of the release point	Required
Width (feet)	Width of area for area release point types. This is the shorter dimension of the rectangular area over which the emissions occur.	Required for fugitive and area release point types
Length (feet)	Length of area for area release point types. This is the longer dimension of the rectangular area over which the emissions occur.	Required for fugitive and area release point types
Orientation (degrees)	Orientation (bearing) of long axis of area release point types for fugitive or area sources, measured in degrees of clockwise rotation from true north. For stack or vent release point types, the orientation of the release point from vertical	Required
Flow Rate (feet ³ /second)	Exit gas flow rate (actual cubic feet per second)	Required
Velocity (feet/second)	Exit gas velocity	Required
Temperature (degrees Fahrenheit)	Exit gas temperature at release point (if unknown, ambient temperature of 78 degrees Fahrenheit)	Required
Moisture Content (%)	Moisture content of exit gas stream, designated as a percentage	Optional
Longitude (decimal degrees)	Longitude of release point	Optional
Latitude (decimal degrees)	Latitude of release point	Optional
UTM Easting (meters)	Universal Transverse Mercator easting of release point	Required
UTM Northing (meters)	Universal Transverse Mercator northing of release point	Required
UTM Zone	Universal Transverse Mercator zone of release point [15 or 16]	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Accuracy (meters)	Measure of accuracy of the release point coordinates (if using GPS reading, accuracy of GPS device)	Required
Horizontal Collection Method	Method used to measure or estimate the release point coordinates (e.g., USGS quad, satellite photo, GPS, address	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
	geocoding, or other)	
X. Portable Source Location — Information describing the specific location or locations at which a portable source released emissions over the reporting period. This is applicable to facilities operated and permitted under LAC 33:III.513.		
Location ID	Unique identification assigned by facility to the location and reported consistently over time, if any	Required
Release Point ID	Facility-assigned release point identification for which this is a supplemental location, if any	Required
Start Date	Date the release point was moved to this location	Required
End Date	Date the release point was moved from this location	Required
Parish	Parish containing this location	Required
Longitude (decimal degrees)	Longitude of release point at this location	Optional
Latitude (decimal degrees)	Latitude of release point at this location	Optional
UTM Easting (meters)	Universal Transverse Mercator easting of release point at this location	Required
UTM Northing (meters)	Universal Transverse Mercator northing of release point at this location	Required
UTM Zone	Universal Transverse Mercator zone of release point [15 or 16] at this location	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Accuracy (meters)	Measure of accuracy of the location's release point coordinates (if using GPS reading, accuracy of GPS device)	Required
Horizontal Collection Method	Method used to measure or estimate the location's release point coordinates (e.g., USGS quad, satellite photo, GPS, address geocoding, or other)	Required
XI. Emissions Record — Information describing the emissions for a specified combination of process (source and operating mode), control equipment, and release point.		
Source ID	Facility-assigned source identification for this emission record	Required
Process ID	Facility-assigned process identification for this emission record	Required
Control System ID	Facility-assigned control system identification for this emission record	Optional
Release Point ID	Facility-assigned release point identification for this emission record	Required
Location ID	Facility-assigned location identification if this is a portable source operating at a location other than the location on the release point record	Optional
Emission Type	Routine, start-up/shutdown, upset/malfunction/other, variance [NOTE: Separate emission records must be submitted showing the total and ozone season emissions for each applicable category.]	Required
Pollutant	Pollutant emitted	Required
Total Emissions	Total emissions of specified pollutant for the reporting period	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
Emissions Units	Unit of measure for total emissions (tons or pounds)	Required
Estimation Method	The method used to calculate or estimate emissions (AP-42, mass balance, etc.)	Required
Ozone Season Emissions (pound/day)	Ozone season average daily emissions of specified pollutant	Required for facilities in ozone nonattainment areas
Ozone Season Estimation Method	A code indicating the method used to calculate or estimate emissions (AP-42, mass balance, etc.)	Required for facilities in ozone nonattainment areas
Number of Start-ups	Number of start-up events for which this record applies (only for emissions records of permitted start-ups/shutdowns)	Optional
Number of Shutdowns	Number of shutdown events for which this record applies (only for emissions records of permitted start-ups/shutdowns)	Optional

iii. Ozone Nonattainment Area Requirement. In addition to the requirements of Subsection C of this Section, the owner or operator of any facility located in an ozone nonattainment area that meets the applicability criteria of Subparagraph A.1.a of this Section shall submit an emissions inventory that includes:

- (a). ozone season average daily emissions (in pounds/day) of CO, NO_x, VOC, ethylene, and propylene;
- (b). average ozone season throughput;
- (c). ozone season average heat content (in MMBtu/ozone season); and
- (d). ozone season estimation method for emissions of CO, NO_x, VOC, ethylene, and propylene.

b. Actual emissions shall be reported for all sources of emissions at a facility, including but not limited to, emissions from routine operations, General Condition XVII emissions (as described in LAC 33:III.537), fugitive emissions, flash gas emissions, emissions from insignificant sources (as described in LAC 33:III.501.B.5, Insignificant Activities List, A—Based on Size or Emission Rate, and D—Exemptions Based on Emissions Levels), emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime, and emissions in excess of permit emission limitations regardless of the amount.

c. Certification Statement. A certification statement, required by Section 182(a)(3)(B) of the federal Clean Air Act, shall be signed by a *responsible official*, as defined in LAC 33:III.502.A, for the facility or facilities and shall be submitted for each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The certification statement shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

d. Both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section shall be submitted to the Office of Environmental Services by April 30 of each year (for the reporting period of the

previous calendar year that coincides with period of ownership or operatorship) unless otherwise directed by the department. Any subsequent revisions shall be accompanied by a certification statement.

i. The owner or operator of any facility located in a parish designated as a nonattainment area or within a nonattainment area after July 1, 2010, and that meets the applicability criteria in Subparagraph A.1.a of this Section, shall submit both an emissions inventory and the certification statement required by Subparagraph F.1.c of this Section to the Office of Environmental Services by April 30 of the year following the first full calendar year of the nonattainment designation, unless otherwise directed by the department.

ii. The owner or operator of any facility located in a parish that adjoins a parish designated as a nonattainment area or within a nonattainment area after July 1, 2010, and that meets the applicability criteria in Subparagraph A.1.a of this Section, shall submit both an emissions inventory and the certification statement required by Subparagraph F.1.c of this Section to the Office of Environmental Services by April 30 of the year following the first full calendar year of the nonattainment designation, unless otherwise directed by the department.

iii. The owner or operator of any facility that has a portable source permit in accordance with LAC 33:III.513 and meets the applicability criteria in Paragraph A.1 of this Section shall submit both an emissions inventory and the certification statement required by Subparagraph F.1.c of this Section for the entire period of ownership or operatorship during the reporting year.

2. The reporting period of both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section, shall coincide with the period of ownership or operatorship during the reporting year. When there is a change of ownership of any facility to which this Section applies, submitted in accordance with LAC 33:III.517.G, at any time during a reporting year, each owner shall submit both an emissions inventory and certification statement required by Subparagraph F.1.c of this Section, with a start and/or end date that coincides with the date of transfer of ownership or operatorship.

3. Special Inventories. Upon request by the administrative authority, the owner or operator of any facility subject to LAC Title 33 shall file additional emissions data with the department. The request shall specify a reasonable time for response that shall not be less than 60 days from receipt of the request.

4. The department will post a notice on the department's website (www.deq.louisiana.gov) advising of any planned changes in required data elements or reporting format, so that entities subject to reporting requirements under this Section will be able to make the necessary adjustments.

G. Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) or approved stack testing shall be used for reporting of emissions from an emissions point when such data exists. In the absence of CEMS or stack test data, emissions shall be calculated using methods found in the most recent edition, as of December 31 of the current reporting year, of EPA's Compilation of Air Pollution Emission Factors (AP-42), calculations published

in engineering journals, and/or EPA or department-approved estimation methodologies.

H. Enforcement. The department reserves the right to initiate formal enforcement actions, under R.S. 30:2025, for failure to submit emissions inventories as required in this Section.

I. Fees. The annual emissions inventory will be used to assess the criteria pollutant annual fee in accordance with LAC 33:III.223.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:184 (February 1993), repromulgated LR 19:485 (April 1993), amended LR 19:1418 (November 1993), LR 20:1101 (October 1994), LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 32:241 (February 2006), LR 33:2084 (October 2007), LR 37:

Chapter 15. Emission Standards for Sulfur Dioxide

§1513. Recordkeeping and Reporting

A. - D. ...

E. All compliance data shall be made available to a representative of the department or the U.S. EPA on request. When applicable, compliance data shall be reported to the department annually in accordance with LAC 33:III.919. In addition, quarterly reports of three-hour excess emissions and reports of emergency conditions in accordance with LAC 33:I.Chapter 39 shall be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:376 (April 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1671 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007), LR 37:

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2115. Waste Gas Disposal

A. Any waste gas stream containing volatile organic compounds (VOC) from any emission source shall be controlled by one or more of the applicable methods set forth in Subsections B-H of this Section. This Section shall apply to all waste gas streams located at facilities that have the potential to emit 25 TPY or more of VOC in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge; 50 TPY or more of VOC in the parishes of Calcasieu and Pointe Coupee; or 100 TPY or more of VOC in any other parish. This Section does not apply to waste gas streams that must comply with a control requirement, meet an exemption, or are below an applicability threshold specified in another section of this Chapter. This Section does not apply to waste gas streams that are required by another federal or state regulation to implement controls that reduce VOC to a more stringent standard than would be required by this Section.

B. Control Requirements for Operations that Commenced Construction Prior to January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1300°F

(704°C) for 0.3 second or greater in a direct-flame afterburner or an equally effective device which achieves a removal efficiency of 95 percent or greater, as determined in accordance with Paragraph K.1 of this Section, or if emissions are reduced to 50 ppm by volume, whichever is less stringent.

C. Control Requirements for Operations that Commenced Construction On or After January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1600°F (870°C) for 0.5 second or greater in a direct-flame afterburner or thermal incinerator. Other devices will be accepted provided 98 percent or greater VOC destruction or removal efficiency can be demonstrated, as determined in accordance with Paragraph K.1 of this Section, or if emissions are reduced to 20 ppm by volume, whichever is less stringent.

D. Control Requirements for Existing Polypropylene Plants Using Liquid Phase Processes. All waste gas streams containing VOCs at the following sources in existing polypropylene plants using liquid phase processes shall be controlled as specified in Subsection C of this Section:

1. polymerization reaction section (i.e., reactor vents);
2. material recovery section (i.e., decanter vents, neutralizer vents, by-product and diluent recovery operation vents); and
3. product finishing section (i.e., dryer vents and extrusion and pelletizing vents).

E. Control Requirements for Existing High-Density Polyethylene Plants Using Liquid Phase Slurry Processes. All waste gas streams containing VOCs at the following sources in existing high-density polyethylene plants using liquid phase slurry processes shall be controlled as specified in Subsection C of this Section:

1. material recovery section (i.e., ethylene recycle treater vents); and
2. product finishing section (i.e., dryer vents and continuous mixer vents).

F. Control Requirements for Polystyrene Plants Using Continuous Processes. The emissions from the material recovery section (e.g., product devolatilizer system) shall be limited to 0.12 kg VOC/1,000 kg of product.

G. Control Requirements for Halogenated Hydrocarbons. The halogenated hydrocarbons shall be combusted or controlled by other methods specified in Subsection H of this Section that achieve a removal efficiency of 95 percent or greater, as determined in accordance with Paragraph K.1 of this Section. If combusted, the halogenated products of combustion shall be reduced to an emission level acceptable to the administrative authority.

H. Alternative Control Requirements. Other methods of control (such as, but not limited to, carbon adsorption, refrigeration, catalytic and/or thermal reaction, secondary steam stripping, recycling, or vapor recovery system) may be substituted for burning provided the substitute is acceptable to the administrative authority and it achieves the same removal efficiency as required by this Section and determined in accordance with Paragraph K.1 of this Section or it achieves a degree of control not practically or safely achieved by other means.

I. Exemptions

1. All waste gas streams containing VOCs, except those subject to Subsections D, E, and F of this Section, are

exempt from the requirements of this Section if any of the following conditions are met:

a. it can be demonstrated that the waste gas stream is not a part of a facility that emits, or has the potential to emit, 25 TPY or more of VOC in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge; 50 TPY or more of VOC in the parishes of Calcasieu and Pointe Coupee; or 100 TPY or more of VOC in any other parish;

b. it is a waste gas stream from a low-density polyethylene plant and no more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1000 kg) of product are emitted from all the waste gas streams associated with the formation, handling, and storage of solidified product;

c. it is a waste gas stream having a combined weight of VOCs equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period; or

d. it is a waste gas stream with a concentration of VOCs less than 0.44 psia true partial pressure (30,000 ppm) except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge in which the concentration of VOCs in the waste gas stream must be less than 0.044 psia true partial pressure (3,000 ppm).

2. Except for waste gas streams subject to Subsections D, E, and F of this Section, the administrative authority may waive the requirements of this Section if one of the following conditions is met:

a. it will not support combustion without economically impractical amounts of auxiliary fuel; or

b. its disposal cannot be practically or safely accomplished by the means described herein or other equivalent means without causing undue economic hardship.

3. Waste gas streams subject to Subsections D, E, and F of this Section are exempt from the requirements of this Section if it can be demonstrated that the waste gas stream has a concentration of VOCs no greater than 408 ppm by volume.

J. Test Methods. Compliance with Subsections B-H of this Section shall be determined by applying the following test methods, as appropriate:

1. Test Methods 1-4 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining flow rates, as necessary;

2. Test Method 18 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining gaseous organic compounds emissions by gas chromatography;

3. Test Method 25 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous nonmethane organic emissions as carbon;

4. Test Method 25A or 25B (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous organic concentration using flame ionization or nondispersive infrared analysis; and

5. modified test methods approved or specified by the administrative authority.

K. Compliance. All facilities affected by this Section shall be in compliance as soon as practicable but in no event later than August 20, 2003. A facility that has become

subject to this regulation as a result of a revision of the regulation shall comply with the requirements of this Section as soon as practicable, but in no event later than one year from the promulgation of the regulation revision.

1. Compliance with LAC 33:III.2115 shall be demonstrated at the owner/operator's expense as requested by the administrative authority. Such demonstration shall consist of control device destruction efficiency or recovery efficiency testing. Such compliance testing is in addition to the continuous monitoring required under Paragraph K.2 of this Section.

2. The owner/operator of any facility subject to this Section shall install and maintain monitors to accurately measure and record operational parameters of all required control devices as necessary to ensure the proper functioning of those devices in accordance with the design specifications, including but not limited to:

a. the exhaust gas temperature of direct flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

b. the breakthrough of volatile organic compounds in a carbon adsorption unit;

c. the total amount of volatile organic compounds recovered by carbon adsorption or other waste gas stream recovery systems during a calendar month;

d. the dates for any maintenance of the required control devices and the estimated quantity and duration of volatile organic compound emissions during such activities; and

e. any other parameters affecting or related to waste gas streams as considered necessary by the administrative authority.

L. Recordkeeping. The owner or operator of any facility subject to this Section shall maintain the following information on the premises for at least two years and shall make such information available to representatives of the Louisiana Department of Environmental Quality and the Environmental Protection Agency upon request:

1. a record for each vent of the results of any testing conducted at the facility in accordance with the provisions specified in Subsections J and K of this Section;

2. the date for any maintenance and repair of required control devices and the estimated quantity and duration of volatile organic compound emissions during such activities;

3. records for each vent required to satisfy the provisions of Paragraph K.2 of this Section to demonstrate the proper functioning of applicable control equipment to design specifications; and

4. records to demonstrate that the criteria are being met for any exemption claimed.

M. This Section does not apply to safety relief and vapor blowdown systems where control cannot be accomplished because of safety or economic considerations. However, the emissions from these systems shall be reported to the department as required under LAC 33:III.919. Emergency conditions shall be reported in accordance with LAC 33:I.Chapter 39.

N. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Section shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply.

Safety Relief and Vapor Blowdown Systems—the emergency escape of gas from a process unit through a valve or other mechanical device, in order to eliminate system overpressure or in the case of an operational emergency.

Waste Gas Stream—any gas stream, excluding *fugitive emissions* as defined in LAC 33:III.Chapter 5, containing VOC and discharged from a processing facility directly to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. Process gaseous streams that are used as primary fuels are excluded. The streams that transfer such fuels to a plant fuel gas system are not considered to be waste gas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:960 (November 1990), LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 19:317 (March 1993), LR 22:1212 (December 1996), LR 24:21 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1764 (August 2002), LR 30:745 (April 2004), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 37:

Subchapter G. Petroleum Refinery Operations

§2139. Refinery Vacuum Producing Systems

A. Control of Steam Jet Ejectors and Mechanical Pumps. Emissions of volatile organic compounds from steam jet ejectors and mechanical pumps shall be controlled by one of the applicable methods specified in LAC 33:III.2115.B, C, and G. Compliance shall be determined and records shall be kept as specified in LAC 33:III.2115.J, K, and L.

B. Emissions of volatile organic compounds from a hot-well with a contact condenser shall be controlled by covering the hot-well and controlling the vapors by one of the applicable methods specified in LAC 33:III.2115.B, C, and G. Compliance shall be determined and records shall be kept as specified in LAC 33:III.2115.J, K, and L.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 24:917 (May 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 37:

§2141. Refinery Process Unit Turnarounds

A. Emissions of volatile organic compounds from petroleum refinery process unit turnarounds shall be controlled by pumping the liquid contents to storage and depressurizing the processing units to 5 psig (pounds per square inch gauge) or below before venting to the atmosphere. Control of the vapors during the depressurization prior to venting to atmosphere shall be accomplished by one of the applicable methods specified in LAC 33:III.2115.B, C, and G. Compliance shall be determined and records shall be kept as specified in LAC 33:III.2115.J, K, and L.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the

Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), amended by the Office of the Secretary, Legal Affairs Division, LR 37:

Subchapter M. Limiting Volatile Organic Compound (VOC) Emissions from Industrial Wastewater

§2153. Limiting VOC Emissions from Industrial Wastewater

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

Plant—all facilities located within a contiguous area, under common control, and identified by the Plant ID number as assigned by the department, within the parish in which the plant is primarily located, for inclusion in the emissions inventory.

B. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:936 (September 1995), amended LR 22:1212 (December 1996), LR 24:26 (January 1998), LR 25:850 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:747 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 33:2087 (October 2007), LR 37:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

A. Annual Emissions Reporting. The owner or operator of any major source that meets the applicability requirements in LAC 33:III.5101.A and emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions report to the Office of Environmental Services in a format specified by the department. The owner or operator shall identify on the emissions report the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted. Beginning with the report due in 2011, the annual emissions report shall meet the following requirements.

1. The owner or operator of any major source subject to the requirements in this Subsection shall submit a completed annual emissions report to the Office of Environmental Services on or before April 30 of each year, unless otherwise directed by the administrative authority, that shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, for the previous calendar year.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991),

amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:2093 (October 2007), LR 33:2622 (December 2007), LR 37:

Family Impact Statement

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

Public Hearing

A public hearing will be held on December 29, 2010 at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ300. Such comments must be received no later than January 5, 2011 at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to donald.trahan@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ300. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Council

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Criteria Pollutant Emissions Inventory

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no significant implementation costs or savings to state or local governmental units as a result of the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units resulting from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no significant costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule. Affected facilities have been reporting emissions inventory data as described in the rule revision since 2007 which covers the calendar years 2006-2009.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment as a result of the proposed rule.

Herman Robinson, CPM
Executive Counsel
1011#013

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Office of Financial Institutions

Residential Mortgage Lending Program (LAC 10:XII.Chapter 1)

In accordance with R.S. 49:950 et seq., of the Administrative Procedure Act, and pursuant to his authority under R.S. 6:121, and R.S. 6:1085 and 6:1088.1 of the Louisiana SAFE Residential Mortgage Lending Act, R.S. 6:1081 et seq., the Commissioner of the Office of Financial Institutions gives notice of his intent to repeal Louisiana Administrative Code, LAC 10:XII.101-113, regarding the minimum requirements for certified continuing education facilitators. This action is being effectuated because the statute pertaining to continuing education has been amended and now requires providers to obtain approval through the Nationwide Mortgage Licensing System and Registry. Thus the Rule is rendered obsolete and no longer necessary.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XII. Residential Mortgage Lending

Chapter 1. Residential Mortgage Lending Program

§101. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 27:688 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

§103. Procedures and Standards for Facilitator Course Certification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

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

27:688 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

§105. Course Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 27:688 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

§107. Training Facility Requirements for Live Class Settings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 27:689 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

§109. Procedures for Verifying Continuing Education Credits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 27:689 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

§111. Program Review-Disciplinary Action

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 27:689 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

§113. Facilitators for Courses Conducted Out of State

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:1085 and R.S. 6:1094(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 27:689 (May 2001), repealed by the Office of the Governor, Office of Financial Institutions, LR 37:

Family Impact Statement

The proposed amendments should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit comments until 4:30 p.m., December 20, 2010, to Susan Rouprich, General Counsel, P.O. Box 94095, Baton Rouge, LA 70804-9095 or by hand

delivery to 8660 United Plaza Blvd, 2nd Floor, Baton Rouge, LA 70809.

John Ducrest, CPA
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Residential Mortgage Lending Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no estimated implementation costs associated with the proposed repeal of the existing rule.

The S.A.F.E Act of 2008 passed by Congress established minimum standards for licensing residential mortgage loan originators including use of a nationwide licensing system and standardized continuing education requirements including system approval of education providers and courses. Act 522 of the 2009 legislative session became effective July 31, 2009 and made Louisiana's requirements for licensed loan originators consistent with the minimal national standards including those pertaining to continuing education. As a result of this, continuing education providers and courses are now approved by the nationwide licensing system of which the OFI is a user. The repeal of the rule is warranted as approval of continuing education providers by OFI is no longer provided for by statute.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed repeal of the rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The repeal of the rule will not result in any costs to or economic benefits to any persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of the repeal of the rule.

Susan P. Jandle
Chief Examiner
1011#038

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Used Motor Vehicle Commission

Licensure and Established Place of Business
(LAC 46:V.2905 and 2907)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 32:783(E), that the Louisiana Used Motor Vehicle Commission proposes to amend LAC 46:V.2905 in order to better facilitate the requirements to become an Used Motor Vehicle Dealer. The Louisiana Used Motor Vehicle Commission also proposed to amend LAC 46:V.2907 by adding a paragraph in order to better facilitate an established place of business.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part V. Automotive Industry

Subpart 2. Used Motor Vehicles

Chapter 29. Licenses to be issued by the Used Motor Vehicle Commission

§2905. Qualifications and Eligibility for Licensure

A. The commission, in determining the qualifications and eligibility of an applicant for a dealer's license, shall verify:

1. the applicant has an established place of business properly zoned in the municipality, provide a suitable office, have a permanently affixed sign, clearly visible from the street or roadway at a minimum of 16 square feet and subject to local zoning laws, in front of the establishment which denotes that vehicles are offered for sale at the location to which the sign is affixed. Existing signs prior to adoption of this rule will not have to meet the new requirements. If two or more dealers share a location, each dealer must display his own sign. Applicant must have an installed telephone listed in the business name at the established place of business, the telephone number shall be listed on the application for license;

2. the applicant has the required garage liability insurance policy on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of the state and for those dealers who conduct the business of daily vehicle rentals, a separate renter's policy is in effect;

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission LR 15:258 (April 1989), LR 15:375 (May 1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle Commission, LR 30:436 (March 2004), amended but the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2480 (November 2004), LR 33:1635 (August 2007), amended by the Office of the Governor, Used Motor Vehicle Commission, LR 37:

§2907. Established Place of Business

A. ...

B. A licensed dealer with an established place of business may conduct a public or retail auction for a specified period of time at a location other than the dealer's established place of business. A licensed dealer which conducts a public or retail auction at a location other than the dealer's established place of business must include the address and telephone number of dealer's established place of business together with a telephone number to be used during the auction on all signs and bills of sale and shall obtain a public retail auction license for the auction location prior to advertising the auction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:791.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR

11:1063 (November 1985), amended by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 33:1635 (August 2007), amended by the Office of the Governor, Used Motor Vehicle Commission, LR 37:

Family Impact Statement

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

Public Comments

Interested persons may submit written comments to Kimberly Baron, Administrative Supervisor 2, Louisiana Used Motor Vehicle Commission, 3132 Valley Creek Drive, Baton Rouge, LA 70808. All comments must be submitted by 4:30 p.m., December 20, 2010.

Derek Parnell
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Licensure and Established
Place of Business**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated costs or savings to state or local governmental units as a result of this rule change. The proposed rule makes technical changes in the qualifications and eligibility for licensure and the established place of business.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will have no cost and/or economic benefit to any person or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will have no effect on competition and employment.

Derek Parnell
Executive Director
1011#126

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Dentistry**

Licenses; Authorized Duties; Nitrous Oxide Inhalation
(LAC 46:XXXIII.419, 701 and 1509)

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.419, 701, and 1509. No preamble has been prepared.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XXXIII. Dental Health Profession

Chapter 4. Fees and Costs

Subchapter D. Fees for Dental Hygienists

§419. Licenses, Permits and Examinations (Dental Hygienists)

A. For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board:

1. - 11. ...
12. Examination and permitting of dental hygiene applicants for administration of nitrous oxide inhalation analgesia \$50
13. Renewal fee for dental hygienists administration of nitrous oxide inhalation analgesia \$50

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8), R.S. 37:768, and R.S. 37:795.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1527 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007); LR 34:2564 (December 2008); LR 37:

Chapter 7. Dental Hygienists

§701. Authorized Duties

A. - E. ...

F. Under general supervision, a dental hygienist may provide to patients of record, for not more than five consecutive business days, all dental hygiene services (except local anesthesia and root planning which must be under direct supervision) if all of the following conditions are satisfied.

1. The dental hygienist has at least one year of full time practice of dental hygiene.

2.-7. ...

8. Dental hygienists may perform light enhanced teeth whitening procedures such as Zoom® under general supervision.

G. - G.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 37:

Chapter 15. Conscious Sedation with Parenteral Drugs

§1509. Minimal Educational Requirements for the Granting of Permits to Administer Nitrous Oxide Inhalation Analgesia, Conscious Sedation with Parenteral or Enteral Drugs and General Anesthesia/Deep Sedation

A. Nitrous Oxide Inhalation Analgesia

1. - 2. ...

3. A dentist who has been trained to administer nitrous oxide inhalation analgesia in a dental school approved by the American Dental Association or a course accepted by the Louisiana State Board of Dentistry and has been administering nitrous oxide inhalation analgesia in another state without any disciplinary or malpractice action being

taken against him regarding the administration of anesthesia may be permitted to administer same in the state of Louisiana by providing documentation of experience in the previous two years, and by gaining approval of the board.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 32:244 (February 2006), LR 37:

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 25 of the date of this notice.

C. Barry Ogden
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Licenses; Authorized Duties;
Nitrous Oxide**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be a one-time cost of \$500 in Fiscal Year 2010-11 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The implementation of these rule changes will increase revenues for the Louisiana State Board of Dentistry because dental hygienists will now be allowed to administer nitrous oxide inhalation analgesia and will have to pay a \$50 application fee for anesthesia permits. The exact amount cannot be determined at this time because it is unknown how many hygienists will apply. However, the Board estimates a minimum of 200 applicants in FY 11 and 100 applicants in FY 12; therefore, \$10,000 in FY 11 and \$5,000 in FY 12 in new revenue is expected. An unknown, minimal revenue increase may occur in subsequent years due to new dental hygienists entering the profession and applying for permits. In addition, though a \$50 renewal fee is authorized, the Board has no plans to implement it at this time. As such, no revenue from renewal fees is expected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Dental hygienists will pay a \$50 application fee and a possible \$50 renewal fee for nitrous oxide inhalation analgesia permits in the future. Dental hygienists may be able to earn 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
1011#134

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Examiners of Nursing Facility Administrators

Nursing Facility Administrators
(LAC 46:XLIX.Chapters 1-16)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and through the authority granted in R.S. 37:2501 et seq., that the Louisiana Board of Examiners of Nursing Facility Administrators proposes to amend LAC 46:XLIX.Chapters 1-16 relative to the administration of nursing facility administrators and their licensure to make certain technical changes, to provide for creation of a "conditional license", to implement statutes, to modify time limits on training, testing and licensure, to establish record retention guidelines, to make changes to Continuing Education Unit requirements from biennially to annual, to insert a chapter delineating a fee schedule range as authorized by statute, and provides for statutorily authorized criminal background checks.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLIX. Nursing Facility Administrators

Chapter 1. General Provisions

§103. General Definitions Title 46

A. ...

Act of Administration—encompasses the decision-making process in the planning, organizing, directing and/or controlling the operation of a *nursing home* whether or not there is an ownership interest in the home. The administrator:

a. - d.i. ...

ii. *Administrator-in-Training*—here and after known as AIT, one who has met the provisions of §§503, 505 and 507; and is under the general supervision of a full-time *nursing home administrator*, duly licensed in the state of Louisiana, for a period of at least six consecutive months and who is preparing for licensing.

iii. - iv. ...

National Association of Long Term Care Administrator Boards—the nationally leading authority on licensing, credentialing, and regulating administrators of organizations along the continuum of long term care here and after known as NAB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:501 and R.S. 37:2504.C.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home

Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 16:258 (March 1990), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§105. Notification of Change

A. Every licensed nursing home administrator shall immediately notify in writing the office of the Louisiana Board of Examiners of Nursing Facility Administrators of any and all changes in name, address, position, or other information originally submitted on their initial registration and any subsequent changes thereto. Failure to comply with this rule within 10 days of the change will result in a penalty as set forth in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 16:199 (February 1990), repealed and repromulgated LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

Chapter 3. Board of Examiners

§301. Meetings

A. - C. ...

D. The board as a public body operates in accord with R.S. 42:1-R.S. 42:13. The conduct of meetings, notices, voting, record keeping, and so on shall be in accord with these statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2503 and R.S. 37:2504.C.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 20:790 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§303. General Powers

A. ...

B. From time to time the board may e-mail or distribute a newsletter, promulgate and publish such rules and regulations not inconsistent with law as it may deem necessary and proper for the execution and enforcement of the law and rules and regulations governing the licensing and registration of nursing facility administrators.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 20:790 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§305. Officers and Duties

A. ...

B. The chairman shall preside at all meetings of the board and shall sign all official documents of the board. In

the absence of the chairman, the vice-chairman or member designated by the chairman shall preside at meetings and perform all duties usually performed by the chairman.

C. ...

D. The executive director shall conduct all routine correspondence for the board, shall issue all notices of meetings and hearings, shall have custody of all books, records and property of the board and shall perform all duties pertaining to the office of executive director. The executive director shall annually, in accordance with the directives of the State Office of the Legislative Auditor, submit financial records for audit. The audit results, on receipt, will be promptly distributed to all members of the board for review.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2503 and R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 20:790 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

Chapter 5. Examinations

§501. Scheduling of Examinations and Re-Examinations

A. ...

B. Examinations

1. State examinations may be held at such times and places, and by entities designated by the board.

2. National examinations shall be conducted by NAB for state-approved candidates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§503. Pre-Examination Requirements: Conditions Precedent

A. - A.2. ...

3. has no convictions for a felony or crimes involving moral turpitude as provided in R.S. 14:80;

4. - 5.a. ...

b. 60 hours of college education from an accredited institute of higher learning with an overall C average and three years of experience in nursing or administration in a licensed nursing home; or

A.5.c. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 20:789 (July 1994), LR 33:2423

(November 2007), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§504. Pre Examination Criminal Background Check

A. At the applicant's expense the board may require fingerprints taken by an appropriate law enforcement agency. Such fingerprints are to be submitted by the enforcement agency to the State Police Bureau of Criminal Identification or such other appropriate authority.

B. The applicant shall request the result of such background check to be submitted to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2505.1.

HISTORICAL NOTE: Adopted by the Board of Examiners of Nursing Facility Administrators, LR 37:

§505. Application for Examination

A. An applicant for examination to secure a license as a nursing home administrator shall apply in writing, on forms provided by the board, and shall furnish evidence satisfactory to the board that he has met the pre-examination requirements as provided for in the state licensing statutes and §503 of these rules and regulations; and

1. a candidate for examination shall submit with his notarized application, the application fee, all waiver requests, and two letters from individuals engaged in either business or professional work, but not related by blood or marriage, who shall certify to the good moral character of the applicant;

2. an applicant for examination who has been convicted of, plead guilty to, no contest to, or has a trial pending for a misdemeanor involving abuse, neglect, or misappropriation of property or any felony or crimes involving moral turpitude as provided in R.S. 14:80 by any court in this state, or by any court of the United States, or by any court of any other state of the United States, shall not be admitted to, or be permitted to take the examination provided for herein, unless he shall request a formal hearing before the board and provide evidence establishing a full pardon or parole granted by an appropriate authority authorized to grant such;

3. ...

4. an applicant who withdraws his application for licensing after it has been received, processed and submitted to the board, shall not be entitled to a refund of their application fee.

B. - C. ...

D. The applicant shall attach to his application a finished unmounted recent photograph of himself. This photograph must not be less than 2 inches by 3 inches in size and taken within the last six months.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§507. Conditional Admission to Examination

A. The board may authorize the executive director to conditionally admit to examination for licensing as a nursing home administrator an applicant who, on the date of a scheduled examination, has not fully established his

qualifications if, in the judgment of the board, it appears that he is otherwise qualified.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§509. Subjects for Examination and Continuing Education

A. - B. ...

C. The board may conduct courses on nursing home administration, especially designed for applicants and for licensees, when the demand is sufficient to defray expenses. Individuals who desire this course shall pay a fee as provided for in Chapter 12 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:684 (October 1983), amended LR 14:23 (January 1988), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 20:789 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

Chapter 7. Administrator-in-Training (AIT)

§701. Program

A. - D. ...

Department	Weeks	Hours
Administration	9	360
Nursing	5	200
Dietary	4	160
Resident Activity	2	80
Social Work	2	80
Medical Records	2	80
Environmental Management	2	80
A week is defined as seven days, Sunday through the following Saturday.		

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 12:511 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 20:790 (July 1994) repromulgated LR 21:175 (February 1995), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§703. Preceptor

A. - E. ...

F. Preceptor Update. Preceptors must undertake update training every three years sponsored by the board in order to maintain this certification. The training qualifies as required continuing education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 19:1023 (August 1993), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§709. Oral Examination

A. Upon completion of the program and receipt of the Certificate of Completion the AIT undergoes an oral examination to ensure she/he is sufficiently knowledgeable to be licensed. The examination is conducted by the executive director, a board member, or other authorized person. The AIT will receive his license upon passage of the oral examination, completion of initial registration form, and payment of registration fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§711. Time Limitation

A. Failure to begin the six-month AIT within one year of the date an applicant passes the licensing examinations will result in loss of all accomplishments and fees, unless otherwise authorized by the board.

B. Failure to complete the licensure process within 24 months from the date of application will result in loss of all accomplishments and fees unless authorized by the board.

C. Record Retention

1. In accordance with R.S. 44:411, the board shall secure written approval from the state archivist or his designee prior to the disposing of any records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 44:405.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended LR 20:1110 (October 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§713. Waivers

A. All waiver requests shall be submitted with applicant's notarized application.

B. Provisions for the six-month AIT, or portions thereof, may be waived on the basis of:

1. education. Full waiver may be granted if applicant has a Bachelor of Science/Bachelor of Art or Master of Science/Master of Art degree in health care administration that included an internship or the internship was waived by

the college or university on the basis of experience and successfully passes an oral exam;

2. experience. Waiver may be granted for any portion of the AIT for experience in the healthcare field that meets or exceeds AIT requirements in their specialty and such areas as approved by the board. Request for waivers are to be submitted with the application and properly documented on forms supplied by the board.

a. - b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Nursing Examiners of Facility Administrators, LR 37:

Chapter 9. Continuing Education

§903. Requirements

A. Number of Hours. Each licensee must complete 15 hours of approved continuing education, or the portion thereof designated by the board, during the 12 month period preceding the date of re-registration of licenses.

B. - B.2. ...

C. Certificates. Each approved provider of continuing education shall provide each participant with a certificate indicating topic, number of hours, or parts of hours participating, and date of program. Transcripts from accredited institutions of higher learning are considered as having met this provision.

1. ...

2. Licensees are required to attach the original of these certificates to their annual re-registration applications to verify they have completed the required continuing education unless prior approval is obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 11:864 (September 1985), LR 13:240 (April 1987), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 19:1023 (August 1993), repromulgated LR 19:1322 (October 1993), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§905. Registration of Institutions as Providers of Continuing Education Courses

A. - B. ...

C. A fee, as provided for in Chapter 12 of this Part, shall be paid annually providers who impose charges to course participants. Government agencies are exempt from the fee.

D. National Continuing Education Review Services (NCERS) approved programs are exempt from the requirement that providers be approved by the board. The approval of programs by NCERS, operated by the National Associations of Boards of Examiners For Long Term Care Administrators, Inc., meets board requirements.

E. ...

F. Programs offered by non-approved provider organizations that do not seek provider approval may be approved on an individual basis. Individual licensees may seek this approval by applying to the board. When the organization or individual licensee applies there is a fee as provided for in Chapter 12 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 19:1023 (August 1993), LR 20:788 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§907. Approval of Programs of Study

A. - A.7. ...

8. Credit will not be given for courses offered by an organization for its administrators only; and

9. the program is submitted for approval prior to the beginning date.

B. - B.2. ...

C. Monitoring may be done to observe quality of content of presentation by the board or its representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 20:788 (July 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§908. Approval of NAB Standards

A. Should the board elect to utilize the standards set forth by the National Continuing Education Resource Service in affiliation with the NAB, the board shall notify all licensed administrators, AITs and applicants of such decision in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2505.

HISTORICAL NOTE: Adopted by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 37:

§909. Exception

A. Nothing contained in this Chapter shall preclude the board from providing for any program of study which excludes subjects which are in conflict with, the teachings and practice of any recognized religious faith. Any applicant seeking to be admitted to such program of study hereunder shall submit evidence satisfactory to the board that he is, in fact, an adherent of such recognized religious faith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

Chapter 11. Licenses

§1101. Initial License

A. An applicant for a license as a nursing home administrator who has successfully complied with the

requirements of the licensing laws and the standards provided for herein, passed the examinations provided by the board and submitted notarized forms certifying to the AIT prerequisite shall be issued a license on a form provided for that purpose by the board, certifying that such applicant has met the requirements of the laws, rules and regulations entitling him to serve, act, practice and otherwise hold himself out as a duly licensed nursing home administrator.

A.1. - B. ...

C. Each nursing facility in the state shall operate under the supervision of an administrator who holds a current valid nursing facility administrator license and current registration certificate, or a current temporary license issued pursuant to this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, repealed and promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 20:789 (July 1994), repromulgated LR 20:1110 (October 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§1103. Registration of Licenses and Certificates

A.1. Every person who holds a valid license as a nursing home administrator issued by the board shall immediately upon issuance thereof be deemed registered with the board and issued an annual certificate of registration.

1.a. - 2. ...

3. Charges for replacement and/or second copies of permanent licenses, re-registration certificates, or licensee cards shall be assessed as provided for in Chapter 12 of this Part.

B.1. Upon making an application for a new certificate of registration such licensee shall pay an annual registration fee as provided for in Chapter 12 of this Part and, at the same time, shall submit evidence satisfactory to the board that, during the annual period immediately preceding such application for registration, they have attended a continuing education program or course of study as provided in Chapter 9 of these rules and regulations. Unless prior approval is obtained, originals of the certificate(s) of attendance for 15 hours of approved continuing education shall be attached to the annual re-registration application.

2. A licensed nursing home administrator no longer practicing in Louisiana may place his license in an inactive or conditional status. He shall continue to register his license annually but is exempt from continuing education requirements. Should a licensee wish to reactivate their license they shall undergo 60 days of on-site re-orientation under supervision of a board-approved preceptor, unless such person has been actively practicing in another state and meets Louisiana continuing education requirements. In either case, to change a conditional license or inactive license to active status, an applicant must meet all requirements for an active license. Conditional licensure as used in this subparagraph shall mean an individual who meets at least one of the following:

a. administrator not actively running a facility and age 65 or older;

b. administrator not actively running a facility in Louisiana and possessing an active license in another state.

3. The annual conditional licensure fee shall be assessed as provided for in Chapter 12 of this Part.

C. ...

D. The license of a nursing home administrator who fails to comply with the provisions of this Section shall be suspended by the board and the license shall automatically lapse.

E. Only an individual who has qualified as a licensed and registered nursing home administrator and who holds a valid current registration certificate pursuant to the provisions of these rules for the current annual registration period, shall have the right and the privilege of using the title "nursing home administrator" and have the right and the privilege of using the abbreviation "NFA." after his name. No other person shall use or shall be designated by such title or such abbreviation or any other words, letters, sign, card, or device tending to, or intended to indicate that such person is a licensed and registered nursing home administrator.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators LR 18:181 (February 1992), amended LR 25:1627 (September 1999), LR 25:2407 (December 1999), repromulgated LR 26:82 (January 2000), LR 26:316 (February 2000), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§1105. Refusal, Suspension and Revocation of License

A. - A.2.a.ix. ...

x. has failed to re-register his license as required by the board.

b. - b.ii. ...

iii. has committed acts of misconduct in the operation of a nursing home, which includes but is not limited to discrimination, sexual harassment, or failure to attend to duties of the administrator;

iv. has impersonated another licensee; and

v. has violated any of the provisions of the law pertaining to the licensing of administrators, or rules and regulations of the board pertaining thereto.

c. - c.iv. ...

d. Category Four

i. has failed to notify the board in writing of any and all changes in name, address, position, and other such information included on their initial registration and any subsequent changes thereto.

2.e. - 3.a. ...

i. A fine of not less than 150 nor more than \$2,000, and/or probation not to exceed three years, and/or suspension of license for not less than 30 days nor more than three years, and/or remedial training or revocation of license.

ii. Failure to re-register a license as required by the board results in a suspension. Provided further the licensee shall not practice until re-registered. Failure to re-register within 6 months of annual re-registration deadline will result in the lapse of such license unless extended by the board at its discretion.

b. - c. ...

d. Category Four. A fine of not less than \$25 nor more than \$150.

A.3.e. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504, R.S. 37:2509 and R.S. 37:2510.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:461 (July 1983), LR 12:366 (June 1986), amended by Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 15:195 (March 1989), repealed and repromulgated LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§1107. Reciprocity

A. The board, in its discretion, and otherwise subject to the law pertaining to the licensing of nursing home administrators and prescribing the qualifications for a nursing home administrator license, may endorse a nursing home administrator license issued by proper authorities of any other state, upon payment of any fee determined by the board, and passing a state examination and upon submission of evidence satisfactory to the board:

A.1. - E. ...

F. A Louisiana licensee who applies for reciprocity in another state shall pay a fee as provided for in Chapter 12 of this Part to the board to cover costs of completing and mailing necessary forms to the other state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2508.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Home Administrators, LR 19:1024 (August 1993), amended LR 20:1002 (September 1994), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§1109. Restoration and Reinstatement of Licenses

A. A license may be restored after revocation by the board at its discretion upon submission of evidence satisfactory to the board that the applicant for such restoration of license has removed the disability. The requirements of §505.A.2 shall be applicable to applicants for license who have been convicted of a felony. In the case of revocation of license due to a six-month suspension (§1105.C.4) or voluntary surrender, the applicant shall file a new application based on current requirements, as a new applicant, including sitting for examinations as the board deems necessary.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2511.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 11:864 (September 1985), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

§1111. Display of Licenses and Re-Registration Certificates

A. Every person licensed as a nursing home administrator actively engaged in the profession shall

display such license and certificate of annual registration in a conspicuous place in the office or place of business or employment of such licensee. The current certificate of annual re-registration shall be displayed adjacent to the facility's license issued by Department of Health and Hospitals. Such license and certificate of annual re-registration shall be shown, when requested, to a member of the board, a legally constituted officer of the board, or a law enforcement officer of the state of Louisiana or of a political subdivision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:

Chapter 12. Fees and Assessments

§1201. Fee Schedule

A. The board hereby establishes the following fees and costs to be imposed for the purpose of implementing and enforcing the provisions of this Part.

Administrator address labels/page	\$8
Annual Conditional Registration Fee	\$200
Annual Registration Fee	\$375
Application Packet	\$50
Certification of document as true copy	\$10
CNA / DSW Card	\$12
Continuing Education Provider(Annually)	\$600
Delinquent fee	\$150
Directory of Administrators	\$15
Failure to maintain current information	\$75
Handling and mailing per page	\$2
Initial Registration Fee	\$350
Minimum Licensure Standards Book	\$15
National Prep Course Fee	\$250
NFA Application Fee	\$500
NFA Replacement Card(with photo)	\$17
NSF Fee	\$25
Photocopies of document/page	\$0.50
Reciprocity Fee(to another state)	\$50
Reciprocity Fee(to Louisiana)	\$125
Replace License Card	\$12
Replace License(original)	\$30
Replace Registration Certificate or 2nd copy	\$25
Request for CEU Approval(applicant)	\$25
Request for CEU Approval(vendor)	\$75
Rules and Regulations Book	\$15
Seminars (per hour of instruction)	\$30
State Exam Fee	\$100

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 37:

Chapter 16. Certified Nurses Aide Register

§1603. Certificate of Certification

A. If requested, the board shall impose a fee for issuing a certificate, or a card of certification as provided in Chapter 12 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home

Family Impact Statement

The proposed amendments, to Rule XLIX Chapters 1-16, should not have any impact on family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments until 4 p.m. on December, 2010 to Mark A. Hebert, Board of Examiners of Nursing Facility Administrators, 5647 Superior Drive, LA 70816.

Mark A. Hebert
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facility Administrators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the rule publication costs, the total of which are estimated to be \$1,280 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any costs or savings to the Board of Examiners or local government unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

In compliance with the fee ranges set forth in Act 721 of the 2010 legislative session, the proposed rule will increase the revenue collections of the Board of Examiners by an estimated \$8,667. Due to the decreasing number of applicants in recent years, the fee increases are necessary in order to increase revenue needed for the Board's operations and the addition of state mandated OPEB (Other Post Employment Benefits) Liability, and to prevent a deficit. There will be no effect on the revenue collections of other state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Since the Board's fees are increasing, applicants will have to pay higher costs for its services and requirements. In addition to these fee changes, the proposed rule also creates a conditional license for retired administrators over the age of 65, or those administrators also licensed in other states that are not currently practicing in Louisiana, and wish to maintain their Louisiana license. The conditional license fee will be half the price of a regular license, so these applicants who wish to retain their qualified Louisiana nursing facility administrator status will save money by not having to pay the full price of a regular license as in the past.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be a minimal effect on competition and employment due to the likelihood that a slightly increased number of nursing facility administrators will remain qualified in Louisiana due to the new conditional license; whereas, before, many out of state nursing facility administrators would allow their license and qualifications to lapse, rather than pay the fee for a regular license.

Mark A. Hebert

Robert E. Hosse

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Clinical Laboratory Personnel, Licensure
and Certification (LAC 46:XLV.3509)

Notice is hereby given in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 *et seq.*, that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Clinical Laboratory Personnel Law, R.S. 37:1311-1329, intends to amend its administrative rules governing licensure and certification of clinical laboratory personnel, LAC 46:XLV, Subpart 2, Chapter 35, Subchapter B, Section 3509, by updating and revising the list of approved certifying organizations for two categories of CLP licensure, and deleting 3509G respecting annual review of certifying examinations. The proposed amendments are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV Medical Professions

Subpart 2. Licensure and Certification

Chapter 35. Clinical Laboratory Personnel

Subchapter B. Licensure and Certification Requirements

§3509. Qualifications for Licensure and Certification

A. Clinical Laboratory Scientist-Generalist. To be eligible for licensure as a clinical laboratory scientist-generalist an applicant, in addition to satisfaction of the procedural requirements for licensure under this Chapter, shall have successfully completed an approved nationally recognized certification examination for such clinical laboratory personnel classification as developed and administered:

1. on or before June 30, 2011, by one of the following organizations or their successor organizations:

- a. American Society of Clinical Pathologists (ASCP);
- b. National Certification Agency (NCA);
- c. American Medical Technologists (AMT); or
- d. International Society of Clinical Laboratory

Technology (ISCLT) provided, however, that an applicant for licensure as a CLS-G who has, prior to January 1, 1995, successfully completed the certification examination for such clinical laboratory personnel classification developed and administered by the United States Department of Health, Education, and Welfare (HEW) (predecessor to the Department of Health and Human Services) shall also be eligible for licensure as a clinical laboratory scientist-generalist.

2. after June 30, 2011, by the ASCP.

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

C. Clinical Laboratory Scientist-Technician. To be eligible for licensure as a clinical laboratory scientist-technician, an applicant, in addition to satisfaction of the procedural requirements for licensure under this Chapter,

shall have successfully completed an approved nationally recognized certification examination for such clinical laboratory personnel classification, as developed and administered:

1. on or before June 30, 2011, by one of the following organizations or their successor organizations:

- a. American Society of Clinical Pathologists (ASCP);
- b. National Certification Agency (NCA);
- c. American Medical Technologists (AMT); or
- d. International Society of Clinical Laboratory Technology (ISCLT).

2. after June 30, 2011, by the ASCP.

D. - F.2.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(5) and R.S. 37:1311-1329.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1286 (November 1994), amended, LR 37:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA 70190-0250 (1515 Poydras Street, Suite 2700, New Orleans, LA 70112), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., December 20, 2010.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. Should it become necessary to convene a public hearing to receive data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on Tuesday, December 28, 2010 at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 1515 Poydras Street, Suite 2700, New Orleans, LA 70112. Any person wishing to attend should call to confirm that a hearing is being held.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Clinical Laboratory Personnel, Licensure and Certification

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Other than the rule publication cost, the total of which is estimated to be \$274 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any material costs to the Board of Medical Examiners or any state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated effects on the Board's revenue collections or that of any other state or local governmental unit anticipated from the proposed rule amendments

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

To be eligible for licensure as a clinical laboratory scientist an applicant must successfully complete a certification examination approved by the Board on the recommendation of its Clinical Laboratory Personnel Advisory Committee. On recommendation of the Committee, the Board proposes to amend its existing CLP rules to update and revise the list of approved certifying organizations for CLP scientist-generalists and technicians by removing certifying organizations that have merged, no longer exist or are no longer recommended by the Committee for purposes of certification. As proposed, the certifying examination accepted for licensure as a CLP generalist or technician will be the American Society of Clinical Pathology (ASCP). The proposed amendments provide an accommodation for applicants who are certified by organizations that will no longer be accepted, provided certification is obtained on or before June 30, 2011 (3509A, C). Over the past three years only a small number of total applicants have sought CLP generalist or technician licensure on a basis other than ASCP certification. There are a variety of avenues by which those who do not qualify for such certification after June 30, 2011 may do so. Some of these avenues may require additional education or training. Because the costs associated with such education or training will vary based on an individual's current training and experience, and by virtue of the variety of avenues by which such certification may be sought, the Board is not in a position to estimate the proposed rules' effect in this respect. The proposed amendments also delete 3509G, respecting annual review of certifying examinations. It is not anticipated that the proposed amendments will have any significant effect on costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule amendments will have any significant impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.
Executive Director
1011#120

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Medical Psychologists, General,
Licensure, Certification and Practice
(LAC 46:XLV.231-235; 3901-3961; and 6101-6121)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., that pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Medical Psychology Practice Act, as enacted by the Louisiana Legislature in Acts 2009, No. 251, R.S. 37:1360.51-1360.72,

the board intends to adopt general and administrative rules governing the licensure, certification and practice of medical psychologists in this state, LAC Title 46:XLV, Subpart 1, Chapter 1, Subchapter M, Sections 231-235, Subpart 2, Chapter 39, Subchapters A-H, Sections 3901-3961 and Subpart 3, Chapter 61, Subchapters A-D, Sections 6101-6121. The proposed rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter M. Medical Psychologists Fees

§231. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to licensing and certification of medical psychologists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1281; 37:1360.66.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§233. Licenses, Certificates, Permits

A. For processing an application for licensure as a medical psychologist, a fee of \$250 shall be payable to the board.

B. For processing an application for certification of the advanced practice of medical psychology, a fee of \$150 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1281, 37:1360.66.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§235. Annual Renewal

A. For processing a medical psychologist's annual renewal of license, a fee of \$200 shall be payable to the board.

B. For processing a medical psychologist's annual renewal of a certificate of advanced practice, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1281, 37:1360.66.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subpart 2. Licensure and Certification

Chapter 39. Medical Psychologists

Subchapter A. General Provisions

§3901. Scope of Chapter and Definitions

A. The rules of this Chapter govern the licensing and certification of medical psychologists in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3903. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

Applicant—an individual who has applied to the board for a license as a medical psychologist or a certificate of advanced practice.

Approved—as applied to an examination, school, college, university, institution, organization, program,

curriculum, course of study or continuing professional education, shall mean affirmatively recognized and sanctioned by the board in accordance with this Chapter.

Board—the Louisiana State Board of Medical Examiners, as constituted in R.S. 37:1263.

Bona Fide Medication Sample—a medication, other than a controlled substance, packaged by the original manufacturer thereof in such quantity as does not exceed a reasonable therapeutic dosage and provided at no cost to a medical psychologist for administration or distribution to a patient at no cost to the patient.

Certificate of Advanced Practice or *Certificate* or *Certification*—the board's official recognition of a medical psychologist's lawful authority to engage in advanced practice of medical psychology as provided by R.S. 37:1360.57 and Subpart 3 of these rules.

Collaborating Physician—a physician who consults and/or collaborates with a medical psychologist.

Concurrence or *Concur*—a physician's agreement to a plan for psychopharmacological management of a patient based on prior discussion with a medical psychologist.

Consultation and Collaboration with a MP or *Consult* and/or *Collaborate*—that practice in which a physician discusses and, if deemed appropriate, concurs in a medical psychologist's plan for psychopharmacologic management of a patient for whom the physician is the primary or attending physician.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Discussion—a communication between a physician and a medical psychologist conducted in person, by telephone, in writing or by some other appropriate means.

Drug—shall mean the same as the term "drug" as defined in R.S. 40:961(16), including controlled substances except narcotics, but shall be limited to only those agents related to the diagnosis and treatment or management of mental, nervous, emotional, behavioral, substance abuse or cognitive disorders.

Good Moral Character—as applied to an applicant, means that:

a. the applicant has not, prior to or during the pendency of an application to the board, been guilty of any act, omission, condition, or circumstance which would provide legal cause under R.S. 37:1360.67 for the suspension or revocation of a license or certificate;

b. the applicant has not, prior to or in connection with the application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to a material fact or omits to state any fact or matter that is material to the application; or

c. the applicant has not made any representation or failed to make a representation or engaged in any act or omission which is false, deceptive, fraudulent, or misleading in achieving or obtaining any of the qualifications for a license or certificate required by this Chapter.

LAMP—the Louisiana Academy of Medical Psychologists.

LSBEP—the Louisiana State Board of Examiners of Psychologists, as constituted in R.S. 37:2353.

Medication—is synonymous with *drug*, as defined herein.

Medical Psychologist or *MP*—a psychologist practitioner who has undergone specialized training in clinical psychopharmacology and has passed a national proficiency examination in psychopharmacology approved by the board. Such practice includes the authority to administer and prescribe drugs and distribute *bona fide* medication samples, as defined in this Section.

Medical Psychology—that profession of the health sciences which deals with the examination, diagnosis, psychological, pharmacologic and other somatic treatment and/or management of mental, nervous, emotional, behavioral, substance abuse or cognitive disorders, and specifically includes the authority to administer, distribute without charge and/or prescribe drugs as defined in this Part. In addition, the practice of medical psychology shall include the practice of psychology as defined in R.S. 37:2352(5).

Medical Psychology Advisory Committee or *Committee*—a committee to the board constituted under R.S. 37:1360.63.

Medical Psychology Practice Act or *MP Act*—Acts 2009, No. 251, R.S. 37:1360.51-1360.72.

Mental, Nervous, Emotional, Behavioral, Substance Abuse and Cognitive Disorders—those disorders, illnesses or diseases listed in either the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the mental, nervous, emotional, behavioral, substance abuse and cognitive disorders listed in the International Classification of Diseases published by the World Health Organization.

Narcotics—natural and synthetic opioid analgesics and their derivatives used to relieve pain.

Physician—an individual licensed by the board to engage in the practice of medicine in the state of Louisiana as evidenced by a current license duly issued by the board.

Primary or Attending Physician—a physician who has an active clinical relationship with a patient and is principally responsible for the health care needs of the patient, or currently attending to the health care needs of the patient, or considered by the patient to be his or her primary or attending physician.

Psychopharmacologic Management—the treatment and/or management of the mental, nervous, emotional, behavioral, substance abuse and cognitive disorders with medication.

State—any state of the United States, the District of Columbia, and Puerto Rico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter B. Requirements and Qualifications for License

§3905. Scope of Subchapter

A. The rules of this Subchapter prescribe the requirements, qualifications and conditions for licensure as a medical psychologist in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3907. Qualifications for License

A. To be eligible for a license to practice as a medical psychologist an applicant shall:

1. possess a current, unrestricted license in good standing to practice psychology duly issued by the LSBEP;

2. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the Commissioner of the Immigration and Naturalization Service of the United States under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the Commissioner's regulations thereunder (8 CFR);

3. be of good moral character as defined by Section 3903A of these rules;

4. possess approved certification in Basic Life Support (BLS);

5. possess:
a. a post-doctoral master's degree in clinical psychopharmacology conferred by a regionally accredited institution approved by the board; or

b. equivalent training to a post-doctoral master's degree in clinical psychopharmacology approved by the board;

6. have within the past 3 years, in conformity with the restrictions and limitations prescribed by this Chapter, taken and passed a national examination in psychopharmacology approved by the board; and

7. not be otherwise disqualified by any ground for denying a license provided by the MP Act or these rules.

B. The burden of satisfying the board as to the qualifications and eligibility of an applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3909. Alternative Qualifications for License

A. Provided application is made within 12 months of the effective date of these rules, an individual who desires to be licensed as a MP may qualify for licensure pursuant to R.S. 37:1360.55A without compliance with the requirements prescribed by Section 3907, upon submission of evidence satisfactory to the board that the applicant possessed all of the following as of January 1, 2010:

1. an unrestricted license in good standing to practice psychology issued by the LSBEP;

2. an unrestricted certificate of prescriptive authority issued by the LSBEP;

3. a controlled substance permit duly issued by the Louisiana State Board of Pharmacy;

4. a controlled substance registration duly issued by the United States Drug Enforcement Administration; and

5. as of the date of application, not be otherwise disqualified by any ground for denying a license provided by the MP Act or these rules.

B. The alternative qualification provided by this Section shall expire and become null, void and to no effect 12 months and 1 day following the effective date of these rules.

C. The burden of satisfying the board as to the qualifications and eligibility of an applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3911. Qualifications for Certificate of Advanced Practice

A. To be eligible for a certificate of advanced practice an applicant shall, as of the date of application to the board, have:

1. a current, unrestricted license as a MP duly issued by the board and not be the subject of an investigation or pending disciplinary proceeding by the board;

2. practiced as a MP for at least three of the past four years. With respect to individuals licensed under the alternative qualification provided in Section 3909 of this Chapter, such experience shall be deemed to have commenced on the date that the applicant's initial certificate of prescriptive authority was issued by the LSBPE;

3. as a MP, treated at least one hundred patients which demonstrate the competence of the medical psychologist. Of this number at least 25 shall have involved the use of major psychotropics and at least 25 shall have involved the use of major antidepressants;

4. received the written recommendation of two collaborating physicians who hold a current, unrestricted license to practice medicine in this state duly issued by the board, who are familiar with the applicant's competence to practice medical psychology;

5. received a favorable recommendation from the committee; and

6. completed a minimum of one hundred hours of continuing medical education relating to the use of medications in the management of patients with psychiatric illnesses, commencing with:

a. initial issuance of a certificate of prescriptive authority by the LSBPE if prior to January 1, 2010; or

b. the date the MP is licensed by the board after January 1, 2010.

B. The burden of satisfying the board as to the qualifications and eligibility of an applicant for certification shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter C. Application

§3913. Scope of Subchapter

A. The rules of this Subchapter govern the procedures and requirements for application to the board for a license to practice medical psychology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3915. Application Procedure

A. Application must be made and submitted in a format approved by the board and shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications set forth in this Chapter, along with a recent photograph;

2. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

3. criminal history record information;

4. payment of the fee provided in Chapter 1 of these rules; and

5. such other information and documentation as the board may require.

B. Upon submission of a completed application a personal interview with a member of the board or a designee may be required as a condition of licensure when:

1. discrepancies exist in an initial application;

2. an applicant has been the subject of prior adverse action in any jurisdiction; or

3. the board has questions respecting an application response.

C. The recommendation of the board member or designee as to the applicant's fitness for licensure shall be made a part of the applicant's file.

D. The board may reject or refuse to consider an application which is not complete in every detail. The board may in its discretion require a more detailed or complete response to any request for information set forth in the application as a condition to application consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3917. Effect of Application

A. The submission of an application for licensure to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each state or federal agency to which the applicant has applied for any license, permit, certificate, or registration, each person, firm, corporation, clinic, office, or institution by whom or with whom the applicant has been employed in the practice of psychology or medical psychology, each physician or other health care practitioner whom the applicant has consulted or seen for diagnosis or treatment and each professional organization or specialty board to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensing to the board shall equally constitute and operate as a consent by the applicant to disclosure and release of such information and documentation and as a waiver by the applicant of any privilege or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensure to the board an applicant shall be deemed to have given his consent to submit to physical or mental examinations if, when, and in the manner so directed by the board and to waive all objections as to the admissibility or disclosure of findings,

reports, or recommendations pertaining thereto on the grounds of privileges provided by law. The expense of any such examination shall be borne by the applicant.

C. The submission of an application for licensure to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose and release any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations, or governmental entities pursuant to this Section to any person, firm, corporation, association, or governmental entity having a lawful, legitimate, and reasonable need therefore including, without limitation, the psychology or medical psychology licensing authority of any state; the Federal Drug Enforcement Administration; the Louisiana Board of Pharmacy; the Department of Health and Hospitals; federal, state, county, parish and municipal health and law enforcement agencies; and the Armed Services.

D. The board, acting through its president or a member designated by the president, may approve the issuance of any directive or order to carry out the provisions of Subsection B of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter D. Board Approval of Schools, Colleges, Universities, or Institutions

§3919. Scope of Subchapter

A. The rules of this Subchapter prescribe the requirements for board approval of a school, college, university or institution for the purpose of assessing qualifications for medical psychology licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3921. Applicability of Approval

A. Successful completion of a post-doctoral master's degree in clinical psychopharmacology from a regional accredited institution approved by the board is among the educational qualifications required for MP licensure.

B. The completion of training approved by the board that is equivalent to a post-doctoral master's degree in clinical psychopharmacology is an alternative educational qualification for MP licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3923. Approval of Schools and Colleges

A. A school, college, university or institution shall be concurrently considered approved by the board for purposes of qualification under this Chapter provided it:

1. is accredited by one of the six regional bodies recognized by the United States Department of Education's Council on Postsecondary Accreditation;

2. has achieved the highest level of accreditation or approval awarded by statutory authorities of the state in which the school or college is located;

3. offers a full-time post-doctoral master's program in clinical psychopharmacology that:

a. includes curriculum instruction in each of the following areas:

i. anatomy and physiology;

ii. biochemistry;

iii. neurosciences to include neuroanatomy, neuropathology, neurophysiology, neurochemistry and neuroimaging;

iv. pharmacology;

v. psychopharmacology;

vi. clinical medicine/pathophysiology; and

vii. health assessment, including relevant physical and laboratory assessment; and

b. provides opportunity to review, present and discuss each of the following:

i. case examples representing a broad range of clinical psychopathologies;

ii. medical conditions presenting as psychiatric illness;

iii. treatment complexities, including complicating medical conditions, diagnostic questions, choice of medications, and untoward side effects;

iv. compliance problems; and

v. alternative treatments and treatment failures.

B. Board approval of a school, college, university or institution shall be deemed to be effective as to an applicant if such school, college, university or institution was approved as of the date on which the applicant's post-doctoral master's degree in clinical psychopharmacology was awarded.

C. Subject to Section 3925 of these rules, a school, college, university or institution accepted by the LSBPE for MP prescriptive authority on or before January 1, 2010, shall be considered approved by the board for purposes of qualification under this Chapter.

D. For the purposes of this Chapter, equivalent training to the post-doctoral master's degree provided in R.S. 37:1360.55B.(2) is defined as the successful completion of the Department of Defense Psychopharmacology Demonstration Project (DOD-PDP), or a similar program developed and operated under the auspices of any branch of the United States armed services and approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3925. Withdrawal of Approval

A. Notwithstanding current or prior approval pursuant to this Subchapter or by individual determination, the board's approval of any school, college, university or institution may be withdrawn at any time upon its affirmative finding that such school, college, university or institution does not possess the qualifications for approval specified by this Subchapter or by the MP Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter E. Examination

§3927. Scope of Subchapter

A. The rules of this Subchapter designate the examination, passing score, restrictions, limitations and exceptions applicable to medical psychologist licensure in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3929. Designation of Examination

A. The MP licensing examination approved and accepted by the board, pursuant to R.S. 37:1360.55B(3), is the Psychopharmacology Examination for Psychologists (PEP), developed by the American Psychological Association practice organization's College of Professional Psychology and its contractor, the Professional Examination Service, or their successor(s) organizations.

B. The PEP or such other examination as the board may approve shall:

1. be taken after the successful completion of the post-doctoral master's program in clinical psychopharmacology; and

2. not less than three years prior to the date of MP application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3931. Passing Score

A. An applicant will be deemed to have successfully passed the examination upon attaining a score equivalent to the passing score required by the PEP and its contractor, the Professional Examination Service, or their successor(s) organizations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3933. Restriction, Limitations on Examinations

A. Applicants shall be required to authorize the PEP and the Professional Examination Service to release their testing scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by the PEP.

B. An applicant having failed to attain a passing score upon taking the examination four times shall not thereafter be considered for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter F. Licensure Issuance, Termination, Renewal, Reinstatement

§3935. Scope of Subchapter

A. The rules of this Subchapter prescribe the requirements applicable to issuance, termination, renewal and reinstatement of a license to practice medical psychology in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3937. Issuance of Licensure; Certificate of Advanced Practice

A. If the qualifications, requirements, and procedures set forth in this Chapter are met to its satisfaction the board shall issue a license to the applicant to engage in the practice of medical psychology in this state.

B. If the qualifications, requirements, and procedures set forth in this Chapter are met to its satisfaction the board shall issue a certificate of advanced practice to the applicant to

engage in the advanced practice of medical psychology in this state.

C. A license or certificate issued under this Chapter shall designate the applicant's status with respect to advanced practice.

D. Every MP is responsible for updating the board within 15 days should any of the required contact information submitted with an application change after license or certificate issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3939. Expiration of License, Certificate

A. Every license or certificate issued under this Chapter shall expire and thereby become null, void and to no effect the following year on the last day of June B. The timely submission of a properly completed application for renewal of a license shall operate to continue an expiring license, and if applicable a certificate of advanced practice, in full force and effect pending renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3941. Renewal of License, Certificate

A. Every license or certificate issued by the board shall be renewed annually on or before the last day of June by submitting to the board a properly completed renewal application, in a format specified by the board, together with the renewal fee prescribed by Chapter 1 of these rules and documentation of:

1. satisfaction of the continuing professional education requirement prescribed by this Chapter; and
2. maintenance of basic life support.

B. Possession of a current, unrestricted license to practice psychology duly issued by the LSBPE is a requirement for initial licensure as a medical psychologist under this Chapter but shall not be required by the board for license renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3943. Reinstatement of Expired License or Certificate

A. A license or certificate that has expired without renewal may be reinstated by the board provided that application is made within two years of the date of expiration.

B. A MP whose license and/or certificate has expired for a period in excess of two years or who is otherwise ineligible for reinstatement under this Section may apply to the board for an initial original license or certificate pursuant to these rules.

C. An applicant seeking reinstatement more than one but less than two years from the date on which his or her license or certificate expired shall demonstrate, as a condition of reinstatement, satisfaction of the continuing professional education required by these rules for each year since the date of the license expiration. As additional conditions of reinstatement the board may require that the applicant:

1. complete a statistical affidavit and provide a recent photograph;

2. take and successfully pass:
 - a. all or a designated portion of the national examination required for licensure under this Chapter;
 - b. a written certification or recertification examination acceptable to the board; and/or
 - c. demonstrate clinical competency by successfully completing a program designated by the board, following consultation with the committee, and any recommended remediation.

D. An applicant whose license to practice psychology or medical psychology has been revoked, suspended or placed on probation by the licensing authority of any state or who has voluntarily or involuntarily surrendered his or her license to practice psychology or medical psychology in consideration of the dismissal or discontinuance of pending or threatened administrative or criminal charges following the date on which his or her license to practice as a MP in Louisiana expired, shall be deemed ineligible for license reinstatement.

E. An application for reinstatement of a license or certificate meeting the requirements and conditions of this Chapter may nonetheless be denied for any of the causes for which an application for original licensure or certification may be refused by the board pursuant to R.S. 37:1360.67 or for violation of these rules.

F. An application for reinstatement shall be made in a format supplied by the board together with the applicable fees and costs for license and/or certificate renewal under Chapter 1 of these rules, plus a penalty computed as follows.

1. If the application is made less than one year from the date of expiration, the penalty shall be equal to the renewal fee of the license and, if applicable, the certificate.

2. If the application is made more than one but less than two years from the date of expiration, the penalty shall be equal to twice the renewal fee of the license and, if applicable, the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter G. Medical Psychology Advisory Committee
§3945. Scope of Subchapter

A. The rules of this Subchapter identify the constitution, functions and responsibilities of the medical psychology advisory committee to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3947. Constitution, Function and Responsibilities of Advisory Committee

A. The board shall constitute and appoint a Medical Psychology Advisory Committee which shall be organized and function in accordance with the MP Act and these rules.

B. Composition. The committee shall be comprised of five members, consisting of:

1. one physician selected from a list of names submitted by the Louisiana State Medical Society, and recommended by Louisiana Psychiatric Medical Association and LAMP, who is certified in the specialty of psychiatry by a member board of the American Board of Medical Specialties or the American Osteopathic Association; and

2. four medical psychologists selected by the board from a list of names recommended by LAMP.

C. Appointment. Each member, to be eligible for and prior to appointment to the committee, shall have maintained residency and a current and unrestricted license or certificate to practice their respective professions in the state of Louisiana for not less than two years.

D. Term of Service. Each member of the committee shall serve for a term of four years, or until a successor is appointed and shall be eligible for reappointment. Committee members serve at the pleasure of the board. Committee members may be reappointed to two additional terms of four years with the length of the terms to be staggered after the first term.

E. Functions of the Committee. The Committee will provide the Board with recommendations relating to the following matters:

1. applications for licensure and for certificates of advanced practice (initial and renewal);
2. educational requirements for licensure and for certificates of advanced practice (initial and renewal);
3. changes in related statutes and rules; and
4. other activities as might be requested by the board.

F. Committee Meetings, Officers. The committee shall meet at least twice each calendar year, or more frequently as may be deemed necessary by a quorum of the committee or by the board. Three members of the committee constitute a quorum. The committee shall elect from among its members a chair, a vice-chair, and a secretary. The chair, or in the absence or unavailability of the chair, the vice-chair, shall call, designate the date, time, and place of, and preside at all meetings of the committee. The secretary shall record or cause to be recorded accurate and complete written minutes of all meetings of the committee and shall cause copies of the same to be provided to the board.

G. Confidentiality. In discharging the functions authorized under this Section, the committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. Committee members are prohibited from communicating, disclosing, or in any way releasing to anyone other than the board, any confidential information or documents obtained when acting as the agents of the board without first obtaining the written authorization of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter H. Continuing Education
§3949. Scope of Subchapter

A. The rules of this Subchapter provide standards for the continuing professional education required for annual renewal of a license to practice as a medical psychologist, and prescribe procedures applicable to satisfaction and documentation thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3951. Continuing Education Requirement

A. To be eligible for license renewal a MP shall evidence and document in a format specified by the board the

successful completion of 35 hours of approved continuing professional education that includes:

1. not less than 20 hours of continuing medical education relevant to the practice of medical psychology; and

2. not less than fifteen hours of continuing education in psychology.

B. A minimum of 25 percent of the continuing medical education required by this Section shall be provided by LAMP.

C. At least two hours required by this Section shall be devoted to ethics relevant to the practice of medical psychology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3953. Qualifying Programs and Activities

A. To be acceptable as qualified continuing professional education under these rules, an activity or program must have significant intellectual or practical content, dealing primarily with matters related to medical psychology or psychology, and its primary objective must be to maintain or increase the participant's competence as a MP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3955. Approval of Program Sponsors

A. Any category 1 education program, course, seminar or activity offered or sponsored by the organizations set forth in this Section shall presumptively be deemed approved by the board for purposes of qualifying as an approved continuing professional education.

B. Approved sponsors of continuing medical education for practitioners licensed under this Part shall include the Louisiana Academy of Medical Psychologists, the Louisiana State Medical Society, the Louisiana Psychiatric Medical Association, the State of Louisiana Department of Health and Hospitals Office of Behavioral Health or its successor, sponsors accredited by the Accreditation Council for Continuing Medical Education approved to offer category 1 educational activities, and other sponsors as may be approved by the board.

C. Approved sponsors for continuing education in psychology shall include the Louisiana Psychological Association, the American Psychological Association, the Louisiana Academy of Medical Psychologists, the state of Louisiana Department of Health and Hospitals, Office of Behavioral Health or its successor, and other sponsors as may be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3957. Documentation Procedure

A. A format or method specified by the board for documenting and certifying completion of continuing professional education shall be completed by licensees and returned with an annual renewal application.

B. Any certification of continuing professional education activities not presumptively approved or preapproved in writing by the board pursuant to these rules shall be referred

to the committee for its evaluation and recommendations. If the committee determines that an activity certified by an applicant for renewal in satisfaction of continuing education requirements does not qualify for recognition by the board or does not qualify for the number of continuing education units claimed by the applicant, the board shall give notice of such determination to the applicant for renewal. The board's decision with respect to approval and recognition of any such activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3959. Failure to Satisfy Continuing Education Requirements

A. An applicant for license renewal who fails to evidence satisfaction of the continuing professional education requirements shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 60 days following the mailing of such notice, following which it shall be deemed expired, unrenewed, and subject to revocation without further notice, unless the applicant shall have, within such 60 days, furnished the board satisfactory evidence, by affidavit, that:

1. applicant has satisfied the applicable continuing professional education requirements; or

2. applicant's failure to satisfy the continuing professional education requirements was occasioned by disability, illness, or other good cause as may be determined by the board.

B. The license of a MP whose license has expired by nonrenewal or been revoked for failure to satisfy the continuing education requirements of these rules may be reinstated by the board within the time and in accordance with the procedures for reinstatement provided by these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§3961. Waiver of Requirements

A. The board may, in its discretion, waive all or part of the continuing professional education required by these rules in favor of a MP who makes written request for such waiver and evidences to the satisfaction of the board a permanent physical disability, illness, financial hardship, or other similar extenuating circumstances precluding the MP's satisfaction of the continuing professional education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subpart 3. Practice

Chapter 61. Medical Psychologists

Subchapter A. General Provisions

§6101. Scope of Chapter

A. The rules of this Chapter govern the practice of medical psychologists in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter B. Necessity for License, Exemptions

§6103. Necessity for License

A. No person shall engage in the practice of medical psychology in the state of Louisiana, or identify or hold himself or herself out as such, nor use in connection with his or her name the words "medical psychologists" or the letters "MP" or any other words, letters, abbreviations, insignia, or signs tending to indicate or imply that the person is a medical psychologist, unless he or she is currently licensed by the board as a medical psychologist.

B. No person shall engage in the advanced practice of medical psychology as defined in the MP Act or these rules in this state in the absence of a current certificate of advanced practice issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6105. Exemptions

A. The provisions of this Chapter shall not prevent, restrict the practice, services, or activities of any individual:

1. licensed by other laws in this state from engaging in the profession or occupation for which he or she is licensed; or

2. employed as a medical psychologist by the United States government when practicing solely under the direction or control of the United States government agency by which he or she is employed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter C. Ethical Guidelines, Authority,

Limitations and Standards of Practice

§6107. Scope of Subchapter

A. This Subchapter provides the ethical guidelines, authority, limitations and standards of practice of individuals licensed to practice medical psychology in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6109. Ethical Guidelines

A. A medical psychologist shall, in the practice of medical psychology, observe and abide by the code of ethics of the American Medical Association and American Psychological Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6111. Authority of Practice

A. An individual currently licensed by the board as a medical psychologist is authorized to:

1. order, administer, and prescribe or distribute without charge drugs recognized as customarily used for the management of mental, nervous, emotional, behavioral, substance abuse and cognitive diseases or disorders; and

2. order and interpret routine laboratory studies and other medical diagnostic procedures, as necessary for

adequate pretreatment health screening, diagnosis of mental, nervous, emotional, behavioral, substance abuse and cognitive disorders and treatment maintenance, including those necessary for the monitoring of potential side effects associated with medications prescribed by the MP.

B. An individual currently certified for advanced practice by the board is authorized to engage in the advanced practice of medical psychology as defined by the MP Act and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6113. Limitations of Practice

A. A medical psychologist shall not:

1. order, administer, prescribe or distribute drugs that are not customarily used for the management of mental, nervous, emotional, behavioral, substance abuse and cognitive diseases or disorders;

2. order, administer, prescribe or distribute narcotics, as defined in this Part;

3. utilize controlled substances for the treatment of non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules or for the treatment of obesity, as set forth in §§6901-6913 of the board's rules;

4. prescribe medications outside his or her areas of competency consistent with his or her training and experience as defined by the board;

5. delegate the administration, prescription, or distribution of a drug to any other individual;

6. engage in practice beyond the authority conferred by license or certificate approved by the board; or

7. employ a physician or enter into an independent contractor or similar contractual or financial relationship with a physician with whom he or she consults or collaborates. The board may grant an exception to this requirement on a case-by-case basis where it has been shown to its satisfaction that such relationship is structured so as to prohibit interference with the physician's relationship with patients, his or her exercise of independent medical judgment and satisfaction of the obligations and responsibilities imposed by law and the board's rules on a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6115. Standards for Prescribing by Medical Psychologists without a Certificate of Advanced Practice

A. Medical psychologists shall prescribe only in consultation and collaboration with the patient's primary or attending physician, and with the concurrence of that physician.

B. The medical psychologist shall also re-consult with the patient's physician prior to making changes in the patient's medication treatment protocol, as established with the physician, or as otherwise directed by the physician.

C. In the event that the primary or attending physician does not concur with the psychopharmacologic treatment protocol planned by a MP, the MP shall defer to the medical judgment of the physician.

D. In the event a patient does not have a primary or attending physician, the medical psychologist shall not prescribe for that patient.

E. Documentation of Physician Consultation. When psychopharmacologic management of a patient is indicated, the initial plan shall include consultation with the patient's primary or attending physician. The medical psychologist shall document the consultation with the primary or attending physician in the patient's medical record. Documentation shall include, but is not necessarily limited to:

1. patient authorization. In order to permit the necessary coordination of care for the patient, the MP shall obtain a release of information from the patient and/or the patient's legal guardian to contact the patient's primary or attending physician in all cases in which psychopharmacologic management is planned. If the patient or the patient's legal guardian declines to sign a release of information authorizing coordination of care with his or her primary or attending physician, the MP shall inform the patient and/or the patient's legal guardian that he or she cannot treat the patient pharmacologically without such consultation;

2. patient identity. The physician's name; date of consultation; and contact information for the patient, physician and MP;

3. purpose. The purpose of consultation (e.g., new medication, change in medication, discontinuance of medication, adverse treatment effects, treatment failure, change in medical status, etc.);

4. psychological evaluation and diagnosis. If known, the psychological evaluation of the patient, including any relevant psychological history, laboratory or diagnostic studies and psychological diagnosis; and any other information the MP or physician deems necessary for the coordination of the care for patient;

5. medication. The specific drug(s) the MP plans to utilize, including the starting dosage and titration plan if any; frequency of use, the number of refills and anticipated duration of therapy; relevant indications and contraindications, any previously utilized psychopharmacologic therapy, and any alternatives;

6. treatment plan. The MP's treatment and/or management plan for the patient;

7. results of consultation. The results of the consultation (e.g., concurrence, deferring or denying medication recommended by the MP); medications ordered (e.g., generic or trade; starting dosage and titration plan, if any; number of refills; etc.) and any other information that might be necessary for the appropriate coordination of care for the patient (e.g., review of prior labs or diagnostic procedures; new labs or diagnostic procedures requested by the physician, if any; etc.);

8. responsibilities. Any specific responsibilities of the MP and physician respecting the patient's care;

9. reporting. Any reporting and documentation requirements between the MP and the physician and/or a schedule by which such are to take place; and

10. immediate consultation. A plan to accommodate immediate consultation between the MP, physician, and/or patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6117. Standards for Prescribing by Medical Psychologists Holding a Certificate of Advanced Practice

A. Patients receiving care from a medical psychologist who holds a certificate of advanced practice issued under this Part shall have an established primary, attending or referring physician licensed by the board who shall be responsible for the patient's overall medical care.

B. The primary, attending or referring physician shall evaluate the patient for medical conditions in accordance with customary practice standards, and as might be indicated based on the medications that the patient is receiving and/or risk factors that may be present. If the patient has been referred to a medical psychologist holding a certificate of advanced practice for the express purpose of evaluation and treatment to include drug management by the primary, attending or referring physician, this condition shall be considered met.

C. The medical psychologist shall provide the primary, attending or referring physician with a summary of the treatment planned at the initiation of treatment.

D. The medical psychologist shall provide the primary, attending or referring physician with follow-up reports as may be dictated by the patient's condition.

E. The medical psychologist shall provide the patient's primary, attending or referring physician with a summary of the patient's condition and treatment no less than annually.

F. The medical psychologist may treat common side effects of medications used in the treatment of mental illness as defined in this Chapter after consultation with the patient's primary or attending physician and with the concurrence of that physician.

G. The requirements for Subsections C, D and E of this Section shall be considered satisfied if the medical psychologist provides the physician with a copy of the initial examination and follow-up visit records or, in those instances in which the medical psychologist is providing services authorized under this Section in a hospital or clinic setting on referral of the attending or referring physician on the medical staff of that hospital or clinic, the medical psychologist documents those services in the patient's medical record at that hospital or clinic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§6119. Informed Consent

A. In addition to the written release and authorization set forth in Section 6115E, a MP shall insure that each of his or her patients subject to consultation and collaboration with a physician is informed:

1. of the relationship between the MP and physician and the respective role of each with respect to the patient's psychopharmacologic management;

2. that he or she may decline to participate in such a practice and may withdraw at any time without terminating the MP-patient relationship;

3. of the MP's decision to withdraw from consultation and collaboration with a physician; and

4. by written disclosure, of any contractual or financial arrangement that may impact the MP's decision to engage in consultation and collaboration with a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Subchapter D. Grounds for Administrative Action
§6121. Causes for Administrative Action

A. The board may refuse to issue, or may suspend or revoke any license or certificate, or impose probationary or other restrictions on any license or certificate issued under this Part, for violation of the board's rules relative to medical psychologists or for any of the causes set forth in MP Act, R.S. 37:1360.67A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed rules on the family has been considered. It is not anticipated that the proposed rules will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed rules to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, Louisiana, 70190-0250 (1515 Poydras Street, Suite 2700, New Orleans, LA 70112), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., December 20, 2010.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. Should it become necessary to convene a public hearing to receive data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on December 28, 2010 at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 1515 Poydras Street, Suite 2700, New Orleans, LA 70112. Any person wishing to attend should call to confirm that a hearing is being held.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Medical Psychologists, General,
Licensure, Certification and Practice

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Board of Medical Examiners has devoted some administrative resources to licensure processing of medical psychologists (MPs) who were transferred to its jurisdiction pursuant to Act No. 251 of the 2009 legislative session,

enacting the Louisiana Medical Psychology Practice Act, R.S. 37:1360.51-1360.72. As the increase in administrative workload necessary to accommodate the jurisdictional transition has been modest, it has been absorbed by existing personnel. Accordingly, other than the rule publication cost, the total of which is estimated to be \$1,435 during the current fiscal year, it is not anticipated that the proposed rules will have any significant or material impact on the Board or any other state or local governmental unit, inclusive of adjustments in workload and paperwork requirements.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed rules will generate agency fees for the issuance and renewal of a medical psychologist (MP) license of \$250 and \$200, respectively, and for the issuance and renewal of a certificate for MP advanced practice (MPAP) of \$150 and \$100, respectively. The Board anticipates that 63 MP licenses and 19 MPAP certificates will be renewed in the current fiscal year. Approximately 10 new applicants for initial MP licensure and 5 new applicants for MPAP certificates are anticipated each year. Accordingly, anticipated agency revenue resulting from implementation of the proposed rules is \$17,750 for FY 2011 (63 x \$200, 19 x \$100, 10 x \$250 and 5 x \$150), plus an estimated additional \$2500 each subsequent year based on new applicants. The Board does not anticipate an appreciable increase in the number of new applicants in forthcoming years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In conformity with Act No. 251 of the 2009 legislative session (R.S. 37:1360.51-1360.72), the Board proposes to adopt rules governing the licensure, certification and practice of medical psychologists in this state. Aside from an application form supplied by the Board for initial issuance or renewal of an MP license or certificate for MPAP, and payment of the applicable fees, it is not anticipated that the proposed rules will have any material effect on costs, paperwork or workload of MPs or any adverse costs and/or economic impact on applicants, licensees or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules will have any significant impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.
Executive Director
1011#121

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Medical Examiners

Physician Consultation or Collaboration with Medical Psychologists (LAC 46:XLV.7203, 7207, and 7215)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., that pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and the Louisiana Medical Psychology Practice Act, as enacted by the Louisiana Legislature in Acts 2009, No. 251, R.S. 37:1360.51-1360.72, the board intends to amend its administrative rules governing the practice of physicians who engage in consultation or collaboration with medical psychologists in

this state, LAC Title 46:XLV, Subpart 3, Chapter 72, Subchapters A, Sections 7203, 7207 and 7215 to clarify and make technical modifications consistent with Act No. 251. The proposed rule amendments are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions
Subpart 3. Practice

Chapter 72. Consultation or Collaboration with
Medical Psychologists

Subchapter A. General Provisions

§7203. Definitions

A. As used in this Chapter, the following words and terms shall have the meanings specified.

* * *

Medical Psychology Practice Act, or MP Act—Acts 2009, No. 251, R.S. 37:1360.51-1360.72.

* * *

Medical Psychologist or MP—a psychologist practitioner who has undergone specialized training in clinical psychopharmacology, passed a national proficiency examination in psychopharmacology approved by the board and holds a current license to practice medical psychology in this state, duly issued by the board.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009); amended LR 37:

§7207. General Prohibitions

A. A physician shall not consult and collaborate, as defined in §7203 of these rules:

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009), amended, LR 37:

§7215. Reporting Obligations

A. A physician who consults and collaborates with a MP should report to the board all instances in which he or she has a good faith reason to believe that the MP has:

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1531 (August 2009), amended, LR 37:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed Rules on the family has been considered. It is not anticipated that the proposed Rules will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed rule amendments to Rita Arceneaux, Confidential Executive

Assistant, Louisiana State Board of Medical Examiners, at P.O. Box 30250, New Orleans, LA, 70190-0250 (1515 Poydras Street, Suite 2700, New Orleans, LA 70112), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., December 20, 2010.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. Should it become necessary to convene a public hearing to receive data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on December 28, 2010 at 11 a.m. at the office of the Louisiana State Board of Medical Examiners, 1515 Poydras Street, Suite 2700, New Orleans, LA 70112. Any person wishing to attend should call to confirm that a hearing is being held.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Physician Consultation or Collaoration
with Medical Psychologists

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the rule publication costs, the total of which are estimated to be \$287 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any material costs to the Board of Medical Examiners or any state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on the Board's revenue collections or that of any other state or governmental unit by virtue of the proposed rule amendments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Board proposes to make technical amendments to its existing rules respecting physician consultation or collaboration with a medical psychologist made necessary in order to conform with Act No. 251 of the 2009 legislative session, which enacted the Louisiana Medical Psychology Practice Act, R.S. 37:1360.51-1360.72. The Board does not anticipate that the proposed rule amendments will have any adverse costs and/or economic impact on physicians who consult or collaborate with medical psychologists. Nor is it anticipated that the proposed rule amendments will result in any material increase or reduction in workload or additional paperwork for applicants, licensees, or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendments will not have any material impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.
Executive Director
1011#119

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Wholesale Drug Distributors

Wholesale Drug Distribution—Exemptions (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 Procedures 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 amendment 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 amendment to the rule is 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. intra-company sales to licensed wholesale drug distributors physically located in Louisiana;
2. - 8. ...

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 36:321 (February 2010), LR 37:

Family Impact Statement

The proposed Rule 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 Kimberly B. Barbier, Executive Assistant, 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 December 21, 2010.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on Tuesday, December 28, 2010, at 11:00 am at the office of the Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, LA.

John Liggio
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Wholesale Drug Distribution—Exemptions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Estimated implementation costs to the state include those associated with publishing the rule amendment estimated at \$250 in fiscal year 2011. Licensees will be informed of this rule change via the Board's regular newsletter or other direct mailings, which will result in minimal costs to the Board. Local governmental units will not incur any costs as a result of this rule.

- 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 changes.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The current rule exempts intra-company sales from classification as wholesale drug distribution. The proposed rule amendment will clarify that only intra-company sales from a wholesale drug distributor located outside Louisiana to an affiliated, licensed wholesale drug distributor physically located in Louisiana is not wholesale drug distribution activities as defined in the Louisiana Wholesale Drug Distributors Act. The rule will not require the selling or transferring wholesale drug distributor located outside Louisiana to obtain a wholesale drug distributor license as issued by the Louisiana Board of Wholesale Drug Distributors. There are no costs and/or material economic benefits to directly affected persons or non-governmental groups from the proposed rule change.

- 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
1011#018

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services Non-Rural, Non-State Hospitals Children's Specialty Hospitals (LAC 50:V.909)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.909 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions which established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals and implemented prospective per diem rates for various hospital peer groups (*Louisiana Register*, Volume 20, Number 6). Separate peer group payment rates were established for certain specialty hospital services rendered in the general acute care setting. Children's hospitals were categorized as a specialty hospital within the acute care general hospital peer group.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule

which amended the June 1994 Rule governing inpatient hospital services to revise the qualifying criteria and reimbursement methodology for children's specialty hospitals (*Louisiana Register*; Volume 35, Number 9). The provisions of the September 1, 2009 Emergency Rule governing the reimbursement methodology for children's specialty hospitals will be published in a final Rule on November 20, 2010 (*Louisiana Register*; Volume 36, Number 11). This proposed Rule is being promulgated to continue the provisions of the September 1, 2009 Emergency Rule governing the qualifying criteria for children's specialty hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter A. General Provisions

§909. Children's Specialty Hospitals

A. In order to receive Medicaid reimbursement for inpatient services as a children's specialty hospital, the acute care hospital must meet the following criteria:

1. be recognized by Medicare as a prospective payment system (PPS) exempt children's specialty hospital;
2. does not qualify for Medicare disproportionate share hospital payments; and
3. has a Medicaid inpatient days utilization rate greater than the mean plus two standard deviations of the Medicaid utilization rates for all hospitals in the state receiving Medicaid payments.

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

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, December 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Inpatient Hospital Services Non-Rural, Non-State Hospitals Children's Specialty Hospitals

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 \$1,135,369 for FY 10-11, \$1,440,220 for FY 11-12 and \$1,469,585 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$3,363,245 for FY 10-11, \$3,193,691 for FY 11-12 and \$3,303,343 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the September 1, 2009 Emergency Rule, amends the provisions governing inpatient hospital services to revise the qualifying criteria for children's specialty hospitals (anticipate one qualifying hospital). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Hospital Program by approximately \$4,498,942 for FY 10-11, \$4,633,911 for FY 11-12 and \$4,772,928 for FY 12-13.

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. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to children's specialty hospitals for inpatient hospital services. The reduction in payments may adversely impact the financial standing of hospitals, and could possibly cause a reduction in employment opportunities.

Don Gregory
Medicaid Director
1011#100

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Labor
State Plumbing Board**

Continuing Professional Education Programs
(LAC 46:LV.1003 and 1005)

The Louisiana State Plumbing Board (board), pursuant to R.S. 37:1366(I), which authorizes the board to establish and determine by rule minimum requirements relative to continuing professional development for the renewal or reinstatement of any license or special endorsement issued by the board, proposes to amend plumbing regulations, LAC 46:LV.1003 and 1005, in accordance with the Administrative Procedure Act. The proposed Rule change allows the board to accept an endorsee’s attendance or participation in a board approved industry-related recertification programs in lieu of a Board-approved CPE class, effective upon final publication in the State Register.

All currently stated rules of the board, unless amended herein, shall remain in full force and effect.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LV. Plumbers

**Chapter 10. Continuing Professional Education
Programs**

§1003. Water Supply Protection Specialists

A. CPE Requirement

1. Effective January 1, 2011, in addition to the yearly renewal of their endorsement, every three years all persons holding a water supply protection specialist endorsement issued by the Louisiana State Plumbing Board are required to show proof of attendance at no less than six hours of a Louisiana State Plumbing Board-approved CPE training class in the prior three calendar years, as set out in this Section. In lieu of attendance at any such class, the Board may accept proof of the endorsee’s attendance or participation in board-approved industry-related recertification programs during the prior three calendar years.

B. - E.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2074 (September 2004), amended LR 37:

**§1005. Medical Gas Piping Installers and Medical Gas
Verifiers**

A. CPE Requirement

1. Effective January 1, 2012, in addition to the yearly renewal of their endorsement, every three years all persons seeing to renew a medical gas piping installer or medical gas verifier license issued by the Louisiana State Plumbing Board are required to show proof of attendance at no less than four hours of a Louisiana State Plumbing Board-approved CPE class in the prior three calendar years, as set out in this Section. In lieu of attendance at any such class, the board may accept proof of the endorsee’s attendance or participation in board approved industry-related recertification programs during the prior three calendar years.

B. - E.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2074 (September 2004), amended LR 37:

Family Impact Statement

1. Estimated effect on the stability of the family:
There is no estimated effect on the stability of the family.

2. Estimated effect on the authority and rights of parents regarding the education and supervision of their children: There is no estimated effect on the authority and rights of parents regarding the education and supervision of their children.

3. Estimated effect on the functioning of the family:
There is no estimated effect on the functioning of the family.

4. Estimated effect on family earnings and family budget: There is no estimated effect on family earnings and family budget.

5. Estimated effect on the behavior and personal responsibility of children: There is no estimated effect on the behavior and personal responsibility of children.

6. Estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule: There is no estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Any interested person may submit written comments regarding the content of this proposed rule change to John Barker, Executive Director, 12497 Airline Highway, Baton Rouge, LA, no later than 5 p.m., December 20, 2010.

Louis L. Robein
Board Attorney

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Continuing Professional
Education Programs**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs resulting from the proposed rule change.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Currently, the Board requires an annual renewal of endorsement by the Board and proof of attendance in at least six hours (water supply protection specialists) or at least four hours (medical gas piping installers and medical gas verifiers) of Certified Plumbing Education courses over the prior three years. The proposed rule maintains the annual renewal of endorsement requirement but allows the attendance or participation at any approved industry-related recertification programs during any three-year period in lieu of the current attendance requirements. There will be no additional costs to any Board licensed individuals. The State Plumbing Board believes that the rule change will be more convenient for those licensed under the State Plumbing Board to maintain their

licensed status. It will eliminate duplication of effort and expenses to those licensees who must maintain industry certifications in a specialized field. The proposed rule change does not increase the continuing professional education requirements. It simply allows the individual additional options for maintaining their licensed status.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition, but will continue to increase knowledge and skills of licensees due to regular training and updates on industry practices, health, conservation and environmental protection.

Louis L. Robein
Board Attorney
1011#072

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Telephone Use and Policy on Monitoring of Calls
(LAC 22:I.315)

In accordance with the provisions of the Administrative procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of Section 315 Telephone Use and Policy on Monitoring of Calls.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult Services

§315. Telephone Use and Policy on Monitoring of Calls

A. Purpose. To state the secretary's policy regarding the use of telephones by offenders and the monitoring of offender telephone calls at all adult institutions.

B. Applicability—deputy secretary, chief of operations, regional wardens and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for implementing and notifying all affected persons of its contents.

C. Policy. It is the secretary's policy that uniform telephone procedures, including the ability to monitor and/or record offender telephone calls to preserve the security and orderly management of the institution and to protect public safety, shall be adhered to at all institutions. Each institution shall offer offenders (including the hearing and/or speech impaired) reasonable access to telephone communication without overtaxing the institution's ability to properly maintain security and to avoid abuse of this privilege on the part of any offender. Offenders with hearing and/or speech disabilities and offenders who wish to communicate with parties who have such disabilities shall be given access to appropriate auxiliary aids and services. It is further the secretary's policy to encourage offenders to maintain telephone communications while incarcerated in order to maintain family connections that will promote unification upon release.

D. Procedures

1. General

a. Each offender shall be assigned a personal identification number (PIN) which must be used when placing outgoing telephone calls; the PIN shall be the offender's DOC number.

b. Each offender will provide his assigned institution a master list of up to 20 frequently called telephone numbers inclusive of all family, personal and legal calls. Each offender's outgoing telephone calls shall be limited to those telephone numbers he has placed on his master list. Changes may be made to the master list at the discretion of the warden, but no less than once each quarter. These changes may be entered by the contractor or by appropriately trained institutional staff. No offender shall place the telephone number of the family of another offender on his master list "except for verified members of his own family."

c. For new offenders, PIN and master list numbers shall be entered into the telephone system upon intake at the reception and diagnostic centers.

d. All offender telephone calls made through use of the offender telephone system shall be recorded and are subject to monitoring, this includes calls made to attorneys using the offender telephone system. (See Clause D.6.a.iii for additional information.)

e. A visible sign by each offender telephone shall place offenders on notice that all calls shall be recorded and are subject to monitoring.

f. A recorded message shall notify all parties that all calls shall be recorded and are subject to monitoring and that the call originated from a correctional facility.

g. Use of the offender telephone system shall constitute consent by all parties to the recording and/or monitoring of the call.

h. Upon the request of a telephone subscriber, the institution shall block a telephone number and prevent the subscriber from receiving calls from an offender housed in the facility. To accomplish a block of a particular number for all state facilities, the institution should contact the contractor to request that a universal block be put into place.

i. Offenders are allowed to make collect calls to cell phones. These calls must be set up as direct remit accounts with the department's phone service provider. This shall be done after approval is received from the department to add the cell number. Prepaid cell phones are not allowed to set up the direct bill accounts. Cell phones must have a provider from a major wireless company i.e., AT and T, Sprint, Verizon, T-Mobile, etc.

2. Dormitory Housing (Minimum or Medium Custody)

a. Personal or Family Calls (routine)—Collect telephone access should be available on a relatively non-restricted basis. The specific hours in the various living areas at the individual institutions shall be established by the warden of each institution. The warden shall communicate the telephone schedule to the offender population. A time limit should be established.

b. Personal or Family Calls (emergency)—Requests for access outside of normally scheduled hours may be made through the dormitory officer, shift supervisor or other appropriate staff who decides if the justification the offender presents warrants the request. That decision is then logged.

No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a schedule for legal calls. Offenders are generally able to place legal calls during the lunch period "non-working hours," or after the afternoon count (when "normal office hours" are in effect for attorneys.) The warden shall establish an alternate procedure if this is not adequate.

3. Cellblock Housing (Maximum Custody)

a. Personal or Family Calls (Routine). Collect telephone access is generally located in the cellblock lobby. (In those situations where the telephone is on the tier, the offender may be allowed access during the shower or exercise period.) Lobby placement may restrict offender access. Therefore, posted policy may limit routine personal calls for offenders assigned to cellblocks. Access may vary by offender classification status. A time limit should be established.

b. Personal or Family Calls (Emergency). In all subclasses of maximum custody, the offender is required to request consideration for this type call from the warden's designee (shift supervisor, unit major, or program staff) who decides if the justification the offender presents warrants the request. That decision is then logged. No frequency for this type call is established as the severity and duration of the emergency may vary.

c. Legal Calls. The warden shall establish a procedure for placing legal calls on a reasonable basis during "normal office hours." Each housing unit shall maintain a legal telephone log for the purpose of monitoring the number of legal calls made by offenders on a weekly basis. All legal calls are to be logged with the attorney's full name, bar number, telephone number called, date, time and whether completed.

4. Incoming Calls

a. Personal or Family calls (Routine). Messages are not accepted or relayed on a routine basis for any offender.

b. Legal Calls. Offenders may be given notice that their attorney has requested contact. Complete verification is required prior to processing. If minimum or medium custody, the offender may call from the dormitory during lunch or after work. If maximum custody, the offender may be allowed to call during "normal office hours" at a time which does not interfere with the orderly operation of the unit.

5. Emergency Messages/Important Telephone Calls Based upon Faith-Based Programs and Services

a. Emergency messages concerning a serious illness, injury, death or other family crisis, etc. shall be delivered to an offender by the chaplain or other person designated by the warden. Exceptions to this paragraph shall only be granted by the warden or designee.

b. Notification to an offender's emergency contact (or other appropriate person as the situation warrants) of an offender's serious illness, injury or death shall be made in a timely manner by the chaplain or other person designated by the warden.

c. Chaplains are allowed discretion to make telephone calls for offenders for the purposes of dealing with emergency matters.

6. Monitoring

a. Offenders shall be put on notice of the following:

i. telephone calls in housing areas shall be recorded and are subject to monitoring and that "use" constitutes "consent";

ii. it is the offender's responsibility to advise all other parties that conversations are subject to being monitored and/or recorded;

iii. telephone calls to the offender's designated attorney(s) will not be routinely monitored. Any telephone calls placed on offender telephones to attorneys shall be recorded but not monitored unless the warden determines a security need exists. Prior to examination of the content of the conversation with the attorney, the party requesting examination must put in writing the factors supporting the good cause and submit to the warden for approval. Only after approval has been received, shall the conversation be examined. Only investigators approved by the chief of operations shall be allowed to monitor the calls.

b. The telephone system will normally terminate a call at the end of the authorized period (normally 15 minutes); however, the warden or designee may authorize calls of a longer duration as circumstances warrant. Persons using the TDD system shall be allowed one hour telephone calls.

c. Offenders shall not be allowed access to home telephone numbers nor be allowed to call any staff member of the department (including volunteers, contract workers, etc.) by any means whether through call forwarding, texting, web based or similar communication platforms or systems.

d. Only authorized (i.e., those who have been assigned a login/password) personnel approved by the warden or designee may monitor offender telephone calls. Information gained from monitoring calls which affects the security of the institution or threatens the protection of the public shall be communicated to the warden and other law enforcement agencies.

e. Offenders being processed into the system through the reception and diagnostic centers shall be required to give "consent" in writing, acknowledging that they are aware that their telephone calls shall be recorded and are subject to monitoring. A copy of this "consent" shall be placed in the offender's master record.

f. Each institution's orientation manual shall include the information contained in this regulation as a means to notify the offender population of its contents and verbal notification shall be given during the orientation program. A sign shall be posted at each offender telephone which states the following information:

ATTENTION

This telephone has been electronically programmed to monitor and/or record telephone calls. By using this telephone, you consent to the monitoring and/or recording of your conversation. Telephone calls to your designated attorney(s) will not be routinely monitored.

Department of Public Safety and Corrections
Department Regulation No. B-08-001

7. Remote Call Forwarding

a. Remote Call Forwarding (RCF) is a mechanism by which offenders may employ a local telephone number that automatically forwards the telephone call to a pre-selected number generally located out of the local calling area code or long distance. RCF in essence is an automated 3-way call.

b. RCF is also known as automated call forwarding or PBX call forwarding. Use of this automated and remote mechanism represents significant security risks for several reasons. The telephone call terminated number (the end destination of the call) cannot be readily identified or verified. This number is not a traditional telephone number located at a residence, business or other such location but merely a number within the telephone switching equipment local to the facility where the offender is housed.

c. RCF initiated calls to an unidentified terminated number can and are being easily forwarded to unauthorized telephones. This forwarding is done through the normal 3-way call hook ups. This in fact negates the security mechanisms achieved by the requirement of approved telephone lists. Safeguards to prevent calls to victims, to blocked or restricted numbers or to prevent other unauthorized call activities are defeated by the use of an RCF number.

d. RCF usage creates an opportunity to conduct criminal or illegal or unauthorized activities since the end call location is not readily being identified, verified or its actual location known. This affords untold opportunity for offenders to engage in potential scams, to call victims, to facilitate escape attempts and to engage in other conduct representing significant security risks to the facility.

e. The offender population shall be put on notice that all third-party telephone calls, including RCF calls, are strictly prohibited and such activity shall result in appropriate disciplinary action.

f. Wardens shall develop a monitoring system to analyze the frequency of local calls. High frequency may indicate RCF utilization. When RCF calls are discovered, a system-wide block of the number shall be initiated pursuant to Subparagraph D.1.i. of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 29:360 (March 2003), amended LR 29:2849 (December 2003), LR 35:87 (January 2009), LR 37:

Family Impact Statement

Amendment to the current Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P. O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on December 09, 2010.

James M. Le Blanc
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Telephone Use and Policy on Monitoring of Calls

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This is a technical adjustment to an existing regulation. There will be no fiscal impact associated with amending the

existing Department of Corrections regulation on Telephone Use and Policy on Monitoring Calls.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units since this is a technical adjustment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment associated with this rule change.

Thomas C. Bickham, III
Undersecretary
1011#116

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Corporation Income and Franchise Tax Extension Payments (LAC 61:III.1505)

Under the authority of R.S. 47:1511, 287.651, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1505 to mandate that the payment of taxes due with a request for an extension of time to file a return be submitted electronically.

Section 287.651(D) of Title 47 of the Louisiana Revised Statutes provides that corporation income taxes may be paid by check, bank draft, post office money order, express money order, electronic funds transfer, or credit or debit cards. Beginning with the filing of the 2010 corporation income and 2011 franchise tax returns, taxpayers who electronically request an extension of time to file their returns must electronically pay any income and franchise taxes due on or before the due date of the return in order to avoid interest and delinquent payment penalty assessments.

This proposed adoption of LAC 61:III.1505 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous Chapter 15. Mandatory Electronic Filing of Tax Returns and Payments

§1505. Corporation Income and Franchise Tax Extension Payments

A. Form of payment

1. Louisiana Revised Statute Title 47 Section 287.651(D) provides that the secretary may accept payment of taxes by:

- a. check;
- b. bank draft;
- c. post office money order;
- d. express money order;
- e. electronic funds transfer; or
- f. credit or debit cards.

2. A taxpayer required to submit any return, report, or request for an extension to file electronically, is also required to submit an accompanying payment electronically.

B. Electronic Payments

1. Electronic payments must be submitted on or before the due date of a return or report.

2. An electronic payment may be submitted via:

- a. credit or debit card;
- b. ACH debit payment, or,
- c. any other electronic method authorized by the secretary.

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 37:

Family Impact Statement

The proposed adoption of LAC 61:III.1505, regarding Corporation Income and Franchise Tax Extension Payments, should not have any known or foreseeable impact on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, the ability of the family or a local government to perform this function.

Small Business Statement

In accordance with R.S. 49:965.6, the Regulatory Flexibility Act, the Department of Revenue has determined that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit data, views, or arguments, in writing to Shone Pierre, Assistant Secretary, Office of Legal Affairs, Louisiana Department of Revenue, 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, December 28, 2010. A public hearing will be held on Wednesday, December 29, 2010, at 10:00 a.m. in the River Conference Room on the Seventh Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

temporary personnel during the income tax rush to, among other things, process manual payments. Since RPC will lack the financial resources to hire temporary personnel for the FY 11 income tax rush, mandating electronic filing of the prepayment of taxes due with an electronic request for an extension of time to file a corporation income and franchise tax return will allow the reallocation of resources being used to process manual extension payments to other tax processing functions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule, mandating the electronic filing of a prepayment of taxes due with an electronic request for an extension of time to file a corporation income and franchise tax return, will have no effect on revenue collections of state or local governmental units. Extension payments are currently accepted by check, bank draft, post office money order, express money order, electronic funds, or credit or debit card. The proposed rule would limit payments to credit or debit cards, automated clearinghouse debit payments or any other electronic method authorized by the secretary, which may be a statutory conflict.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Every taxpayer making a prepayment of taxes due with an electronic request for an extension to file a corporation income and franchise tax return will be affected by the proposed rule. The proposed rule limits payments with corporate extensions to electronic means while the current rule allows payment by check, bank draft, post office money order, express money order, electronic funds, or credit or debit card. However, because prepayments of taxes due can be filed electronically through the LDR web site or through tax preparation software for free, there is no anticipated cost to these taxpayers. The Department will have internet kiosks available in all Department of Revenue offices and internet access is also available through public libraries. This proposed rule will serve to alleviate some of the reliance on temporary workers related to extensions and will not result in a decrease in processing time for returns as most e-file mandates do given budgetary limitations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
1011#070

Robert E. Hosse
Staff Director
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Corporation Income and Franchise Tax Extension Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed rule mandates the electronic filing of a prepayment of taxes due with an electronic request for an extension of time to file a corporation income and franchise tax return. There is no anticipated cost to implement the proposed rule, but the proposed rule will allow the reallocation of resources being used to process manual extension payments to other tax processing functions. The current fiscal year budget for the Revenue Processing Center (RPC) has been cut by \$1 million. In FY 10, the Department paid about \$725,000 for roughly 100 temporary workers. In FY 11, the Department has \$374,000 available for temporary workers and anticipates an increase in processing time. In the past, RPC has utilized

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Corporation Income and Franchise Tax Filing Extensions
(LAC 61:III.2503)**

Under the authority of R.S. 47:1511, 1514, 287.614(D), 612, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:III.2503, to mandate the electronic filing of a request for an extension to file a Corporation Income and franchise Tax return.

The secretary of revenue is authorized, but not required, to grant a reasonable extension of time to file a Louisiana corporation income tax return. It has been Louisiana

Department of Revenue (LDR) practice in past years to accept paper extensions, submitted prior to or with the return. Beginning with returns due on or after January 1, 2011, corporate taxpayers needing additional time to file a corporation income and franchise tax return must electronically submit a request for an extension of time to file on or before the return due date.

This proposed amendment of LAC 61:III.2503 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous

Chapter 25. Returns

§2503. Corporation Income and Franchise Tax Filing Extensions

A. Louisiana Revised Statute Title 47, Section 287.614(D) provides that the secretary may grant a reasonable extension of time to file a state corporation income and franchise tax return, not to exceed seven months from the date the return is due.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer must request a state filing extension by submitting an electronic application.

3. An electronic application may be submitted via:

a. the Department of Revenue's web site at www.revenue.louisiana.gov;

b. tax preparation software; or

c. any other electronic method authorized by the secretary.

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, income and franchise taxes due must be prepaid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, and 287.614(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 37:

Family Impact Statement

The proposed adoption of LAC 61:III.2503, regarding Corporation Income and Franchise Tax Filing Extensions, should not have any known or foreseeable impact on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, the ability of the family or a local government to perform this function.

Small Business Statement

In accordance with R.S. 49:965.6, the Regulatory Flexibility Act, the Department of Revenue has determined that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit data, views, or arguments, in writing to Shone Pierre, Assistant Secretary, Office of Legal Affairs, Louisiana Department of Revenue, 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, December 28, 2010. A public hearing will be held on Wednesday, December 29, 2010, at 10 a.m. in the River 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: Corporation Income and Franchise Tax Filing Extensions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed amendment to LAC 61:III.2503 mandates the electronic filing of requests for extensions to file corporation income and franchise tax returns. There is no anticipated cost to implement this amended rule, but this amendment will allow the reallocation of resources being used to process paper extension requests to other tax processing functions; resulting in a cost savings.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendment to this rule, mandating the electronic filing of all requests for an extension to file a corporation income and franchise tax return, will have no effect on revenue collections of state or local governmental units. Extension requests are currently accepted by paper or electronically.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The current fiscal year budget for the Revenue Processing Center (RPC) has been cut by \$1 million. In the past, RPC has utilized temporary personnel during the income tax rush to, among other things, process paper extension requests. Since RPC will lack the financial resources to hire temporary personnel for FY 11 income tax rush, mandating the electronic filing of every request for an extension to file a corporation income and franchise tax return will allow RPC to process those requests using available personnel.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment to this rule should not affect competition or employment.

Cynthia Bridges
Secretary
1011#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Individual Income Tax Extension Payments
(LAC 61:III.1503)

Under the authority of R.S. 47:1511, 105(G), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC

61:III.1503 to mandate the electronic filing of the payment of taxes due with a request for an extension of time to file.

Section 105(G) of Title 47 of the Louisiana Revised Statutes provides that individual income taxes may be paid by check, bank draft, post office money order, express money order, electronic funds transfer, or credit or debit cards. Beginning with the filing of the 2010 individual income tax returns, taxpayers electronically requesting an extension of time to file their individual income tax return must electronically pay any income taxes due on or before the due date of the return (2010 returns are due May 16, 2011) in order to avoid interest and delinquent payment penalty assessments.

This proposed adoption of LAC 61:III.1503 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous

Chapter 15. Mandatory Electronic Filing of Tax Returns and Payments

§1503. Individual Income Tax Extension Payments

A. Form of Payment

1. Louisiana Revised Statute Title 47 Section 105(G) provides that the secretary may accept payment of taxes by:

- a. check;
- b. bank draft;
- c. post office money order;
- d. express money order;
- e. electronic funds transfer; or
- f. credit or debit cards.

2. A taxpayer required to submit any return, report, or request for an extension to file electronically, is also required to submit an accompanying payment electronically.

B. Electronic Payments

1. Electronic payments must be submitted on or before the due date of a return or report.

2. An electronic payment may be submitted via:

- a. credit or debit card;
- b. ACH debit payment;
- c. any other electronic method authorized by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, and 105(G).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 37:

Family Impact Statement

The proposed adoption of LAC 61:III.1503, regarding Individual Income Tax Extension Payments, should not have any known or foreseeable impact on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, the ability of the family or a local government to perform this function.

Small Business Statement

In accordance with R.S. 49:965.6, the Regulatory Flexibility Act, the Department of Revenue has determined that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit data, views, or arguments, in writing to Shone Pierre, Assistant Secretary, Office of

Legal Affairs, Louisiana Department of Revenue, 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, December 28, 2010. A public hearing will be held on Wednesday, December 29, 2010, at 10:00 a.m. in the River Conference Room on the Seventh Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Individual Income Tax Extension Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed rule mandates the electronic filing of a prepayment of taxes due with an electronic request for an extension of time to file an individual income tax return. There is no anticipated cost to implement the proposed rule, but the proposed rule will allow the reallocation of resources being used to process manual extension payments to other tax processing functions.

The current fiscal year budget for the Revenue Processing Center (RPC) has been cut by \$1 million. In FY 10, the Department paid about \$725,000 for roughly 100 temporary workers. In FY 11, the Department has \$374,000 available for temporary workers and anticipates an increase in processing time. In the past, RPC has utilized temporary personnel during the income tax rush to, among other things, process manual payments. Since RPC will lack the financial resources to hire temporary personnel for the FY 11 income tax rush, mandating electronic filing of the prepayment of taxes due with an electronic request for an extension of time to file an individual income tax return will allow the reallocation of resources being used to process manual extension payments to other tax processing functions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule, mandating the electronic filing of a prepayment of taxes due with an electronic request for an extension of time to file an individual income tax return, will have no effect on revenue collections of state or local governmental units. Extension payments are currently accepted by check, bank draft, post office money order, express money order, electronic funds, or credit or debit card. The proposed rule would limit payments to credit or debit cards, automated clearinghouse debit payments or any other electronic method authorized by the secretary, which may be a statutory conflict.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Every individual taxpayer making a prepayment of taxes due with an electronic request for an extension to file an individual income tax return will be affected by the proposed rule. The proposed rule limits payments with individual extensions to electronic means while the current rule allows payment by check, bank draft, post office money order, express money order, electronic funds, or credit or debit card. However, because prepayments of taxes due can be filed electronically through the LDR web site or through tax preparation software for free, there is no anticipated cost to these taxpayers. The Department will have internet kiosks available in all Department of Revenue offices and internet access is also available through most public libraries. This proposed rule will serve to alleviate some of the reliance on temporary workers related to extensions and will not result in a decrease in

processing time for returns as most e-file mandates do given budgetary limitations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Interested persons may submit data, views, or arguments, in writing to Shone Pierre, Assistant Secretary, Office of Legal Affairs, Louisiana Department of Revenue, 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, December 28, 2010. A public hearing will be held on Wednesday, December 29, 2010, at 10:00 a.m. in the River Conference Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary
1011#068

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, 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 LAC 61:III.2501 to mandate the electronic filing of a request for an extension to file an individual income tax return.

The secretary of revenue is authorized, but not required, to grant a reasonable extension of time to file a Louisiana individual income tax return. It has been Louisiana Department of Revenue (LDR) practice in past years to accept paper extensions, submitted prior to or with the return. Beginning with returns due on or after January 1, 2011, individuals needing additional time to file their income tax returns must electronically request an extension of time to file on or before the return due date. (2010 returns will be due May 16, 2011).

This 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).

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous Chapter 25. Returns

§2501. Individual Income Tax Filing Extensions

A. Louisiana Revised Statute Title 47, Section 103(D) provides that the secretary may grant a reasonable extension of time to file a state individual income tax return, not to exceed six months from the date the return is due.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer must request a state filing extension by submitting an electronic application.

3. An electronic application may be submitted via:

a. the Department of Revenue's web site at www.revenue.louisiana.gov;

b. tax preparation software; or

c. any other electronic method authorized by the secretary.

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, taxes due must be prepaid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, and 103(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 37:

Family Impact Statement

The proposed adoption of LAC 61:III.2501, regarding Individual Income Tax Filing Extensions, should not have any known or foreseeable impact on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, the ability of the family or a local government to perform this function.

Small Business Statement

In accordance with R.S. 49:965.6, the Regulatory Flexibility Act, the Department of Revenue has determined that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit data, views, or arguments, in writing to Shone Pierre, Assistant Secretary, Office of Legal Affairs, Louisiana Department of Revenue, 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, December 28, 2010. A public hearing will be held on Wednesday, December 29, 2010, at 9:00 a.m. in the River 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)

This proposed amendment to LAC 61:III.2501 mandates the electronic filing of requests for extensions to file individual income tax returns. There is no anticipated cost to implement this amended rule, but this amendment will allow the reallocation of resources being used to process paper extension requests to other tax processing functions.

The current fiscal year budget for the Revenue Processing Center (RPC) has been cut by \$1 million. In FY 10, the Department paid about \$725,000 for roughly 100 temporary workers. In FY 11, the Department has \$374,000 available for temporary workers and anticipates an increase in processing time. In the past, RPC has utilized temporary personnel during the income tax rush to, among other things, process paper extension requests. Since RPC will lack the financial resources to hire as many temporary personnel for the FY 11 income tax rush, mandating the electronic filing of every request for an

extension to file an individual income tax return will allow RPC to process those requests using available personnel.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendment to this rule, mandating the electronic filing of all requests for an extension to file an individual income tax return, will have no effect on revenue collections of state or local governmental units. Extension requests are currently accepted by paper or electronically.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Every individual taxpayer filing a request for an extension to file an individual income tax return will be affected by the proposed amendment to this rule. The proposed rule limits individual extension filing to electronic means while the current rule allows paper or electronic filing. However, because extension requests can be filed electronically through the LDR web site or through tax preparation software for free, there is no anticipated cost to these taxpayers. The Department will have internet kiosks available in all Department of Revenue offices and internet access is also available through public libraries. This proposed rule will serve to alleviate some of the reliance on temporary workers related to extensions and will not result in a decrease in processing time for returns as most e-file mandates do given budgetary limitations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendment to this rule should not affect competition or employment.

Cynthia Bridges
Secretary
1011#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development

Outdoor Advertising (LAC 70:III.Chapter 1)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Part III of Title 70, entitled "Outdoor Advertising", in accordance with R.S. 48:461, et seq.

**Title 70
TRANSPORTATION
Part III. Outdoor Advertising
Chapter 1. Outdoor Advertising
Subchapter C. Regulations for Control of Outdoor Advertising**

§127. Definitions

Centerline of Highway—a line of equal distance from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a non-divided interstate highway or the centerline of each of the main-traveled ways of a divided highway separated by more than the normal median width or constructed on independent alignment.

Controlled Areas—within urban areas, the applicable control area distance is 660 feet measured horizontally from the edges of the right-of-way along a line perpendicular to the centerline of the Interstate and/or Federal Aid Primary

Systems or National Highway System. Outside urban areas, the control area extends beyond 660 feet to include any sign within visibility of the Interstate and/or Federal Aid Primary System or National Highway System.

Destroyed Sign—means that 50 percent or more of the upright supports of a sign structure are physically damaged so that normal repair practices would require:

1. In the case of wooden sign structures, replacement of the broken supports, or,
2. In case of metal sign structures, replacement of a least thirty percent of the length above ground of each broken, bent or twisted support.

Maintenance—means to allow to exist. The dimensions of the existing sign are not to be altered nor shall any additions be made to it except for a change in message content. When the damage to the upright supports of a sign is 50 percent or more (see definition of destroyed sign), it shall be considered new construction and shall be subject to all requirements pertaining to new construction.

Zoned Commercial or Industrial Areas—means those areas which are zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or regulation. A zone in which limited commercial or industrial activities are permitted as an incidental to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002), amended LR 31:944 (April 2005), LR 33:530 (March 2007), LR 37:

§132. Off-Premise Changeable Message Signs

A. *Changeable Message Sign*—any outdoor advertising sign which displays a series of advertisements, regardless of technology used, including, but not limited to, the following:

1. rotating slats;
2. changing placards;
3. rotating cubes;
4. changes in light configuration or light colors;
5. LED (light emitting diodes)/video displays.

B. Qualifying Criteria

1. - 3. ...
4. The use of such technology is limited to conforming signs only. Application of such technology to nonconforming signs is prohibited.

5. - 7. ...

8. On stacked sign structures, changeable message signs shall be allowed one per side.

9. Changeable message signs shall not exceed 672 square feet.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the General Counsel, LR 25:2463 (December 1999), amended LR 37:

§134. Spacing of Signs

A. ...

B. Interstate Highways and Freeways on the Federal-Aid Primary System and National Highway System (Control of Access Routes).

1. No two structures shall be spaced less than 1000 feet apart.

2. ...

C. Freeways on the Federal-Aid Primary System or National Highway System (Control of Access Routes)

1. Outside of incorporated villages, towns and cities, No two structures shall be spaced less than 500 feet apart.

2. Outside of incorporated villages, towns and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection, intersection at grade or safety rest area.

D. Non-Freeway Federal-Aid Primary highways or National Highway System

1. Outside of incorporated villages, towns and cities, no two structures shall be spaced less than 300 feet apart.

2. Within incorporated villages, towns and cities, no two structures shall be less than 100 feet apart.

E. The above provisions applying to the spacing between structures do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time. This exception does not apply to vegetation.

F. Official and "on-premise" signs, as defined in §139, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 28:872 (April 2002), amended LR 33:530 (March 2007), LR 37:

§135. Measurements for Spacing

A. - C. ...

D. For continuous ramps which start at one entrance and end at the next exit, the allowable spacing shall be measured from the intersection of the edge of the mainline shoulder and the edge of the ramp shoulder; or in the case of bridges, the measurement would be taken where the mainline and the ramp bridge rails meet. This provision shall apply to §134.B.1 and 2 and §134.C.1 and 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:188 (June 1976); amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005), LR 33:350 (March 2007), amended LR 37:

§136. Erection and Maintenance of Outdoor Advertising in Unzoned Commercial and Industrial Areas.

A. Definitions

Unzoned—Repealed

Unzoned Commercial or Industrial Areas—those areas which are not zoned by state or local law, regulation, ordinance and on which there are located one or more permanent structures within which a commercial or industrial business is actively conducted, and where the area

along the highway extends outward 800 feet from and beyond the edge of the activity.

B. Qualifying Criteria

1. Primary Use Test

a. - b. ...

c. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an *unzoned or commercial area*. Activities incidental to the primary use of the area, such as a kennel or a repair shop in a building or on land which is used primarily as a residence, school, church or assisted/extended living facilities do not constitute commercial or industrial activities for the purpose of determining the primary use of an *unzoned* area even though income is derived from the activity.

d. ...

e. The actual land use at the sign site cannot be agricultural or farming.

2. - 2.c....

3. Structures and Grounds Requirements

a. - f. ...

g. Limits. Limits of business activity shall be in accordance with the definition of *Unzoned* commercial or industrial areas as stated in §136.B.2.

h. Activity requirements. In order to be considered a commercial or industrial activity for the purpose of outdoor advertising regulation, the following conditions shall be taken into consideration by the department. The department shall make a determination based upon a totality of the circumstances.

i. The purported activity enterprise is open for business and actively operated and staffed with personnel on the premises a minimum of eight hours each day and a minimum of five days each week. However, some businesses may not require staffing, such as a laundry mat, car wash, etc. The department has the discretion to determine whether the business requires staff to operate the business.

ii. ...

iii. A sufficient inventory or products is maintained for immediate sale or delivery to the consumer. If the product is a service, it ~~is~~ must be available for purchase on the premises.

iv. ...

C. Where a mobile home, manufactured building, or a recreational vehicle is used as a business or office, the following conditions and requirements also apply.

1. - 4. ...

D. Non-Qualifying Activities

1. - 4. ...

5. activities conducted in a building principally used as a residence, school, church or assisted/extending living facility.

6. - 10. ...

11. recreational facilities

12. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 25:880 (May 1999), amended by the Department of Transportation and Development, Office of

Highways/Engineering, LR 31:945 (April 2005), repromulgated LR 32:117 (January 2006), amended LR 37:

§137. Nonconforming Signs

A. In addition to all other laws, regulations and rules, the following conditions and requirements apply to continue and maintain a nonconforming sign.

1. ...
2. Reasonable repair and maintenance of the sign includes a change of advertising message, repainting of the structure, sign face, or trim, and replacing electrical components after failure. Reasonable maintenance also includes replacement of stringers, platforms and worker supports. The type of sign face may not be changed, except that a wood or steel face may be wrapped with a vinyl wrap containing the message or the face may be replaced with a panel free frame for hurricane protection. Lighting cannot be added to the sign structure or placed on the ground with the intention of illuminating a previously unilluminated nonconforming sign. Replacement of 50 percent or more of the upright supports is prohibited. (See definitions of "Destroyed Sign" in §127).

3. A substantial change in the subject sign which will terminate the status of legal but nonconforming usage occurs when:

a. there has been an addition of 25 percent or more of the square footage of the sign (excluding trim);

b. there has been a any change in the material composition of the sign super-structure or sign facing. The cost of which exceeds the cost of replacement or repair of the original materials. other than reasonable maintenance as defined in Section 137.2 (wooden poles must be replaced by wooden poles. I-beams, pipe or other metal poles must be replaced or repaired with the same materials.)

4. When and if nonconforming use rights in and to a sign structure are acquired by the Louisiana Department of Transportation and Development through the exercise of eminent domain, just compensation will be based upon the original size and material of the sign when it became a nonconforming structure and not upon any enlarged size, improvement or betterment to the sign.

5. When any sign which loses its nonconforming use status by reason of any substantial change, including those changes prohibited above, the subject sign will be considered a new advertising device and subject to all current regulations and prohibitions as of the time of the change.

6. Destruction. Nonconforming signs are considered destroyed when 50 percent or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for:

a. in the case of wooden sign structures, replacement of the broken supports; or

b. in case of metal sign structures, replacement of at least thirty percent of the length above ground of each broken, bent or twisted support; or

c. any signs so damaged by intentional, criminal conduct may be re-erected within 180 days from the date of destruction to retain nonconforming status; however such re-erection must occur at the identical location and the size, lighting and spacing must be identical to the prior circumstances;

d. nonconforming signs cannot be modified or repaired unless the requirements of this Section are met. Prior to repair or modification, authorized district personnel must review the damages and approve the repairs. If the sign is repaired prior to approval by the department's authorized personnel, the sign shall become illegal and the permit shall be revoked. The request and documentation of what is to be repaired must be made to the outdoor advertising program manager by certified mail. The department shall respond to the request within 14 business days of receipt of the certified letter. The department's 30 failure to respond within 14 business days of receiving the repair request will allow the owner to repair the sign without the department's approval.

8. Abandonment

a. ...

b. The said 12 month period may be interrupted for the period of time during which the controlled highway relative to such sign is closed for repairs adjacent to said sign or the sign owner is able to demonstrate that the sign has been the subject of an administrative or legal proceeding preventing the owner from displaying copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 2:188 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2855 (December 2003), amended LR 37:

§139. Determination of On-Premise Exemptions

A. - B.(1).a. - e. ...

2. Activity Requirements

a. The purported activity enterprise is open for business and actively operated and staffed with personnel on the premises a minimum of eight hours each day and a minimum of five days a week. However, some businesses may not require staffing, such as a laundry mat, carwash, etc. The department has the discretion to determine if staffing is required in order to operate the business.

b. ...

c. A sufficient inventory of products is maintained for immediate sale or delivery to the consumer. If the product is a service, it must be available for purchase on the premises.

B.3. - C.1.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 2:189 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:945 (April 2005), repromulgated LR 32:117 (January 2006), amended LR 33:531 (March 2007), LR 37:

§143. Procedure and Policy for Issuing Permits for Controlled Outdoor Advertising

A. - D. ...

E. The department must be notified in writing by the original permittee upon any change or transfer of ownership of the permitted installation. Such notification may be done by submittal of the sales agreement.

F. An original signature of the landowner or a copy of the current lease agreement shall be submitted with each application.

G. Every applicant who seeks to situate a controlled advertising structure in a commercial or an industrial zone

shall furnish evidence of the restrictive zoning of the subject land on the department's zoning supplement form which shall be completed by the appropriate state or local authority.

H. Permit applications which are properly completed and executed and which are accompanied by all other required documentation shall be thereafter submitted by the district office to the appropriate permit office in Baton Rouge, Louisiana, for review. Permits applications which are not in proper form or which are not complete or not accompanied by required documentation or do not meet the requirements of state law at the time of the submittal of the application shall be returned to the applicant by the district office with reasons for its return. Applications may be resubmitted at any time.

I. The appropriate permit-issuing officer designated by the department shall review all permit applications. Thereafter, permits shall be issued or the application rejected and returned to the applicant with reasons for denial of the permit.

J. ...

K. Each permit shall specify a time delay of 12 months within which to erect the subject advertising device. The district office shall determine whether or not the device has been erected within the specified time delay.

L. If a sign has not been erected within the delay provided by the subject permit, the permit may be voided by the department and the applicant or permittee so notified. On the day following the posting of notice to any such applicant or permittee of the voiding of the permit to the last known address as furnished by the applicant, the subject sign location shall be available to any other applicant.

M. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 2:191 (June 1976), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2856 (December 2003), LR 31:945 (April 2005), LR 33:532 (March 2007), LR 37:

§144. Penalties for Illegal Outdoor Advertising Signs

A. An outdoor advertising sign is deemed to be illegal for the purpose of issuing penalties if:

1. the owner has received a certified letter from the department under the provisions of R.S. 48:461.7 and has failed to respond within the time allotted; or

2. the owner has received a certified letter from the department provided for in R.S. 48:461.7; received a permit review as provided for hereafter, with a ruling of illegality by the permit review committee; and failed to appeal to a court of competent jurisdiction;

3. the owner replied to the certified letter provided for in R.S. 48:461.7; received a permit review as provided for hereafter; received a ruling of illegality by the permit review committee; appealed said ruling to a court of competent jurisdiction and a final ruling of illegality was rendered by the court.

B. - D.1.c. ...

d. Traffic Engineering or their designated representative.

2 - 5. ...

6. Permittee's failure to submit an appeal in a timely manner shall constitute a waiver of the permit review process.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 24:960 (May 1998), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2856 (December 2003), LR 37:

§145. Directional Signs

A. *Directional signs* are those containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or areas naturally suited for outdoor recreation.

B. Standards for Directional Signs

1. The following criteria apply only to directional signs.

a. General. The following signs are prohibited:

i. signs advertising activities which are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those advertised activities;

ii. signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic;

iii. signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;

iv. obsolete signs;

v. signs which are structurally unsafe or in disrepair;

vi. signs which move or have any animated or moving parts;

vii. signs located in rest areas, on park land or in scenic areas.

b. Size. No sign shall exceed the following limits:

i. maximum area—150 square feet;

ii. maximum height—20 feet;

iii. maximum length—20 feet;

iv. All dimensions include border and trim, but exclude supports.

c. Lighting. Signs may be illuminated, subject to the following provisions:

i. signs which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited;

ii. signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited;

iii. no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

d. Spacing

i. Each location of a directional sign must be approved by the department.

ii. No directional sign may be located within 2000 feet of an interchange or intersection at grade along the Interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.)

iii. No directional sign may be located within 2000 feet of a safety rest area, parkland or scenic area.

iv. No two directional signs facing the same direction of travel shall be spaced less than one mile apart.

v. Not more than three directional signs pertaining to the same activity and facing in the same direction of travel may be erected along a single route approaching the activity.

vi. Signs located adjacent to the Interstate system shall be within 75 air miles of the activity.

vii. Signs located adjacent to the primary system shall be within 50 air miles of the activity.

e. Message Content

i. The message on the directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers or exit numbers.

ii. Descriptive words or phrases and pictorial or photographic representations of the activity or its environs are prohibited.

f. Selection Method and Criteria

i. Privately owned activities or attractions eligible for directional signing are limited to the following:

- (a). natural phenomena;
- (b). scenic attractions;
- (c). historic, educational, cultural, scientific and religious sites; and
- (d). outdoor recreational area.

ii. Privately owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public, as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Outdoor Advertising, LR 37:

Subchapter D. Outdoor Advertising Fee Schedule

§148. Issuance of Outdoor Advertising Permits for Grandfathered Nonconforming Signs

A. Applications shall be made by the person who is the owner of the sign which is the subject of the permit.

B. Applicants for a permit shall execute an application form furnished by the department and shall forward the properly and completely executed application form to the appropriate district office of the department. The "appropriate district office" shall be the district office where the sign to be permitted is located.

C. The appropriate permit issuing officer designated by the department shall review all permit applications. Thereafter, permits shall be issued and a copy of the permit shall be sent to the applicant.

D. Copies of all permits shall be transmitted to the district where the sign is located for subsequent surveillance by the district office.

E. The department must be notified in writing by the original permittee upon any change or transfer of ownership of the permit. Such notification shall be by submittal of the sales agreement.

F. An original signature of the landowner or a copy of the current lease agreement shall be submitted with each permit.

G. A grandfathered sign cannot be modified or repaired unless the requirements of Section 137 are met. Prior to repair or modification, district personnel must review the damages and approve the repairs. If the sign is repaired prior to approval by the department's authorized personnel, the sign shall become illegal and the permit shall be revoked. The department shall respond within two weeks of receiving documentation of repairs to be made by the sign owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:461, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 37:

§149. Permit Fee

A. The following permit fee schedule is applicable to new and replacement outdoor advertising signs beginning on the effective date of this rule change:

a. one to 100 square feet—\$75 (per sign face) for a 12 month period until installation. Annual renewal fee after erection is \$7.50 (per sign face).

b. 100 to 301 square feet—\$125 (per sign face) for a 12 month period until installation. Annual renewal fee after erection is 12.50 (per sign face);

c. 301 square feet and up—\$250 (per sign face) for a 12 month period until installation. Annual renewal fee after erection is \$25 (per sign face).

B. Annual Renewal Due Dates and Extensions

1. Annual renewal fees are due by July 1 of each year.

2. A permit shall expire and the sign structure will become illegal if the annual renewal fees are not paid by July 1 of each year. This applies to all permits, including but not limited to legal, nonconforming and grandfathered signs.

3. Extensions may be granted for 30 days provided that a request is made prior to July 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1, et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 12:602 (September 1986), amended by the Department of Transportation and Development, Office of Highways/Engineering, LR 29:2857 (December 2003), LR 37:

Family Impact Statement

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

NOTICE OF INTENT

Department of Transportation and Development

Tourist Oriented Directional Signs
(LAC 70:III.502, 503, 505 and 506)

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Attorney, P.O. Box 94245, Baton Rouge, LA 70804, Telephone (225)242-4659.

Sherryl H. Lebas, PE.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Outdoor Advertising

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs associated with this proposed rule. Implementation of the proposed rule will place the Department in compliance with federal law (23 CFR 750.707(d)(6)(i) and make the existing rules more clear and workable for the department and the outdoor advertising industry.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule has no impact on revenue collections of state or local governmental units.

The portion of the proposed rule modifying the outdoor advertising fee schedule is revenue neutral. The fee modification is as follows: 1-100 square feet - the fee is changing from \$37.50/face for 6 months to \$75.00/face for 12 months; 100-300 square feet - the fee is changing from \$62.50/face for 6 months to \$125.00/face for 12 months; 301 square feet and up - the fee is changing from \$125.00/face for 6 months to \$250.00/face for 12 months. The fee schedule modifications are doubling the time frame of the permits, which should result in a neutral impact upon departmental revenue collections. The department will no longer provide a six month permit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The outdoor advertising industry is most directly affected by this rule change. The proposed rules more clearly detail actions that could cause permit revocation by the department or the need for remediation by the permittee. The fee schedule modifications should be revenue neutral.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment. The proposed rule applies equally to all facets of the outdoor advertising industry.

Eric Kalivoda
Deputy Secretary
1011#061

Robert E. Hosse
Staff Director
Legislative Fiscal Office

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Chapter 5 of Part III of Title 709 entitled "Installation of Tourist Oriented Directional Signs (TODS)", in accordance with R.S. 48:461, et seq.

Title 70

TRANSPORTATION

Part III. Outdoor Advertising

Chapter 5. Installation of Tourist Oriented Directional Signs (TODS)

§502. Definitions

A. Except as defined in this paragraph, the terms used in this rule shall be defined in accordance with the definitions and usage of the Louisiana Manual on Uniform Traffic Control Devices (MUTCD).

Tourist Activities—publicly or privately owned or operated; natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of national beauty or areas naturally suited for outdoor recreation, the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the activity.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:229(March, 1996), amended LR 37:

§503. General Eligibility Requirements

A. ...

B. Types of attractions may include, but will not be limited to the following:

- 1. national historical sites, parks, cemeteries, monuments;
2. state historical sites, parks, monuments; cultural attractions;
3. aquariums, museums, zoos, planetariums, and arboretums;
4. lakes and dams, recreational areas, beaches;
5. Indian sites, historical homes/buildings, gift/souvenir shops;
6. bed and breakfast establishments; and
7. hotels, motels and restaurants only if they are listed on the National Register of Historic Places.

C. - K. ...

L. Sign design. TOD signs will be designated as follows:

- 1. Each sign should have one or two lines of legend. All signs shall have a directional arrow with mileage. The content of the legend shall be limited to the name of the attraction and the directional information. If space exists on the second line, additional directional information may be indicated, e.g., one-fourth, mile on left, left on Second Street, etc. The maximum number of letters and spaces on a

given line will be 18. Legends shall not include promotional advertising.

AUTHORITY NOTE: Promulgated in accordance with R. S. 48:461.2

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:229 (March, 1996), amended LR 37:

§505. Application Procedure

A. Applications for TODS shall be submitted to the LA DOTD Office of the Traffic Services Administrator.

B. Personnel assigned to the Office of DOTD traffic services administrator or their agent will review the application and a field check will be made by the district traffic operations engineer or its agent to verify information provided and to collect additional data on existing conditions, including whether a location for a TODS exists at the requested intersection and what trailblazing will be necessary.

C. Applications shall then be submitted to the DOTD TODS manager or its agent for further review.

D. The DOTD traffic services administrator or its agent shall then forward the application with information to the Assistant Secretary of the Louisiana Office of Tourism.

E. The DOTD outdoor advertising program manager section 45 or its agent will determine if the applicant qualifies as a tourist activity and make a report of its finding to the assistant secretary of the Louisiana Office of Tourism.

F. TODS applications will be accepted on a "first-come" basis.

G. All TODS signs shall be furnished by the businesses at no cost to DOTD or its agent and shall be manufactured in accordance with DOTD Standards or Special Specifications and/or supplements thereto, for both materials and construction. Signs not meeting these requirements shall not be installed.

H. Applicants must submit a layout of professional quality or other satisfactory evidence indicating design of the proposed TODS sign for approval by DOTD or its agent before the sign is fabricated.

I. Applicant must supply all signs within 90 days of approval. Failure to do so may cause DOTD or its agent to void the application.

J. Applicant will be limited to two mainline signs and a minimal number of trailblazer signs, the number deemed necessary to be determined by the department or its agent.

AUTHORITY NOTE: Promulgated in accordance with L.R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:229 March 1996), amended LR 37:

§506. Fees and Agreements

A. The fees and renewal dates shall be established by the department. Notification will be given 30 days prior to changes in fees.

1. The permittee will be invoiced for renewal 30 days prior to the renewal date. The fee shall be remitted by check or money order payable to the Louisiana Department of Transportation and Development or its agent. Failure of a business to submit the renewal fee(s) by the annual renewal date shall be cause for removal and disposal of the TOD signs by the department or its agent. The initial fee shall be prorated by the department to the annual renewal date to cover the period beginning with the month following the

installation of the TOD signs. Service fees will be charged for the removal and reinstallation of delinquent applicants.

2. When requested by the applicant, the department or its agent, at its convenience, may perform additional requested services in connection with changes of the TOD sign, with a service charge per sign. A service fee will be charged for removal and reinstallation of seasonal signs.

3. The department or its agent shall not be responsible for damages to TOD signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc. requiring repair or replacement. In such events the business shall provide a new or renovated business sign together with payment of a service charge fee per sign to the department or its agent to replace such damaged business sign(s).

4. Tourist attractions requesting placement of TOD signs shall submit to the department or its agent a completed application form provided by the department or its agent. A business which would not typically qualify for a sign may be permitted if the business is a building listed on the National Register of Historic Places. However, the name to be placed on the sign shall be determined by the DOTD TODS manager, section 45 or its agent.

5. No TOD sign shall be displayed which, in the opinion of the department, does not conform to department standards, is unsightly, badly faded, or in a substantial state of dilapidation. The department or its agent shall remove or replace any such TOD signs as appropriate. Removal shall be performed upon failure to pay any fee or for violation of any provision of these rules.

6. When a TOD sign is removed, it will be taken to the district office of the district in which the activity is located or to the permitted business. The applicant will be notified of such removal and given 30 days in which to claim the sign or signs, after which time, the sign or signs shall be disposed of by the department or its agent.

7. Should the department or its agent determine that trailblazing to a tourist attraction is warranted, it shall be done with an assembly (or series of assemblies) consisting of trailblazing signs. The attraction will be responsible for having the signs installed on all local roads by the parish or municipality in which the signs are to be located.

8. ...

9. When it comes to the attention of the department or its agent that a participating activity is not in compliance with the minimum criteria, or does not meet the general eligibility requirements, the applicant will be notified that it has a maximum of 30 days to correct any deficiencies or its signs will be removed. If the applicant applies for reinstatement, this request will be handled in the same manner as a request from a new applicant.

10. ...

AUTHORITY NOTE: Promulgated in accordance with L.R.S. 48:461.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 12:1596 (December, 1993), amended LR 22:230 (March 1996), amended LR 37:

Family Impact Statement

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, Department of Transportation and Development, Post Office Box 94245, Baton Rouge, LA 70804-9245, Telephone (225) 242-4659.

Sherryl H. Lebas, P.E.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Tourist Oriented Directional Signs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs associated with this proposed administrative rule. This rule makes technical changes to the existing administrative rule which governs the Tourist Oriented Directional Signs (TODS) Program. The proposed rule allows for buildings placed on the National Register of Historic Places to utilize TODS and makes adjustments in the application process which allows the private contractor to efficiently administer the program. Due to the current contractor collecting all fees and administering this program, DOTD will not incur any expenditure costs associated with the program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no effect on non-governmental groups as a result of this rule change. There were no fees charged to participate in the program prior to the program being privatized. The department was absorbing the cost to install and maintain the TODS. To the extent that the private contractor continues administering the program, permittees should continue to receive the attention and advertising benefits of the TODS program because the proposed rules do not provide for the private contractor to charge a fee for these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment. The proposed rule applies equally to all permittees.

Eric Kalivoda
Deputy Secretary
1011#060

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Assignment of HINs to Undocumented Vessels
Manufactured in Louisiana (LAC 76:XI.309)

The Wildlife and Fisheries Commission does hereby give notice of intent to enact rules governing the assignment of hull identification numbers to undocumented vessels manufactured in Louisiana that do not qualify for hull identification number assignment by the United States Coast Guard.

Title 76

WILDLIFE AND FISHERIES

Part XI. Boating

Chapter 3. Boating Safety

§309. Assignment of Hull Identification Numbers to Undocumented Vessels Manufactured in Louisiana

A. The following regulations shall provide for the assignment of hull identification numbers (HIN) to undocumented vessels manufactured in this state that do not qualify for the assignment of such numbers by the United States Coast Guard.

B. The manufacturer(s) of such vessels shall submit an Application for Eligibility requesting approval from the department. The manufacturer must be capable of producing a minimum of 10 vessels annually and must provide proof of security in one of the following forms to be eligible to receive the HIN's:

1. pre-payment of a minimum of one block of 10 HIN numbers, or

2. bond, letter of credit, or other security, in an amount and form acceptable to the secretary, determined on a case by case basis.

C. Upon receipt of an application for eligibility from a manufacturer, an agent from the enforcement division shall conduct an initial inspection of the manufacturer's vessel fabrication location.

D. Upon favorable inspection, the manufacturer(s) shall be approved to receive HIN's issued in blocks of 10 individual HINs upon the manufacturer's request. The department shall charge a fee of \$25 per issued HIN.

E. Manufacturer(s) receiving department-issued HIN, as described in this Section, shall comply with the following procedures.

1. The HIN must be stamped on the vessel before it leaves the manufacturer's facility.

2. The manufacturer(s) must produce a manufacturer statement of origin (MSO) as described in R.S. 34:852.11.

The manufacturer shall provide the purchaser and/or transferee with the original MSO.

3. Manufacturer(s) must maintain records of all vessels stamped with HIN from the block of numbers issued to the manufacturer by the department. These records must include the date the vessel was stamped, vessel make, principle vessel hull material, vessel length, vessel type, HIN stamped on vessel, date vessel was sold or ownership transferred, and name and address of the transferee. These records shall be kept in the form of a log book issued by the department. The log book shall be returned to the department upon completion. Manufacturers must maintain a copy of the log book for three years.

F. Agents from the enforcement division may inspect the manufacturer(s)' facility, records, and/or vessels to verify that the manufacturer is maintaining compliance with the stated procedures.

G. Violation of this section shall be fined not less than \$500; but no more than \$1000, or imprisoned for not more than 30 days, or both, for each violation as provided in R.S. 34:852.22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:852.13.B.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR:37

The Secretary of the Department of Wildlife is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public Comments

Interested persons may submit comments relative to the proposed Rule to Lt. Col. Jeff Mayne, Department of Wildlife and Fisheries, Wildlife Division, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, January 6, 2011.

Stephen J. Oats
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Assignment of HINs to Undocumented
Vessels Manufactured in Louisiana**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No implementation costs or savings to state or local governmental units are anticipated. Implementation of the proposed rule will be carried out using existing staff and funding level.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no effect on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Boat manufacturers whose vessels do not qualify for the assignment of hull identification numbers (HINs) by the U.S. Coast Guard, but qualify for such numbers from the Louisiana Department of Wildlife and Fisheries under the guidelines of the proposed rule will directly benefit. They will be able to receive blocks of 10 hull identification numbers upon request from the department to stamp on the vessels they build. This is anticipated to streamline the process for qualifying manufacturers to obtain HINs. State law requires that a vessel have a HIN before it can be registered or receive a certificate of title from the department.

The proposed rule will require additional paperwork for qualifying boat manufacturers, since they will be required to maintain records for a period of three years on all vessels with a HIN issued by the department. The records will be kept in the form of a log book provided by the department and must be returned to the department when complete. No additional costs will result from the proposed action, since the current charge to have a vessel inspected for HIN (\$25) is the same as the cost per HIN issued under this rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule is anticipated to have no effect on competition or employment in the public or private sectors.

Lois Azzarello
Undersecretary
1011#034

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Health and Hospitals Board of Veterinary Medicine

Board Meeting Dates

The Members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2011:

Thursday, February 3, 2011
Thursday, April 7, 2011
Thursday, June 2, 2011 (Annual Meeting)
Thursday, August 4, 2011
Thursday, October 6, 2011
Thursday, December 1, 2011

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at admin@lsbvm.org to verify actual meeting dates.

Wendy D. Parrish
Executive Director

1011#042

POTPOURRI

Department of Health and Hospitals Bureau of Health Services Financing

Ambulatory Surgical Centers Minimum Licensing Standards

The Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent for Ambulatory Surgical Centers in the October 20, 2010 edition of the *Louisiana Register* (Volume 36, Number 10). This Notice of Intent was published with an incorrect Public Hearing date. The Public Hearing for the Ambulatory Surgical Centers—Minimum Licensing Standards Notice of Intent will be held on Wednesday, November 24, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA.

Bruce D. Greenstein
Secretary

1011#107

POTPOURRI

Department of Health and Hospitals Bureau of Health Services Financing

CommunityCARE Program Primary Care Provider Referral Exemptions

The Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent for the CommunityCARE Program in the October 20, 2010 edition of the *Louisiana Register* (Volume 36, Number 10). This Notice of Intent was published with an incorrect Public Hearing date. The Public Hearing for the CommunityCARE Program—Primary Care Provider Referral Exemptions Notice of Intent will be held on Wednesday, November 24, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA.

Bruce D. Greenstein
Secretary

1011#114

POTPOURRI

Department of Health and Hospitals Bureau of Health Services Financing

Estate Recovery

The Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent for Estate Recovery in the October 20, 2010 edition of the *Louisiana Register* (Volume 36, Number 10). This Notice of Intent was published with an incorrect Public Hearing date. The Public Hearing for the Estate Recovery Notice of Intent will be held on Wednesday, November 24, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA.

Bruce D. Greenstein
Secretary

1011#115

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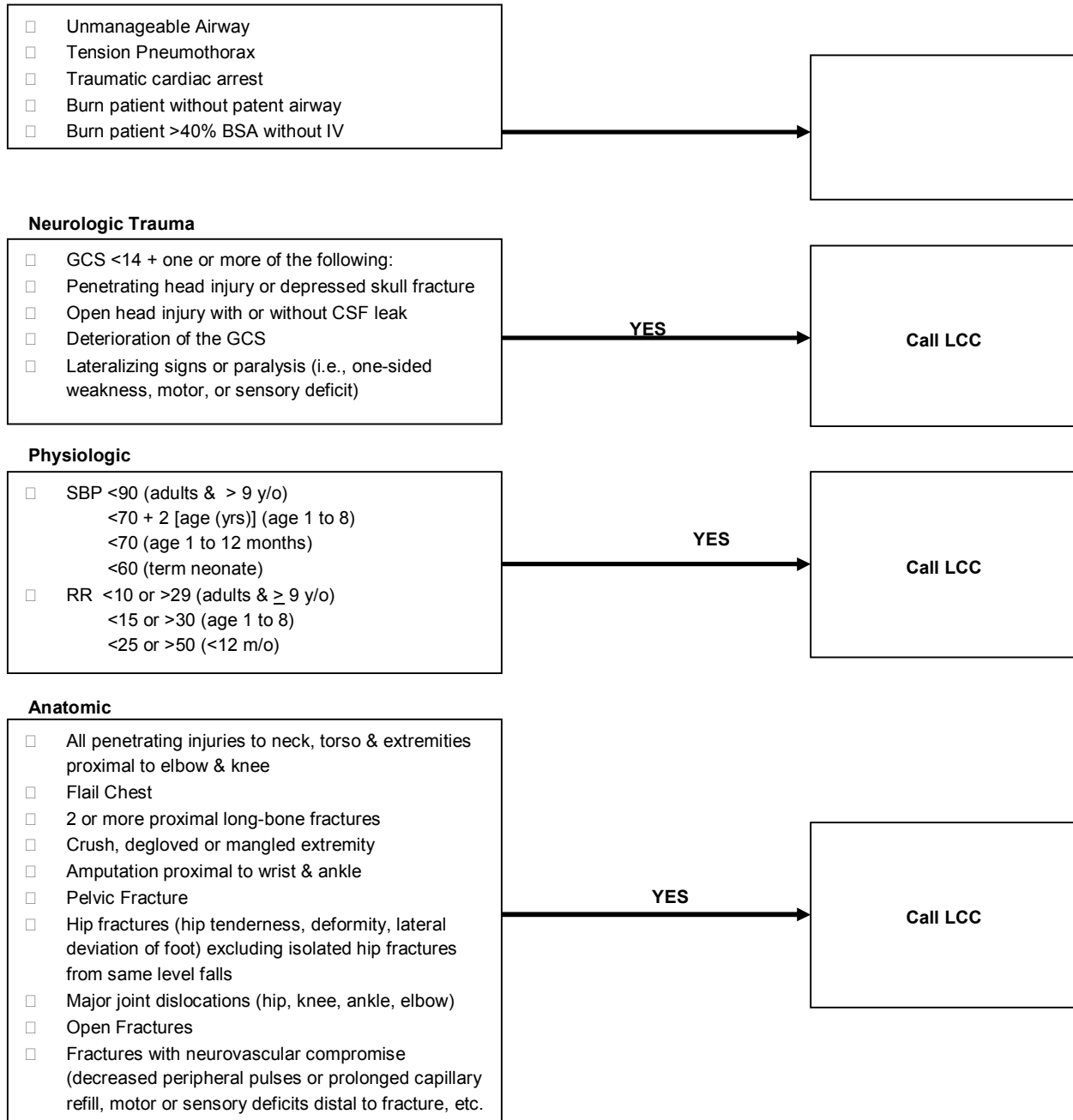
Department of Health and Hospitals Emergency Response Network Board

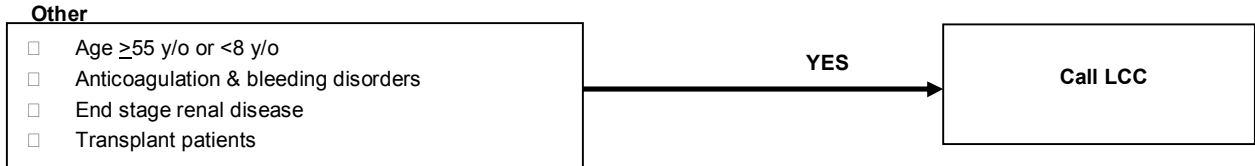
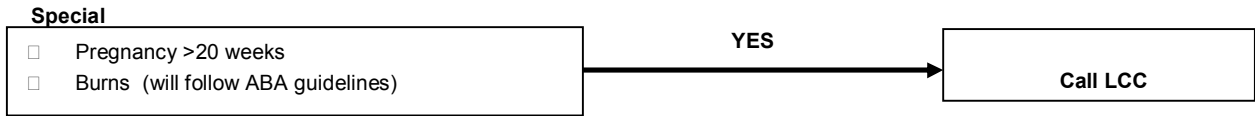
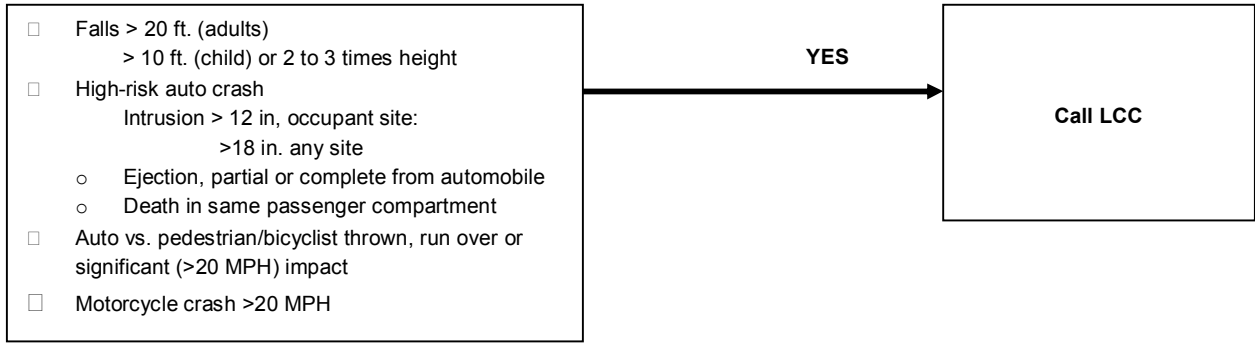
Standard LERN Entry and Destination Criteria

On October 21, 2010, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] revised, adopted and

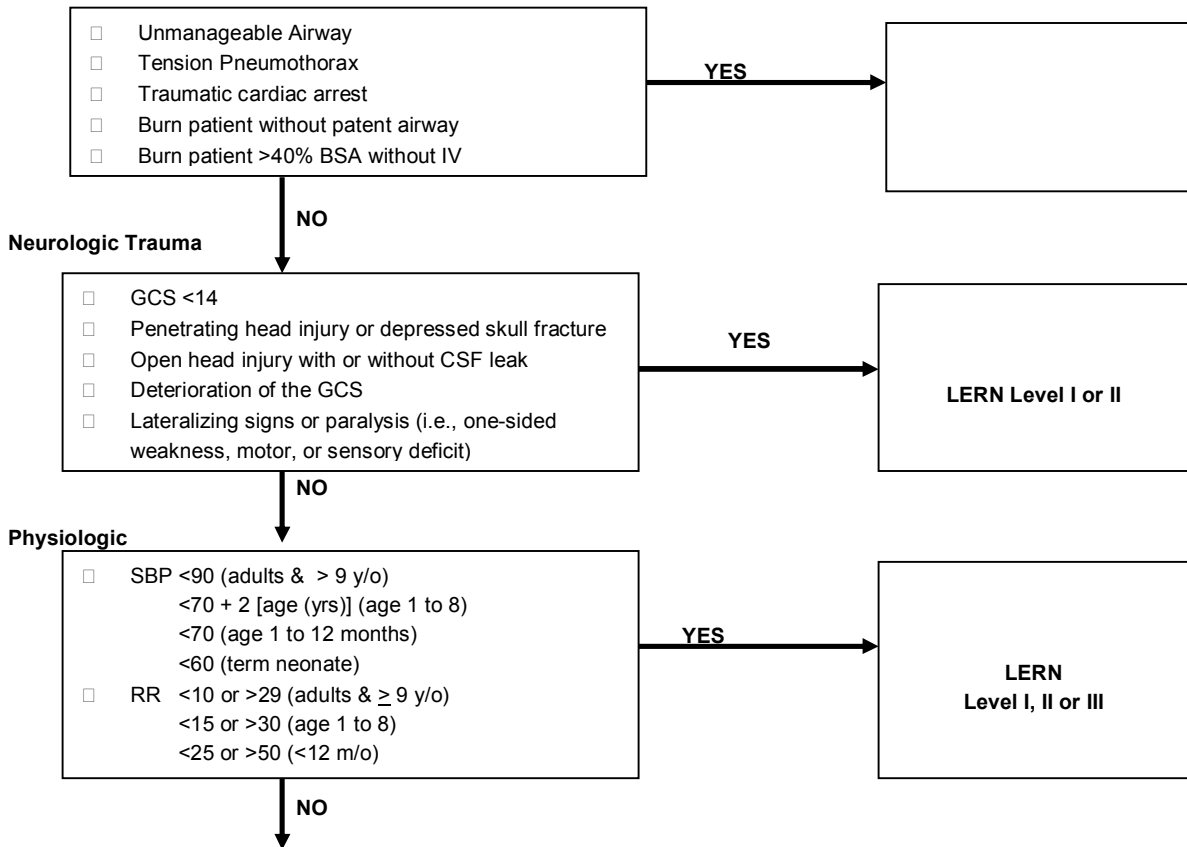
promulgated “Standard LERN Entry Criteria” and “Standard Destination Protocol” for use in all Regions, except Region 7, of the Louisiana Emergency Response Network [R.S. 40:2842(3)], replacing the “LERN Entry Criteria” and “LERN Region 4 LCC Destination Protocol,” adopted and promulgated June 18, 2009, as follows.

STANDARD LERN ENTRY CRITERIA Pre-Hospital & Hospital Triage Protocol





STANDARD DESTINATION PROTOCOL



Anatomic

- All penetrating injuries to neck, torso & extremities proximal to elbow & knee
- Flail Chest
- 2 or more proximal long-bone fractures
- Crush, degloved or mangled extremity
- Amputation proximal to wrist & ankle
- Pelvic Fracture
- Hip fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls
- Major joint dislocations (hip, knee, ankle, elbow)
- Open Fractures
- Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)

YES

**LERN
Level I, II or III**

Mechanism

NO

- Falls > 20 ft. (adults)
> 10 ft. (child) or 2 to 3 times height
- High-risk auto crash
 - Intrusion > 12 in, occupant site:
> 18 in. any site
 - Ejection, partial or complete from automobile
 - Death in same passenger compartment
- Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact
- Motorcycle crash >20 MPH

YES

**LERN
Level II or III**

Special

NO

- Pregnancy >20 weeks
- Burns (will follow ABA guidelines)

YES

**LERN
Level II or III**

NO

Other

- Age ≥ 55 y/o or <8 y/o
- Anticoagulation & bleeding disorders
- End stage renal disease
- Transplant patients

YES

**LERN
Level II, III or IV**

Coletta Barrett, RN, MHA
Chair

POTPOURRI

Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
R L Kelly, Sr.	Edgerly	L	Vua; Koonce U2	002	59079
Goldking Production Co.	Port Allen	L	Lefebvre	001	149696 (30)
Trendsetter Production Co, Inc	Big Creek	M	Parker	001	175437
Unknown	Blue Lake	S	Sabine Lumber Co	001	990466
Dalnor Corporation	Caddo Pine Island	S	Brown-Holt	002	110720
Dalnor Corporation	Caddo Pine Island	S	Brown-Holt	001	110721
Dalnor Corporation	Caddo Pine Island	S	Brown-Holt	003	156521
Dalnor Corporation	Caddo Pine Island	S	Brown-Holt	004	156522
Dalnor Corporation	Caddo Pine Island	S	J Barlow	001	156762
Dalnor Corporation	Caddo Pine Island	S	J Barlow	002	156763
Dalnor Corporation	Caddo Pine Island	S	J Barlow	003	156764
Dalnor Corporation	Caddo Pine Island	S	J Barlow	004	156765
Dalnor Corporation	Caddo Pine Island	S	Cecil Barlow	001	157648
Dalnor Corporation	Caddo Pine Island	S	Cecil Barlow	002	157649
Dalnor Corporation	Caddo Pine Island	S	Cecil Barlow	004	157651
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	001	65407
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	005	65884
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	003	66145
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	004	66146
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	006	67996

Operator	Field	District	Well Name	Well Number	Serial Number
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	008	68839
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	010	70804
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	011	71102
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	013	72444
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	012	72445
Dalnor Corporation	Greenwood -Waskom	S	Soniat Et Al	002	105874
Dalnor Corporation	Greenwood -Waskom	S	Abney	001	106514
Dalnor Corporation	Greenwood -Waskom	S	Abney	002	107090
Dalnor Corporation	Greenwood -Waskom	S	Abney	003	107091
Dalnor Corporation	Greenwood -Waskom	S	Abney Swd	004	107092
Dalnor Corporation	Greenwood -Waskom	S	Soniat Et Al	009	108334
Dalnor Corporation	Greenwood -Waskom	S	Soniat Et Al	007	109190
Dalnor Corporation	Greenwood -Waskom	S	Abney-Kirkpatrick Swd	A-2	109644
Dalnor Corporation	Greenwood -Waskom	S	Abney-Kirkpatrick	A-1	109645
Dalnor Corporation	Greenwood -Waskom	S	Abney-Kirkpatrick	A-4	109760
Dalnor Corporation	Greenwood -Waskom	S	Abney-Kirkpatrick	A-3	109761
Dalnor Corporation	Greenwood -Waskom	S	Abney-Kirkpatrick	A-5	109762
Dalnor Corporation	Greenwood -Waskom	S	Soniat Et Al	008	110592
Dalnor Corporation	Greenwood -Waskom	S	Soniat Et Al	011	111652
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	001	166100
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	002	166101
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	003	166102
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	004	166103
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	006	166449
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	007	166450
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	009	166452

Operator	Field	District	Well Name	Well Number	Serial Number
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	022	168020
Dalnor Corporation	Greenwood -Waskom	S	Brown	001	171448
Dalnor Corporation	Greenwood -Waskom	S	Pxy Sua;Brown	001-D	172458
Dalnor Corporation	Greenwood -Waskom	S	Soniat Et Al	001	179390
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	A-1	199876
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	015	208636
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	014	208637
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	016	208882
Dalnor Corporation	Greenwood -Waskom	S	Fred Wappler P	017	208917
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	005	215591
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	010	236914
Dalnor Corporation	Greenwood -Waskom	S	Nettie Soniat	012	236916
Greenwood-Waskom	S	Soniat Et Al Swd	011	971645	971645

James H. Welsh
Commissioner

1011#039

POTPOURRI
Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates—October

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 6 claims in the amount of \$24,770.47 were received for payment during the period October 1, 2010-October 31, 2010

There were 6 paid and 0 denied.
Latitude/Longitude Coordinates of reported underwater obstructions are:

2917.522	8958.843	Jefferson
2922.097	9017.533	Lafourche
2928.714	8958.744	Jefferson
2932.608	8954.565	Plaquemines
2950.530	8941.467	St. Bernard
3003.390	8939.417	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Robert D. Harper
Secretary

1011#036

POTPOURRI
Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates—September

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 8 claims in the amount of \$25,054.90 were received for payment during the period September 1, 2010-September 30, 2010

There were 8 paid and 0 denied.
Latitude/Longitude Coordinates of reported underwater obstructions are:

2903.290	9038.564	Terrebonne
2903.486	9039.345	Terrebonne
2916.058	9006.273	Lafourche
2932.146	8950.913	Plaquemines
2947.938	8938.082	St. Bernard
2952.550	9320.745	Cameron
2967.758	8950.708	St. Bernard
3006.855	8929.223	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Robert D. Harper
Secretary

1011#028

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