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# Executive Orders

## EXECUTIVE ORDER BJ 11-21

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

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

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

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

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

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Department of Transportation and Development, the Department of Public Safety, and the Department of Revenue shall waive the following statutory requirements for the shipment of hay:

A. The following sizes and weights for vehicles transporting hay on highways maintained by the State of Louisiana shall not exceed the following limitations without permits:

1. All such vehicles transporting round hay bales to be loaded side by side across trailers creating dimensions that shall not exceed twelve (12) feet in width and shall not exceed fourteen (14) feet in height.

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

C. The following requirements shall remain in effect:

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

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

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

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

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

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

SECTION 3. This Order is effective upon signature and shall terminate on December 31, 2011 unless amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of September, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1110#083

## EXECUTIVE ORDER BJ 11-22

Flags at Half Staff

WHEREAS, Former New Orleans Archbishop Philip M. Hannan, who served more than two decades as the head of the New Orleans Roman Catholic Archdiocese, passed away on Thursday, September 29, 2011 at the age of 98; and

WHEREAS, Archbishop Hannan served as the 11th Archbishop of New Orleans, from 1965 to 1989, and upon retiring as archbishop at age 75, he became president of WLAETV, the public television station he founded; and

WHEREAS, Archbishop Hannan was a Chaplain for the 82nd Airborne, where he earned the nickname "The Jumping Padre." He risked his life to minister to wounded soldiers; and

WHEREAS, Archbishop Hannan helped comfort the people of Louisiana as they recovered from numerous storms. He served as a voice for those that were less fortunate.

WHEREAS, Archbishop Hannan was a servant of the people and his service to the New Orleans community and the State make it appropriate and fitting for the State of Louisiana to remember him, to mark his passing, and to honor his memory;

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: As an expression of respect for Archbishop Phillip Hannan, effective immediately, the flags of the United States and the State of Louisiana shall be

flown at half staff over the State Capitol and all public building and institutions of the State of Louisiana sunrise to sunset on Thursday, October 6, 2011.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Thursday, October 6, 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 3rd day of October, 2011.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1110#084

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Bulk Pesticide Facilities (LAC 7:XXIII.103, 157 and 158)

In accordance with the Administrative Procedure Act R.S. 49:953 and R.S. 3:3202(A), the commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in implementing the following rules and regulations governing bulk facilities, pesticide containers, filling and refilling of pesticide containers and containment structures and pads.

The U.S. Environmental Protection Agency (EPA) promulgated rules dealing with containment and containers. EPA put the new rules in place to regulate pesticide containers and the filling and refilling of those containers. The Louisiana Department of Agriculture and Forestry (LDAF) Advisory Commission on Pesticides had rules and regulations governing bulk handling of pesticides. In an effort to bring the LDAF rules in compliance with the EPA rules, the LDAF is proposing to amend its rules and regulations.

The EPA has imposed a deadline for adoption for July 1, 2011. Therefore, the commissioner of Agriculture and Forestry has determined that adoption and implementation of these rules by Emergency Rule is necessary to allow the agricultural bulk facilities to continue to provide agricultural pesticides in bulk containers to Louisiana producers of food and fiber. Failure to implement this Emergency Rule will prevent the use of agricultural pesticides in bulk in this state thereby creating an imminent peril to the health, safety, and welfare of the citizens of this state.

An insufficient amount of time was available to make these changes via standard rulemaking prior to July 1, 2011. Therefore, these rules were promulgated in the July 20, 2011 *Louisiana Register*. That Rule expires on October 22, 2011. This Emergency Rule is being reissued to become effective upon signature and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticides

#### Chapter 1. Advisory Commission on Pesticides

#### Subchapter B. Definitions

#### §103. Definitions

*Agricultural Pesticide*—any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

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*Bulk Facilities*—any person, except registrants, who engage in the activity of repackaging any agricultural pesticide product, except manufacturing use products and plant-incorporated protectants into refillable and non-refillable containers. This includes certified commercial applicators and licensed owner-operators dispensing agricultural pesticides from a stationary container.

*Commission*—the Advisory Commission on Pesticides.

*Containment Pad*—a containment structure that meets the design, construction materials and capacity requirements of 750 gallons or 100 percent of the capacity of the largest container/equipment used on the pad (whichever is less), for new and existing containment structures and accommodates pesticide spills or leaks in dispensing areas at bulk facilities.

*Containment Structure or Structure*—new and existing structures, at bulk facilities, that meets the design, construction materials and capacity requirements to contain spills or leaks from stationary pesticide containers or pesticide dispensing activities.

1. An existing containment structure is a structure for which installation began on or before July 1, 2011.

2. A new containment structure is a structure for which installation began after July 1, 2011 if certain conditions regarding permits, construction and contracts are met.

\*\*\*

*Rinsate*—the liquid produced from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

*Secondary Containment Structure* (for the purposes of Subpart J)—a structure, including rigid diking, that is designed and constructed to intercept and contain agricultural pesticide spills and leaks and to prevent runoff and leaching from stationary agricultural pesticide containers. These are described as new or existing with the required capacities in the following:

1. new containment structures, un-protected from precipitation, 110 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within the containment area; or

2. existing structures, un-protected from precipitation, 100 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within the containment area; or

3. new or existing structures, protected from precipitation, 100 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within a containment area.

*Stationary Pesticide Container*—a refillable container that is fixed at a single bulk facility or, if not fixed, remains at the bulk facility for at least 30 consecutive days, and that holds pesticide during the entire time. Stationary pesticide containers are subject to the regulations if they are designed to hold undivided quantities of pesticides equal to or greater than 500 gallons for liquids or 4000 pounds for dry pesticides.

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

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

Sciences, Advisory Commission on Pesticides, LR 35:626 (April 2009), LR 37:

## **Subchapter J. Pesticide Containers and Bulk Facilities**

### **§157. Pesticide Containers**

#### **A. Storage Areas for Full or Partially Full Pesticide Containers**

1. Pesticide containers shall be stored in a secure enclosure.

2. Pesticide containers shall be free of leaks.

3. The storage area shall be maintained in good condition, without unnecessary debris.

B. Pesticide containers shall be cleaned and disposed of according to the product label.

C. Pesticide containers, ready for disposal, shall be stored in a secured area and shall be kept for no more than 90 days after the end of the product spraying season or 180 days if held for recycling.

D. Rinsate from pesticide container cleaning shall be used in the following manner:

1. in subsequent applications of the pesticide; or

2. placed in a rinsate collection system dedicated to that pesticide and used according to the label and labeling by the end of that applicable pesticide's spray season; or

3. disposed in a permitted waste facility.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

### **§158. Bulk Facilities**

#### **A. Bulk facilities:**

1. shall be registered with LDAH as a bulk facility and EPA as a producing establishment;

2. shall have a written contract/agreement from each pesticide's registrant prior to repackaging a pesticide. The contract/agreement for each registrant's product shall include but not be limited to the following:

a. the label and labeling; and

b. the residue removal procedure; and

c. a description of acceptable containers;

3. shall not change the pesticide formulation without an EPA registration for a new pesticide formulation;

4. shall repackage the pesticide into containers that:

a. are identified as acceptable by the registrant; and

b. meet the specified criteria with respect to continued container integrity, required markings and openings;

5. shall be responsible for:

a. the integrity of pesticides repackaged into containers; and

b. securely attaching the label containing the net contents and EPA establishment number to the container;

6. can repackage any quantity of pesticide into containers, up to the rated capacity of the container. There are no limits on the size of the containers;

7. shall clean a refillable container, according to the residue removal procedure, if one or more of the following occur:

a. each tamper-evident device is not intact; or

b. one-way valve (if equipped) is not intact; or

c. the container previously held a pesticide product other than the pesticide product being refilled;

8. shall not refill a refillable container with an agricultural pesticide if it fails an inspection or is compromised in at least one of the following ways:

a. the container shows signs of rupture or other damage which reduces its structural integrity; or

b. the container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects; or

c. the container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation; or

d. there is damage to the fittings, valves, tamper-evident devices or other appurtenances; or

e. the integrity of the container cannot be repaired, reconditioned or remanufactured; or

f. the container does not bear a legible and durably marked serial number or other identifying code; or

g. the container does not have an intact and functioning one-way valve, if required or tamper-evident device on each opening other than a vent;

9. shall keep and maintain for three years the following records:

a. the registrant-bulk facility written contract/agreement; and

b. the residue removal procedure; and

c. the description of acceptable containers; and

d. for each time a refillable container is refilled with an agricultural pesticide:

i. the EPA registration number of the pesticide product; and

ii. the date of repackaging; and

iii. the serial number or other identifying code of the container;

e. for containment structures:

i. inspection date; and

ii. name of person conducting inspection or maintenance; and

iii. conditions noted and specific maintenance performed; and

f. records of how long non-stationary tanks (with the specified capacities) remain at the facility; and

g. construction date of the structure (for as long as the structure is in use and for 3 years afterwards);

10. shall have secondary containment structures for stationary pesticide containers except for the following:

a. empty containers; or

b. containers holding only rinsate or wash water and so labeled; or

c. containers holding pesticides which are gaseous at atmospheric temperature and pressure; or

d. containers dedicated to non-pesticide use and so labeled;

11. shall have containment pads for dispensing areas if:

a. refillable containers of agricultural pesticide are emptied, cleaned or rinsed; or

b. agricultural pesticides are dispensed from any stationary container; or

c. agricultural pesticides are dispensed from a transport vehicle into a refillable container; or

d. agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container or filling a non-refillable container for sale or distribution;

12. containment structures shall:

a. be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head and load of any substances, equipment and appurtenances placed on the structure; and

b. be compatible with the pesticides stored; and

c. be liquid-tight with cracks, seams and joints sealed; and

d. not be constructed of natural earthen material, unfired clay and asphalt;

13. shall protect appurtenances and containers against damage from personnel and moving equipment;

14. shall seal appurtenances, discharge outlets or drains through the base or wall of existing containment structures, except direct connections between containment structures;

15. shall not configure appurtenances, discharge outlets or drains through the base or wall of new containment structures, except direct connections between containment structures;

16. shall control stormwater in all containment structures by constructing with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto them from adjacent land or structures;

17. shall have the following for new and existing secondary containment:

a. liquid pesticide stationary containers shall be anchored or elevated to prevent flotation;

b. dry pesticide stationary containers shall:

i. be protected from wind and precipitation; and

ii. be on pallets or raised concrete; and have a floor that extends completely beneath the pallets or raised concrete platforms; and

iii. be enclosed by a curb a minimum of 6 inches high that extends at least two feet beyond the perimeter of the container;

18. shall have the following for containment pads:

a. for existing pads:

i. intercept leaks and spills; and

ii. have enough surface area to extend under containers on it; and

iii. accommodate at least the portion of the vehicle where the hose or device couples to it, for transport vehicles delivering pesticide; and

iv. allow for removal/recovery of spilled, leaked or discharged material and rainfall; and

v. have no automatic pumps without overflow cutoffs;

b. for new pads be designed and constructed to:

i. intercept leaks and spills; and

ii. have enough surface area to extend under containers on it; and

iii. accommodate at least the portion of the vehicle where the hose or device couples to it, for transport vehicles delivering pesticide; and

iv. allow for removal/recovery of spilled, leaked or discharged material and rainfall; and

v. have no automatic pumps without overflow cutoffs; and

vi. have their surface sloped toward an area where liquids can be collected for removal;

19. shall:

a. prevent pesticides from escaping the structure;

b. manage spilled and leaked materials no later than the end of the day of occurrence except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment and according to the label and all regulations;

c. ensure that transfers of pesticides are attended;

d. lock valves on stationary pesticide containers or lock the facility, whenever the facility is unattended;

e. initiate repair to any areas showing damage and seal cracks and gaps no later than the end of the day on which damage is noticed and complete repairs within a reasonable time frame, taking into account factors such as the weather, and the availability of cleanup materials, trained staff and equipment. Additional pesticides cannot be stored until repairs have been made; and equip stationary containers with suitable sample points for official samples.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Mike Strain, DVM  
Commissioner

1110#038

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Division of Programs

Emergency Preparedness and Evacuation Planning  
(LAC 67:III.7312, 7327, 7328, 7365, 7373, 7378)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67: III, Subpart 21, Chapter 73 Day Care Centers, Subchapter A, Licensing Class "A" Regulations for Child Care Centers and Subchapter B, Licensing Class "B" Regulations for Child Care Centers. This Emergency Rule shall be adopted upon the DCFS secretary's signature, October 6, 2011, and is effective on December 1, 2011. This Emergency Rule shall remain in effect for a period of 120 days.

In order to protect children in child care facilities licensed by DCFS, Section 7328 is being added to Chapter 73, Subchapter A, and Section 7378 to Subchapter B as emergency preparedness and evacuation planning regulations. These regulations will provide specific standards for written multi-hazard plans for child care providers which include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. Sections 7312, 7327, 7365, and 7373, are being amended to



remove references to emergency procedures as they will be addressed in the above added Sections.

Emergency action is necessary to prevent a threat to the health, safety, and welfare of children in licensed care in the event of any emergency. A lack of specific standards concerning written emergency procedures could allow facilities to go without establishing and following a written emergency and evacuation plan. This could pose a substantial risk should a disaster or attack occur while children are in licensed out of home care.

#### **Title 67**

### **SOCIAL SERVICES**

## **Part III. Economic Stability and Self-Sufficiency**

### **Subpart 21. Child Care Licensing**

#### **Chapter 73. Day Care Centers**

#### **Subchapter A. Licensing Class "A" Regulations for Child Care Centers**

#### **§7312. Staff Development and Training**

A. - E.7. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1114 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2763 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

#### **§7327. Safety Requirements**

A. - N. ...

O. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1119 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2767 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

#### **§7328. Emergency Preparedness and Evacuation Planning**

A. The director, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of an emergency. The plan shall include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. The plan shall be appropriate for the area in which the center is located and address any potential disaster due to that particular location. The plan shall be reviewed with all staff at least twice per calendar year. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed. At a minimum, the plan shall be reviewed annually by the director for accuracy and updated as changes occur. Documentation of review by the director shall consist of the

director's signature and date. The plan shall also include information regarding handling children with special needs enrolled in the child care center as well as instructions for infants through children age two. The plan shall specifically address the evacuation and transportation of children in wheelchairs. The plan shall include but shall not be limited to a system to account for all children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site. The plan shall include a system and backup system to contact parents or authorized third party release caretakers of children notifying them of the emergency situation (how and when parents will be notified). The plan shall include a system to reunify children and parents following an emergency. Parents shall be informed of the details of this emergency plan prior to an emergency event.

B. The multi-hazard emergency and evacuation plan shall include lock down procedures for situations that may result in harm to persons inside the child care center, including but not limited to a shooting, hostage incident, intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the director, or public safety personnel. The director shall announce the "lock down" over the public address system or other designated system. The alert may be made using a pre-selected code word. In a "lock down" situation, all children shall be kept in classrooms or other designated safe locations that are away from the danger. Staff members shall account for children and ensure that no one leaves the classroom/safe area. Staff shall secure center entrances and ensure that no unauthorized individual leaves or enters the center.

1. Staff and children shall remain in the classroom/safe area, locking the classroom door, turning off the lights, and covering the windows. Staff shall encourage children to get under tables, behind cabinets, etc., and, if possible, engage in quiet story time activities with the children until "all clear" is announced.

2. Parent or authorized representative shall be notified no later than at the time of pick-up at the child's release of a "lock down" situation at the center on the date of the occurrence.

C. An individualized emergency plan (including medical contact information and additional supplies/equipment needed) shall be in place for each child with special needs.

D. If evacuation of the center is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

1. list of area emergency phone numbers;
2. list of emergency contact information and emergency medical authorization for all children enrolled;
3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parent(s);
4. first aid kit;
5. hand sanitizer;
6. wet wipes;
7. tissue;
8. diapers if children enrolled who are not yet potty trained;
9. plastic bags;
10. battery powered flashlight;
11. battery powered radio;

12. batteries;
13. food for all ages of children enrolled, including infant food and formula;
14. disposable cups; and
15. bottled water.

E. Provider shall maintain a copy of all records, documents, and computer files necessary for the continued operation of the center following an emergency in a portable file and/or offsite location.

F. If the center is located within a ten-mile radius of a nuclear power plant or research center, the center shall also have plans for nuclear evacuation.

G.1 Fire drills shall be conducted at least once per month. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. amount of time to evacuate the center;
- d. problems noted during drill and corrections noted; and
- e. signatures (not initials) of staff present.

2. The Licensing Section recommends that at least one fire drill every six months be held at rest time.

H.1 Tornado drills shall be conducted at least once per month in the months of March, April, May, and June. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. problems noted during drill and corrections noted; and
- d. signatures (not initials) of staff present.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

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

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

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

### **§7365. Center Staff**

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

### **§7373. Physical Plant and Equipment**

A. - B.9. ...

C. Safety Regulations

1. Drugs, poisons, harmful chemicals, all products labeled "Keep out of the reach of children," equipment and

tools shall be locked away from the children. Whether a cabinet or an entire room, the storage area must be locked.

2. Refrigerated medications shall be in a secure container to prevent access by children and avoid contamination of food.

3. Secure railings shall be provided for:

- a. flights of more than three steps;
- b. porches more than three feet from the ground.

4. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

5. Accordion gates are prohibited.

6. First aid supplies shall be available at the day care center. (Suggestions for first aid supplies may be obtained from the Red Cross.)

7. The center and yard must be clean and free from hazards.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1641 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2776 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

### **§7378. Emergency Preparedness and Evacuation Planning**

A. The director, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of an emergency. The plan shall include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. The plan shall be appropriate for the area in which the center is located and address any potential disaster due to that particular location. The plan shall be reviewed with all staff at least twice per calendar year. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed. At a minimum, the plan shall be reviewed annually by the director for accuracy and updated as changes occur. Documentation of review by the director shall consist of the director's signature and date. The plan shall also include information regarding handling children with special needs enrolled in the child care center as well as instructions for infants through children age two. The plan shall specifically address the evacuation and transportation of children in wheelchairs. The plan shall include but shall not be limited to a system to account for all children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site. The plan shall include a system and backup system to contact parents or authorized third party release caretakers of children notifying them of the emergency situation (how and when parents will be notified). The plan shall include a system to reunify children and parents following an emergency. Parents shall be informed of the details of this emergency plan prior to an emergency event.

B. The multi-hazard emergency and evacuation plan shall include lock down procedures for situations that may result in harm to persons inside the child care center, including but not limited to a shooting, hostage incident,

intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the director, or public safety personnel. The director shall announce the "lock down" over the public address system or other designated system. The alert may be made using a pre-selected code word. In a "lock down" situation, all children shall be kept in classrooms or other designated safe locations that are away from the danger. Staff members shall account for children and ensure that no one leaves the classroom/safe area. Staff shall secure center entrances and ensure that no unauthorized individual leaves or enters the center.

1. Staff and children shall remain in the classroom/safe area, locking the classroom door, turning off the lights, and covering the windows. Staff shall encourage children to get under tables, behind cabinets, etc., and, if possible, engage in quiet story time activities with the children until "all clear" is announced.

2. Parent or authorized representative shall be notified no later than at the time of pick-up at the child's release of a "lock down" situation at the center on the date of the occurrence.

C. An individualized emergency plan (including medical contact information and additional supplies/equipment needed) shall be in place for each child with special needs.

D. If evacuation of the center is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

1. list of area emergency phone numbers;
2. list of emergency contact information and emergency medical authorization for all children enrolled;
3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parent(s);
4. first aid kit;
5. hand sanitizer;
6. wet wipes;
7. tissue;
8. diapers if children enrolled who are not yet potty trained;
9. plastic bags;
10. battery powered flashlight;
11. battery powered radio;
12. batteries;
13. food for all ages of children enrolled, including infant food and formula;
14. disposable cups; and
15. bottled water.

E. Provider shall maintain a copy of all records, documents, and computer files necessary for the continued operation of the center following an emergency in a portable file and/or offsite location.

F. If the center is located within a ten-mile radius of a nuclear power plant or research center, the center shall also have plans for nuclear evacuation.

G.1. Fire drills shall be conducted at least once per month. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. amount of time to evacuate the center;
- d. problems noted during drill and corrections noted; and
- e. signatures (not initials) of staff present.

2. The licensing section recommends that at least one fire drill every six months be held at rest time.

H.1. Tornado drills shall be conducted at least once per month in the months of March, April, May, and June. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. problems noted during drill and corrections noted; and
- d. signatures (not initials) of staff present.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

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

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

Ruth Johnson  
Secretary

1110#013

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Division of Programs

Guardianship Subsidy Program (LAC 67:V.Chapter 41)

The Department of Children and Family Services, Division of Programs has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to adopt the following Rule in the foster care and guardianship subsidy programs. This Emergency Rule is effective October 1, 2011 and shall remain in effect for 120 days.

Pursuant to Children's Bureau requirements for authorization of Louisiana's Title IV-E state plan, which allows for federal reimbursement of eligible child welfare expenditures, adjustments to the foster care and guardianship subsidy programs were necessary. It is required terminology related to the programs, types of available payments, and eligibility criteria be updated.

Emergency action is required in this matter in order to avoid sanctions and penalties from the United States Children's Bureau (R.S. 49:953 (B)). If the department does not follow the federal guidelines regarding these adjustments the department will be unable to claim federal reimbursement for eligible clients, and the department may be subject to penalties for previously claimed funds.

**Title 67**  
**SOCIAL SERVICES**  
**Part V. Community Services**  
**Subpart 5. Foster Care**

**Chapter 41. Guardianship Subsidy Program**

**§4101. Subsidizing Guardianship Arrangements for Children in Foster Care**

A. Overview of Program Purpose

1. The Subsidized Guardianship Program enables the Department of Children and Family Services (DCFS) to make payments to certified relative and fictive kin caregivers on behalf of a child who otherwise might not be able to achieve permanency outside of department custody because of special needs or other circumstances. Subsidy payments shall be limited to a child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, immediate unsubsidized custody to a relative or other caregiver, or adoption being determined unfeasible for the child. The guardianship subsidy applies only to a child(ren) for whom the DCFS holds legal custody, only to potential caregivers with whom the child had an established familial or emotional relationship prior to entering DCFS custody, and when the kinship placement provider becomes a certified foster caregiver according to the certification standards of the state, and, the child(ren) remains in the certified kinship placement for at least six consecutive months immediately prior to entering the guardianship subsidy arrangement.

2. The prospective guardianship family must meet basic foster care certification eligibility requirements in all respects except for the ability to assume complete financial responsibility for the child's care.

B. Types of Subsidy Payments. The child may be subsidized for the following services up to age 18.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical costs. The maintenance subsidy may be ongoing until the child reaches age 18, but must be renewed on a yearly basis. This renewal will be dependent upon the child remaining in the care of the guardian with whom the subsidy agreement was established. The amount of payment shall not exceed 80 percent of the state's regular foster care board rate based on the monthly flat rate payments of the regular foster care board rate for the corresponding age group. Monthly maintenance payments shall not be based on subsidized foster care arrangements such as specialized foster care, alternate family care, or therapeutic foster care. Changes in the maintenance subsidy rate routinely only occur once a year and the adjustment is typically made at the time of the subsidy renewal, or due to a change in the child's age. Adjustments to the maintenance subsidy rate may also occur due to availability of funds, legislative changes or adjustments to the regular foster care board rate.

2. Special Board Rate. Foster parents entering into a guardianship agreement for a foster child for whom a special board rate was received during the foster care episode may request up to a maximum of \$240 which is 80 percent of the special board rate amount of \$300. This is only provided if the care and needs of the child in the guardianship arrangement warrant this same special board rate. The continued need for the special board rate shall be reviewed

at the time of the annual review. This review shall consist of a determination of whether the same level of specialized care by the guardian, for which the special board rate was being provided at the time of the subsidy agreement, continues to be necessary to meet the child's needs. Any reduction in the level of care required by the guardian should result in a decrease in the amount of special board rate compensation to the guardian.

3. Special Services

a. The special services subsidy is time limited and in some cases may be a one time payment. It is the special assistance given to handle an anticipated expense when no other family or community resource is available. If needed, it can be offered in addition to the maintenance and special board rate subsidy. The special services subsidy must be established as a part of the initial guardianship subsidy agreement, and may not be provided or renegotiated based on any circumstances which develop or issues identified after that point. Special services subsidies include the following types of needs:

i. special medical costs deemed medically necessary for the daily functioning of the child for any condition existing prior to the date of the initial judgment establishing guardianship with the kinship caregiver and not covered by Medicaid or other insurance;

ii. ongoing therapeutic treatment costs to complete current therapy and future treatment costs on a time limited basis up to 18 years of age, as agency resources allow, related to the abuse/neglect received by the child and impacting the child's capacity to function effectively as part of the child's educational, family or social environment. This does not include the cost of residential care or psychiatric hospitalization, nor does it include therapeutic intervention for the sole purpose of providing behavior management assistance to the guardian;

iii. legal and court costs to the potential guardian family up to \$1000 for children who are not Title IV-E eligible and up to \$2000 for children who are Title IV-E eligible for establishing the guardianship arrangement. This service is only available for costs distinct and separate from the routine costs of the child in need of care proceedings to provide for costs to the potential guardian in establishing the guardianship arrangement. This legal/and or court fee will be as a non-reoccurring, one-time payment for each guardianship episode.

b. Medicaid Eligibility. The child remains eligible for Medicaid coverage up to 18 years of age when entering a guardianship subsidy arrangement from foster care. This coverage will be eligible utilizing Title IV-E federal benefits if the child was Title IV-E eligible at the time of the subsidy arrangement. For children not eligible for Title IV-E, this coverage will be provided through Title XIX federal benefits or state general funds. For a Louisiana child who is placed out of state in a potential guardianship placement or who moves to another state after the establishment of a guardianship subsidy, if the child is eligible for Title IV-E guardianship subsidy payments, the child is also categorically eligible for Medicaid in the state in which the child resides whether that state participates in the Title IV-E Guardianship Subsidy Assistance program or not.

c. Chaffee Foster Care Independent Living Skills Training and Education Training Voucher Eligibility. The

child is eligible for participation in the Chaffee Foster Care Independent Living Skills Training and for Education Training Vouchers if the child enters a guardianship arrangement from foster care after reaching 16 years of age.

#### C. Exploration of Guardianship Resources

1. Before a child is determined by the Department of Children and Family Services (DCFS) as eligible for a guardianship subsidy, it must be determined the child cannot be reunited with the parents, resources for adoptive placement must be explored by the child's worker, and it must be determined there are no relative resources available to accept guardianship of the child without subsidy payment. If the kinship family with whom the child is placed refuses to adopt the child or is unable to be certified as an adoptive family, the department has to show efforts to achieve the more permanent case goal of adoption for the child and demonstrate the benefits of maintaining the child in the placement in a guardianship arrangement as opposed to ongoing efforts in pursuing adoption or any other long term permanency arrangement. It is also necessary for the child's worker to discuss plans for a guardianship arrangement with the child and document the outcome of that discussion with the child, including agreement with that plan by any child 14 years of age up to 18 years of age. Lack of agreement by any child 14 years of age up to 18 years of age should be an ongoing topic of counseling regarding the benefits of the arrangement between the worker and the child, until a permanency option is achieved for the child or until the child attains 18 years of age.

2. Whenever an eligible child in the custody of DCFS is legally placed based on the Interstate Compact on the Placement of Children guidelines with a certified kinship caregiver in another state, the family shall be eligible for a guardianship subsidy under the same conditions as Louisiana residents.

#### D. Eligibility Criteria

1. The DCFS, Guardianship Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and, the level of the subsidy. An agreement form between the DCFS and the prospective guardianship parent(s), with clearly delineated terms, must be signed prior to the granting of the final decree for guardianship. This agreement will be reviewed on an annual basis thereafter by the DCFS to insure ongoing eligibility.

2. A family is considered eligible for participation in the Guardianship Subsidy Program if they are related to the child or family of the child through blood or marriage or if there exists a fictive kin relationship, which is defined as a relationship with those individuals connected to an individual child or the family of that child through bonds of affection, concern, obligation, and/or responsibility prior to the child's original entry into the custody of the state, and the individual(s) are considered by the child or family to hold the same level of relationship with the child or family as those individuals related by blood or marriage.

#### E. Effects of Deaths of Guardians on Guardianship Subsidy

1. Where a guardianship subsidy agreement is in effect and the guardians both die prior to the child reaching the age of majority, the subsidy agreement will end. The child may remain in the care of a duly designated

tutor/guardian as established by the family prior to their death, without further involvement of the agency.

2. If the duly designated tutor/guardian requires financial assistance to maintain the care of the child it will be necessary for the child to return to state custody and those individuals to become certified as foster parents and provide care to the child six consecutive months after certification and immediately prior to entering into a Guardianship Subsidy Agreement with the department. During the process of becoming certified as foster parents the family may continue to provide care to the child, as long as they are determined to be safe caregivers through a minimum of: department assessment of the home environment; fingerprint based criminal records clearances on all adults in the home; and, child abuse/neglect clearances on all adults in the home. Adoption of the child by the family will be explored by the department as well, since adoption is a more permanent relationship for the child and family. There can be no financial support of the child by the state while being cared for by the family until such family has been certified, other than incidental expenditures routinely reimbursed to other non-certified caregivers of children in foster care. Each guardianship arrangement is considered a new episode. Therefore, the agency may provide legal and court costs to support the establishment of this new legal guardianship arrangement between the potential guardian and the child up to \$1000 for children who are not Title IV-E eligible and up to \$2000 for children who are Title IV-E eligible.

AUTHORITY NOTE: Promulgated in accordance with federal P.L. 110-351.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:552 (March 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:

#### **§4103. Nonrecurring Expenses in Guardianship Arrangements**

A. The DCFS sets forth criteria for reimbursement of nonrecurring expenses associated with establishing guardianship arrangements for children in foster care.

1. The amount of the payment made for nonrecurring expenses associated with establishing guardianship arrangements for children in foster care shall be determined through agreement between the guardian(s) and the DCFS. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

2. The agreement for nonrecurring expenses must be signed prior to the final decree granting guardianship.

3. There must be no income eligibility requirement for guardian(s) in determining whether payments for nonrecurring expenses associated with establishing Guardianship arrangements for children in foster care shall be made. However, potential guardians cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

4. The maximum rate of reimbursement for nonrecurring expenses has been set at \$1000 for children who are not Title IV-E eligible and up to \$2000 for children who are Title IV-E eligible per guardianship arrangement.

5. In cases where siblings are placed and guardianship arrangements established, whether separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

6. In cases where a child has been returned to the custody of the state and a guardianship arrangement dissolved, the child is allowed separate and complete reimbursement for nonrecurring expenses up to the maximum amount allowable for establishing another guardianship arrangement.

7. Reimbursement is limited to costs incurred by or on behalf of guardian(s) not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made directly by the DCFS.

8. When the guardianship arrangement for the child involves interstate placement, Louisiana will only be responsible for paying the nonrecurring expenses for the arrangement for the child when Louisiana is the child's legal custodian and enters into the Guardianship Subsidy Agreement with the caregiver.

9. The term nonrecurring expenses in relation to guardianship arrangements means reasonable and necessary legal fees, court costs, attorney fees and other expenses which are directly related to the legal establishment of the guardianship arrangement for a child in foster care, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other funds. Other expenses which are directly related to the legal establishment of the guardianship arrangement for a child in foster care means the costs of the arrangement incurred by or on behalf of the guardians and for which guardians carry the ultimate liability for payment. Such costs may include but are not limited to travel costs for the child and/or guardians to be present for the legal proceedings to establish the guardianship arrangement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:554 (March 2010), amended by the Department of Children and Family Services, Division of Programs, LR 37:

Ruth Johnson  
Secretary

1110#005

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Division of Programs

#### Increasing Resource Limit for Households with Elderly and Disabled Members (LAC 67:III.1983)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III, Subpart 3, Chapter 19, Section 1983. This Emergency Rule shall remain in effect for a period of 120 days and is effective October 1, 2011.

Pursuant to section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA), adjustments to the Supplemental Nutrition Assistance Program (SNAP) asset limit shall reflect changes for the 12-month period ending the preceding June in the Consumer Price Index (CPI) for all urban consumers and will be rounded down to the nearest \$250 increment. In accordance with the Food and Nutrition Services (FNS) SNAP policy memo dated August 29, 2011,

LAC 67:III, Section 1983 of Subpart 3, Chapter 19, Subchapter I is being revised effective October 1, 2011 to increase the resource limit to \$3,250 for households that include at least one elderly or disabled member who is not categorically eligible.

Emergency action is required in this matter in order to avoid sanctions and penalties from the United States (R.S. 49:953(B)). If the agency does not follow the Federal law regarding increasing the resource limit for households that include at least one elderly or disabled member who is not categorically eligible, the department may be subject to sanctions and penalties.

## Title 67 SOCIAL SERVICES

### Part III. Economic Stability and Self-Sufficiency Subpart 3. Supplemental Nutrition Assistance Program (SNAP)

#### Chapter 19. Certification and Eligible Households Subchapter I. Income and Deductions

##### §1983. Income Deductions and Resource Limits

A.1. - 3.a. ...

B. For federal fiscal year 2011 and each subsequent federal fiscal year, the resource limit will be calculated based on changes in the Consumer Price Index for all urban consumers for the 12-month period ending the preceding June and will be rounded down to the nearest \$250 increment. The resource limit for a household is \$2,000, and effective October 1, 2011, the resource limit for a household that includes at least one elderly or disabled member is \$3,250 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. 110-246, and Section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989). Amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (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: (April 2009), amended by the Department of Children and Family Services, LR 36:2530 (November 2010), amended by the Department of Children and Family Services, Division of Programs, LR:37:

Ruth Johnson  
Secretary

1110#006

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Board of Examiners of Nursing Facility Administrators

Administrator-in-Training  
(LAC 46:XLIX.713)

The Louisiana Board of Examiners of Nursing Facility Administrators, has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative

Procedure Act and through the authority granted in R.S. 37:2501 et seq., and proposes to amend LAC 46:XLIX.713 relative to the administration of Louisiana Nursing Facility Administrators and their licensure to increase the educational requirements necessary for waivers to include a bachelor or masters degree in health care administration or a bachelor or masters degree with a concentration in eldercare studies which includes a clinical internship consistent with existing requirements. The LSU system has initiated a curriculum for the 2012 spring semester in order to accommodate their academic schedule. This necessitates prompt and immediate action. The proposed educational waiver option will increase the applicants' educational experience and optimizes requirements for the administrator in training process. The Emergency Rule effective November 1, 2011, will remain in effect for a period of 120 days.

The Louisiana Board of Examiners of Nursing Facility Administrators by this action is amending its waiver options to include a board collaborative Administrator-in-Training program (AIT) in conjunction with the LSU system to provide educational requirements for waivers so as to meet or exceed present criteria. This will develop and an avenue for academic achievement and earn recognized credentials that will enhance an applicants' training and provide for a more proficient administrator. The proposed amendments, to LAC 46:XLIX.713, will be of interest to nursing facility administrators or persons training to become nursing facility administrators.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLIX. Nursing Facility Administrators**

#### **Chapter 7. Administrator-in-Training (AIT)**

#### **§713. Waivers**

A. - B. ...

1. education. Full waiver may be granted if applicant has a bachelor or masters degree in health care administration or a bachelor or masters degree with a concentration in eldercare studies which includes a clinical internship;

a. the internship shall be consistent with all board regulations and applicable required hours and in areas of concentration. The internship requirements shall be completed within a 24 months period after acquiring 48 credit hours;

b. the applicant shall successfully pass the national exam, state exam, and the exit interview;

2. ...

a. examination. All applicants for a full waiver undergo an exit interview conducted by a board member or an authorized representative. Applicants for partial waiver may be required to undergo an exit interview in those areas for which waiver is requested;

b. non-participating facility experience. No full waiver will be granted for experience gained in a facility that is not certified for and does not participate in Medicare and/or Medicaid. All applicants applying for waiver based on experience in a non-participating facility must undergo an exit interview.

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 37:593 (February 2011), repromulgated LR 37:887 (March 2011), repromulgated LR 38:

Mark A. Hebert  
Executive Director

1110#002

### **DECLARATION OF EMERGENCY**

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

Home and Community-Based Service Providers  
Minimum Licensing Standards  
(LAC 48:I.Chapter 50)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 48:I.Chapter 50 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.1. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 839 of the 2008 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to adopt provisions governing the minimum licensing standards for home and community-based services (HCBS) providers and gave the department the authority to issue a single license to all providers of home and community-based services rather than a separate license for each provider type. Providers of the following services will be licensed under the comprehensive licensing standards: Adult Day Care, Family Support, Personal Care Attendant (PCA), Respite Care, Substitute Family Care, Supervised Independent Living (SIL) and Supported Employment. In compliance with the directives of Act 839, the department promulgated a Notice of Intent which proposed to revise and combine the existing licensing standards for providers of Adult Day Care services, Family Support services, Personal Care services, Respite Care services, and Supervised Independent Living services, and to adopt minimum licensing standards for providers of Substitute Family Care and Supported Employment services in order to establish comprehensive HCBS provider licensing standards and a single HCBS license (*Louisiana Register*, Volume 36, Number 6). A public hearing was conducted on July 28, 2010. As a result of the comments received, the department promulgated an Emergency Rule which revised and republished the provisions of the June 20, 2010 Notice of Intent (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Louisiana citizens by assuring continued access to home and community-based services

through the development of a more comprehensive and efficient licensing infrastructure.

Effective October 30, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to establish comprehensive minimum licensing standards for HCBS providers and a single HCBS license.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part 1. General Administration

#### Subpart 3. Licensing and Certification

### Chapter 50. Home and Community-Based Services

#### Providers Licensing Standards

#### Subchapter A. General Provisions

#### §5001. Introduction

A. Pursuant to R.S. 40:2120.2, the Department of Health and Hospitals hereby establishes the minimum licensing standards for home and community-based services (HCBS) providers. These licensing provisions contain the core requirements for HCBS providers as well as the module-specific requirements, depending upon the services rendered by the HCBS provider. These regulations are separate and apart from Medicaid Standards of Participation or any other requirements established by the Medicaid Program for reimbursement purposes.

B. Any person or entity applying for an HCBS provider license or who is operating as a provider of home and community-based services shall meet all of the core licensing requirements contained in this Chapter, as well as the module-specific requirements, unless otherwise specifically noted within these provisions.

C. Providers of the following services shall be licensed under the HCBS license:

1. adult day care (ADC);
2. family support;
3. personal care attendant (PCA);
4. respite;
5. substitute family care (SFC);
6. supervised independent living (SIL), including the shared living conversion services in a waiver home; and
7. supported employment.

D. The following entities shall be exempt from the licensure requirements for HCBS providers:

1. any person, agency, institution, society, corporation, or group that solely:
  - a. prepares and delivers meals;
  - b. provides sitter services; or
  - c. provides housekeeping services;
2. any person, agency, institution, society, corporation, or group that provides gratuitous home and community-based services;
3. any individual licensed practical nurse (LPN) or registered nurse (RN) who has a current Louisiana license in good standing;
4. staffing agencies that supply contract workers to a health care provider licensed by the department; and
5. any person who is employed as part of a departmentally authorized self-direction program.
  - a. For purposes of these provisions, a self-direction program shall be defined as a service delivery option based upon the principle of self-determination. The program enables participants and/or their authorized representative(s)

to become the employer of the people they choose to hire to provide supports to them.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### §5003. Definitions

*Accredited*—the process of review and acceptance by an accreditation body such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or Council on Accreditation (COA).

*Activities of Daily Living*—the functions or tasks which are performed either independently or with supervision that assist an individual to live in a community setting, or that provide assistance for mobility (i.e., bathing, dressing, eating, grooming, walking, transferring and toileting).

*Adult Day Care Services*—structured and comprehensive services provided in a group setting that are designed to meet the individual needs of adults with functional impairments. This program provides a variety of health, social and related support services in a protective setting for a portion of a 24-hour day.

*Client*—an individual who is receiving services from a home and community-based service provider.

*Department*—the Louisiana Department of Health and Hospitals (DHH) or any of its sections, bureaus, offices or its contracted designee.

*DHH Region*—the geographical administrative regions designated by the Department of Health and Hospitals.

*Developmental Disability*—a severe, chronic condition as defined in the Developmental Disabilities Law of 2005, R.S. 28:451.1-455.2.

*Family Support Services*—advocacy services, family counseling, including genetic counseling, family subsidy programs, parent-to-parent outreach, legal assistance, income maintenance, parent training, homemaker services, minor home renovations, marriage and family education, and other related programs.

*Health Standards Section*—the licensing and certification section of the Department of Health and Hospitals.

*Home and Community-Based Service Provider*—an agency, institution, society, corporation, person(s) or any other group licensed by the department to provide one or more home and community-based services as defined in R.S. 40:2120.1 or these licensing provisions.

*Incident*—a death, serious illness, allegation of abuse, neglect or exploitation or an event involving law enforcement or behavioral event which causes serious injury to the client or others.

*Individual Service Plan*—a service plan developed for each client that is based on a comprehensive assessment which identifies the individual's strengths and needs in order to establish goals and objectives so that outcomes to service delivery can be measured.

*Instrumental Activities of Daily Living*—the functions or tasks that are not necessary for fundamental functioning but assist an individual to be able to live in a community setting. These are activities such as light house-keeping, food preparation and storage, grocery shopping, laundry, reminders to take medication, scheduling medical



appointments, arranging transportation to medical appointments and accompanying the client to medical appointments.

*Personal Care Attendant Services*—services required for a person with a disability to become physically independent to maintain physical function or to remain in, or return to, the community.

*Respite Care*—an intermittent service designed to provide temporary relief to unpaid, informal caregivers of the elderly and/or people with disabilities.

*Service Area*—the DHH administrative region in which the provider's geographic business location is located and for which the license is issued.

*Substitute Family Care Caregiver*—a single or dual parent family living in a home setting which has been certified through a home study assessment as adequate and appropriate to provide care to the client by the SFC provider. At least one family member will be designated as a principal SFC caregiver.

*Substitute Family Care Services*—provide 24-hour personal care, supportive services and supervision to adults who meet the criteria for having a developmental disability.

*Supervised Independent Living via a Shared Living Conversion Model*—a home and community-based shared living model for up to six persons, chosen by clients of the Residential Options Waiver (ROW), or any successor waiver, as their living option.

*Supervised Independent Living Services*—necessary training, social skills and medical services to enable a person who has mental illness or a developmental disability, and who is living in congregate, individual homes or individual apartments, to live as independently as possible in the community.

*Supported Employment*—a system of supports for people with disabilities in regards to ongoing employment in integrated settings. Supported employment can provide assistance in a variety of areas including:

1. job development;
2. job coaches;
3. job retention;
4. transportation;
5. assistive technology;
6. specialized job training; and
7. individually tailored supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5005. Licensure Requirements**

A. All HCBS providers shall be licensed by the Department of Health and Hospitals. It shall be unlawful to operate as a home and community-based service provider without a license issued by the department. DHH is the only licensing authority for HCBS providers in Louisiana.

B. An HCBS license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the HCBS provider to which it is issued and only for the specific geographic address of that provider;
3. designate which home and community-based services the provider can provide;

4. enable the provider to render delineated home and community-based services within a DHH region;

5. be valid for one year from the date of issuance, unless revoked, suspended, modified or terminated prior to that date, or unless a provisional license is issued;

6. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the HCBS provider;

7. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and

8. be posted in a conspicuous place on the licensed premises at all times.

C. An HCBS provider shall provide only those home and community-based services or modules specified on its license and only to clients residing in the provider's designated service area, DHH Region or at the provider's licensed location.

D. An HCBS provider may apply for a waiver from the Health Standards Section (HSS) to provide services to a client residing outside of the provider's designated service area or DHH Region only under the following condition.

1. A waiver may be granted by the department if there is no other HCBS provider in the client's service area or DHH Region that is licensed and that has the capacity to provide the required services to the client, or for other good cause shown by the HCBS provider and client.

2. The provider must submit a written waiver request to HSS prior to providing services to the client residing outside of the designated service area or DHH Region.

3. The written waiver request shall be specific to one client and shall include the reasons for which the waiver is requested.

E. In order for the HCBS provider to be considered operational and retain licensed status, the provider shall meet the following conditions.

1. Each HCBS provider shall have a business location which shall not be located in an occupied personal residence and shall conform to the provisions of §5027 of this Chapter.

- a. The business location shall be part of the licensed location of the HCBS provider and shall be in the DHH Region for which the license is issued.

- b. The business location shall have at least one employee on duty at the business location during stated hours of operation.

- c. An HCBS provider which provides ADC services or out of home (center-based) respite care services may have the business location at the ADC building or center-based respite building.

2. Adult day care facilities shall have clearly defined days and hours of operation posted. The ADC must be open at least five hours on days of operation. Center-based respite facilities shall have the capacity to provide 24 hour services. All other HCBS providers shall render services at all times to clients receiving services in the home, according to the individual service plan (ISP).

3. There shall be adequate direct care staff and professional services staff employed and available to be assigned to provide services to persons in their homes as per the plan of care and for persons receiving ADC services and center-based respite services, during the provider's or facility's hours of operation.

4. Each HCBS provider shall have a published telephone number which is available and accessible 24 hours a day, seven days a week, including holidays.

F. The licensed HCBS provider shall abide by and adhere to any state law, rule, policy, procedure, manual or memorandum pertaining to HCBS providers.

G. A separately licensed HCBS provider shall not use a name which is substantially the same as the name of another HCBS provider licensed by the department. An HCBS provider shall not use a name which is likely to mislead the client or family into believing it is owned, endorsed or operated by the state of Louisiana.

H. Upon promulgation of the final Rule governing these provisions, existing providers of the following home and community-based services shall be required to apply for an HCBS provider license at the time of renewal of their current license(s):

1. adult day care;
2. family support;
3. personal care attendant;
4. respite;
5. supervised independent living; and
6. supported employment.

I. If an existing provider currently has multiple licenses, such as PCA, Respite and SIL, the provider shall be required to apply for an HCBS provider license at the time the first such license is due for renewal. The HCBS provider license shall include all modules for which the provider is currently licensed, and will replace all of the separate licenses.

J. If applicable, each HCBS provider shall obtain facility need review approval prior to licensing.

1. An existing licensed PCA, Respite or SIL provider who is applying for an HCBS provider license at the time of license renewal shall not be required to apply for facility need review approval. However, if an existing licensed provider, who is not currently providing PCA, Respite or SIL services wants to begin providing these services, the provider shall be required to apply for facility need review approval for each of the requested services.

EXAMPLE: A currently licensed PCA provider with no Respite license is now applying for his HCBS provider license and wants to add the respite module. The PCA provider shall be required to apply for facility need review approval for the respite module.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5007. Initial Licensure Application Process**

A. An initial application for licensing as an HCBS provider shall be obtained from the department. A completed initial license application packet for an HCBS provider shall be submitted to and approved by the department prior to an applicant providing HCBS services.

B. The initial licensing application packet shall include:

1. a completed HCBS licensure application and the non-refundable licensing fee as established by statute;
2. a copy of the approval letter of the architectural facility plans for the adult day care module and the center-based respite module from the Office of the State Fire Marshal and any other office/entity designated by the department to review and approve the facility's architectural plans;

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal, if applicable;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health for the adult day care module and the center-based respite module;

5. a copy of a statewide criminal background check, including sex offender registry status, on all owners and administrators;

6. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

7. a completed disclosure of ownership and control information form;

8. the days and hours of operation;

9. an organizational chart and names, including position titles, of key administrative personnel and governing body; and

10. any other documentation or information required by the department for licensure.

C. Any person convicted of one of the following felonies is prohibited from being the owner or the administrator of an HCBS provider agency. For purposes of these provisions, the licensing application shall be rejected by the department for any felony conviction relating to:

1. the violence, abuse, or negligence of a person;

2. the misappropriation of property belonging to another person;

3. cruelty, exploitation or the sexual battery of the infirmed;

4. a drug offense;

5. crimes of a sexual nature;

6. a firearm or deadly weapon;

7. Medicare or Medicaid fraud; or

8. fraud or misappropriation of federal or state funds.

D. If the initial licensing packet is incomplete, the applicant shall be notified of the missing information and shall have 90 days from receipt of the notification to submit the additional requested information.

1. If the additional requested information is not submitted to the department within 90 days, the application shall be closed.

2. If an initial licensing application is closed, an applicant who is still interested in becoming an HCBS provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process, subject to any facility need review approval.

E. Applicants for HCBS licensure shall be required to attend a mandatory training class when a completed initial licensing application packet has been received by the department.

F. Upon completion of the mandatory training class and written notification of satisfactory class completion from the department, an HCBS applicant shall be required to admit one client and contact the HSS field office to schedule an initial licensing survey.

1. Prior to scheduling the initial survey, applicants must be:

- a. fully operational;
- b. in compliance with all licensing standards; and
- c. providing care to only one client at the time of the initial survey.

2. If the applicant has not admitted one client or called the field office to schedule a survey within 30 days of receipt of the written notification from the department, the application will be closed. If an applicant is still interested in becoming an HCBS provider, a new initial licensing packet with a new initial licensing fee must be submitted to the department to start the initial licensing process, subject to any facility need review approval.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the HCBS provider will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5009. Initial Licensing Surveys**

A. Prior to the initial license being issued, an initial on-site licensing survey shall be conducted to ensure compliance with the licensing laws and standards.

B. In the event that the initial licensing survey finds that the HCBS provider is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

C. In the event that the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations, or any other required rules or regulations that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations, or any other required rules 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 clients, the department may issue a provisional initial license for a period not to exceed six months. The provider shall submit a plan of correction to the department for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

1. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

2. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

E. The initial licensing survey of an HCBS provider shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5011. Types of Licenses and Expiration Dates**

A. The department shall have the authority to issue the following types of licenses.

1. Full Initial License. The department shall issue a full license to the HCBS provider when the initial licensing survey finds that the provider is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

2. Provisional Initial License. The department may issue a provisional initial license to the HCBS provider when the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed HCBS provider who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

B. The department, in its sole discretion, may issue a provisional license to an existing licensed HCBS provider for a period not to exceed six months, for any of the following reasons:

1. the existing HCBS provider has more than five deficient practices or deficiencies cited during any one survey;

2. the existing HCBS provider has more than three validated complaints in a 12 month period:

a. a validated complaint is a complaint received by the Health Standards Section and found to be substantiated;

3. the existing HCBS provider has been issued a deficiency that involved placing a client at risk for serious harm or death;

4. the existing HCBS provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey; or

5. the existing HCBS provider is not in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

C. When the department issues a provisional license to an existing licensed HCBS provider, the provider shall submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct a follow-up survey, either on-site or by desk review, of the HCBS provider prior to the expiration of the provisional license.

1. If the follow-up survey determines that the HCBS provider has corrected the deficient practices and has maintained compliance during the period of the provisional

license, the department may issue a full license for the remainder of the year until the anniversary date of the HCBS license.

2. If the follow-up survey determines that all non-compliance or deficiencies have not been corrected, or if new deficiencies that are a threat to the health, safety or welfare of a client are cited on the follow-up survey, the provisional license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee, subject to any facility need review approval.

3. The department shall issue written notice to the provider of the results of the follow-up survey.

D. If an existing licensed HCBS provider has been issued a notice of license revocation, suspension or termination, and the provider's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

1. If a timely administrative appeal has been filed by the provider regarding the license revocation, suspension, or termination, the administrative appeal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the administrative tribunal or department issues a decision on the license revocation, suspension, or termination.

2. If the secretary of the department determines that the violations of the HCBS provider pose an imminent or immediate threat to the health, welfare, or safety of a client, the imposition of such action may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the HCBS provider will be notified in writing.

3. The denial of the license renewal application does not affect in any manner the license revocation, suspension, or termination.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty or other action imposed by the department against the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37: **§5013. Changes in Licensee Information or Personnel**

A. An HCBS license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any change regarding the HCBS provider's entity name, "doing business as" name, mailing address, telephone number or any combination thereof, shall be reported in writing to the department within two days of the change.

C. Any change regarding the HCBS provider's key administrative personnel shall be reported in writing to the department within 10 days of the change.

1. Key administrative personnel include the:
  - a. administrator;
  - b. director of nursing, if applicable; and
  - c. medical director, if applicable.

2. The HCBS provider's notice to the department shall include the individual's:

- a. name;
- b. address;
- c. hire date; and
- d. qualifications.

D. A change of ownership (CHOW) of the HCBS provider shall be reported in writing to the department within five days of the change. The license of an HCBS provider is not transferable or assignable and cannot be sold. The new owner shall submit the legal CHOW document, all documents required for a new license and the applicable licensing fee. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

1. An HCBS provider that is under license revocation may not undergo a CHOW.

2. If the CHOW results in a change of geographic address, an on-site survey may be required prior to issuance of the new license.

E. If the HCBS provider changes its name without a change in ownership, the HCBS provider shall report such change to the department in writing five days prior to the change. The change in the HCBS provider name requires a change in the HCBS provider license. Payment of the applicable fee is required to re-issue the license.

F. Any request for a duplicate license shall be accompanied by the applicable fee.

G. If the HCBS provider changes the physical address of its geographic location without a change in ownership, the HCBS provider shall report such change to DHH in writing at least five days prior to the change. Because the license of an HCBS provider is valid only for the geographic location of that provider, and is not transferrable or assignable, the provider shall submit a new licensing application.

1. An on-site survey may be required prior to the issuance of the new license.

2. The change in the HCBS provider's physical address results in a new anniversary date and the full licensing fee must be paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5015. Renewal of License**

A. The HCBS provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet shall include:

1. the license renewal application;
2. the days and hours of operation;
3. a current state fire marshal report, if applicable;
4. a current Office of Public Health inspection report for the adult day care module and the center-based respite module;
5. the non-refundable license renewal fee;
6. any other documentation required by the department; and
7. proof of financial viability, comprised of the following:
  - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;
  - b. general and professional liability insurance of at least \$300,000; and
  - c. worker's compensation insurance.

B. The department may perform an on-site survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license will result in the voluntary non-renewal of the HCBS license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5016. Deemed Status through Accreditation**

A. An HCBS provider may request deemed status from the department. The department may accept accreditation in lieu of a routine on-site resurvey provided that:

1. the accreditation is obtained through an organization approved by the Department;
2. all services provided under the HCBS license must be accredited; and
3. the provider forwards the accrediting body's findings to the Health Standards Section within 30 days of its accreditation.

B. The accreditation will be accepted as evidence of satisfactory compliance with all provisions of these requirements.

C. The following set of circumstances can cause the state agency to perform a full licensing survey on an accredited HCBS provider:

1. any valid complaints in the preceding 12-month period;
2. addition of services;
3. a change of ownership in the preceding 12-month period;
4. issuance of a provisions license in the preceding 12-month period;
5. serious violations of licensing standards or professional standards of practice that were identified in the preceding 12-month period; or
6. reports of inappropriate treatment or service resulting in death or serious injury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5017. Survey Activities**

A. The department, or its designee, may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing HCBS providers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. The department shall also conduct complaint surveys. The complaint surveys shall be conducted in accordance with R.S. 40:2009.13 et seq.

C. The department may require an acceptable plan of correction from a provider for any survey where deficiencies have been cited, regardless of whether the department takes other action against the facility for the deficiencies cited in the survey. The acceptable plan of correction shall be approved by the department.

D. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices.

E. The department may issue appropriate sanctions for noncompliance, deficiencies and violations of law, rules and regulations. Sanctions include, but are not limited to:

1. civil monetary penalties;
2. directed plans of correction; and
3. license revocation.

F. DHH surveyors and staff shall be:

1. given access to all areas of the provider agency, as necessary, and all relevant files during any survey; and
2. allowed to interview any provider staff, client or other persons as necessary or required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5019. Statement of Deficiencies**

A. The following statements of deficiencies issued by the department to the HCBS provider shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and
2. any subsequent complaint survey statement of deficiencies.

B. Any statement of deficiencies issued by the department to an HCBS provider shall be available for disclosure to the public 30 days after the provider submits an acceptable plan of correction to the deficiencies or 90 days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in these licensing provisions, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 days of receipt of the statement of deficiencies, unless otherwise provided in these standards.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section and will be considered timely if received by HSS within 10 days of the provider's receipt of the statement deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. The provider shall be notified in writing of the results of the informal reconsideration.

6. Except as provided for complaint surveys pursuant to R.S. 40:2009.13 et seq., and as provided in these licensing provisions for license denials, revocations and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies.

a. There is no administrative appeal right of such deficiencies.

7. Pursuant to R.S. 40:2009.13 et seq., for complaint surveys in which the Health Standards Section determines that the complaint involves issues that have resulted in or are likely to result in serious harm or death, as defined in the statute, the determination of the informal reconsideration may be appealed administratively to the Division of Administrative Law or its successor. The hearing before the Division of Administrative Law, or its successor, is limited only to whether the investigation or complaint survey was conducted properly or improperly. The Division of

Administrative Law shall not delete or remove deficiencies as a result of such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

**§5021. Denial of License, Revocation of License, Denial of License Renewal**

A. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the provisions of the Administrative Procedure Act. These actions may be taken against the entire license or certain modules of the license.

B. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations, or any other required statutes or regulations that present a potential threat to the health, safety or welfare of the clients.

2. The department shall deny an initial license for any of the reasons a license may be revoked or non-renewed pursuant to these licensing provisions.

3. If the department denies an initial license, the applicant for an HCBS provider license shall discharge the client receiving services.

C. Voluntary Non-Renewal of a License. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

D. Revocation of License or Denial of License Renewal. An HCBS provider license may be revoked or denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the HCBS licensing laws, rules and regulations;

2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules or regulations;

3. failure to comply with the terms and provisions of a settlement agreement or education letter;

4. failure to uphold client rights whereby deficient practices result in harm, injury or death of a client;

5. failure to protect a client from a harmful act of an employee or other client including, but not limited to:

a. mental or physical abuse, neglect, exploitation or extortion;

b. any action posing a threat to a client's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

f. criminal activity;

6. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in §5021.D.5;

7. knowingly making a false statement in any of the following areas, including but not limited to:

a. application for initial license or renewal of license;

b. data forms;

c. clinical records, client records or provider records;

d. matters under investigation by the department or the Office of the Attorney General; or

e. information submitted for reimbursement from any payment source;

8. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;

9. the use of false, fraudulent or misleading advertising; or

10. an owner, officer, member, manager, administrator, director or person designated to manage or supervise client care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court;

a. for purposes of these provisions, conviction of a felony involves any felony conviction relating to:

i. the violence, abuse, or negligence of a person;

ii. the misappropriation of property belonging to another person;

iii. cruelty, exploitation or the sexual battery of the infirmed;

iv. a drug offense;

v. crimes of a sexual nature;

vi. a firearm or deadly weapon;

vii. Medicare or Medicaid fraud; or

viii. fraud or misappropriation of federal or state funds;

11. failure to comply with all reporting requirements in a timely manner, as required by the department;

12. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or clients;

13. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

14. failure to allow or refusal to allow access to provider, facility or client records by authorized departmental personnel;

15. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular HCBS provider;

16. cessation of business or non-operational status;

17. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment; or

18. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department.

E. In the event an HCBS provider license is revoked, renewal is denied (other than for cessation of business or non-operational status) or the license is surrendered in lieu of an adverse action, any owner, board member, director or administrator, and any other person named on the license application of such HCBS provider is prohibited from owning, managing, directing or operating another HCBS agency for a period of two years from the date of the final disposition of the revocation, denial action or surrender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

**§5023. Notice and Appeal of License Denial, License Revocation and License Non-Renewal**

A. Notice of a license denial, license revocation or license non-renewal (i.e. denial of license renewal) shall be given to the provider in writing.

B. The HCBS provider has a right to an informal reconsideration of the license denial, license revocation or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The HCBS provider shall request the informal reconsideration within 15 days of the receipt of the notice of the license denial, license revocation or license non-renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section. The request for informal reconsideration shall be considered timely if received by the Health Standards Section within 15 days from the provider's receipt of the notice.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by HSS, an informal reconsideration shall be scheduled and the provider will receive written notification of the date of the informal reconsideration.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the license denial, revocation or non-renewal shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The HCBS provider has a right to an administrative appeal of the license denial, license revocation or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the provider.

1. The HCBS provider shall request the administrative appeal within 30 days of the receipt of the results of the informal reconsideration.

a. The HCBS provider may forego its rights to an informal reconsideration, and if so, shall request the administrative appeal within 30 days of the receipt of the notice of the license denial, revocation or non-renewal.

2. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law or its successor. The request shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Division of Administrative Law, or its successor, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department determines that the violations of the provider pose an imminent or immediate threat to the health, welfare or safety of a client, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the provider will be notified in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation or non-renewal shall not be a basis for an administrative appeal.

D. If an existing licensed HCBS provider has been issued a notice of license revocation, and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal or license revocation, the Division of Administrative Law, or its successor, shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law, or its successor, if good cause is shown.

1. If the final agency decision is to reverse the license denial, license non-renewal or license revocation, the provider's license will be re-instated or granted upon the payment of any licensing fees, outstanding sanctions or other fees due to the department.

2. If the final agency decision is to affirm the license non-renewal or license revocation, the provider shall discharge any and all clients receiving services according to the provisions of this Chapter.

a. Within 10 days of the final agency decision, the provider must notify HSS, in writing, of the secure and confidential location where the client records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new HCBS provider, or the issuance of a provisional license to an existing HCBS provider. A provider who has been issued a provisional license is licensed and operational for the term of the provisional license. The issuance of a provisional license is not considered to be a denial of license, renewal or revocation.

G. A provider with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey, shall have the right to an informal reconsideration and the right to an administrative appeal, as to the deficiencies.

1. The correction of a violation, noncompliance or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

2. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

3. The provider shall request the informal reconsideration in writing, which shall be received by the Health Standards Section within five days of receipt of the

notice of the results of the follow-up survey from the department.

4. The provider shall request the administrative appeal within 15 days of receipt of the notice of the results of the follow-up survey from the department. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law or its successor.

5. A provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge clients unless the Division of Administrative Law, or its successor, issues a stay of the expiration.

a. The stay may be granted by the Division of Administrative Law, or its successor, upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing and only upon a showing that there is no potential harm to the clients being served by the provider.

6. If a timely administrative appeal has been filed by a provider with a provisional initial license that has expired, or by an existing provider whose provisional license has expired under the provisions of this Chapter, the Division of Administrative Law, or its successor, shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law, or its successor, if good cause is shown.

a. If the final agency decision is to remove all deficiencies, the provider's license will be re-instated upon the payment of any outstanding sanctions and licensing or other fees due to the department.

b. If the final agency decision is to uphold the deficiencies and affirm the expiration of the provisional license, the provider shall discharge any and all clients receiving services.

i. Within 10 days of the final agency decision, the provider must notify HSS in writing of the secure and confidential location where the client records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5025. Inactivation of License due to a Declared Disaster or Emergency**

A. An HCBS provider licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

1. the licensed provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

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

b. the licensed HCBS provider intends to resume operation as an HCBS provider in the same service area;

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

d. includes an attestation that all clients have been properly discharged or transferred to another provider; and

e. provides a list of each client and where that client is discharged or transferred to;

2. the licensed HCBS provider resumes operating as a HCBS provider in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the licensed HCBS provider continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

4. the licensed HCBS provider continues to submit required documentation and information to the department.

B. Upon receiving a completed written request to inactivate a HCBS provider license, the department shall issue a notice of inactivation of license to the HCBS provider.

C. Upon completion of repairs, renovations, rebuilding or replacement, an HCBS provider which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met.

1. The HCBS provider shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening.

a. The license reinstatement request shall inform the department of the anticipated date of opening, and shall request scheduling of a licensing survey.

b. The license reinstatement request shall include a completed licensing application with appropriate licensing fees.

2. The provider resumes operating as an HCBS provider in the same service area within one year.

D. Upon receiving a completed written request to reinstate an HCBS provider license, the department shall conduct a licensing survey. If the HCBS provider meets the requirements for licensure and the requirements under this Section, the department shall issue a notice of reinstatement of the HCBS provider license.

1. The licensed capacity of the reinstated license shall not exceed the licensed capacity of the HCBS provider at the time of the request to inactivate the license.

E. No change of ownership in the HCBS provider shall occur until such HCBS provider has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as an HCBS provider.

F. The provisions of this Section shall not apply to an HCBS provider which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the HCBS provider license and any applicable facility need review approval for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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



## **Subchapter B. Administration and Organization**

### **§5027. Governing Body**

A. An HCBS provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program/agency.

1. A provider shall have documents identifying all members of the governing body, their addresses, their terms of membership, officers of the governing body and terms of office of any officers.

2. The governing body shall be comprised of three or more persons and shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of an HCBS provider shall:

1. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;

2. ensure that the provider is adequately funded and fiscally sound;

3. review and approve the provider's annual budget;

4. designate a person to act as administrator and delegate sufficient authority to this person to manage the provider agency;

5. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;

6. annually evaluate the administrator's performance;

7. have the authority to dismiss the administrator;

8. meet with designated representatives of the department whenever required to do so;

9. inform the department, or its designee, prior to initiating any substantial changes in the services provided by the provider; and

10. ensure statewide criminal background checks on all unlicensed persons.

C. An HCBS provider shall maintain an administrative file that includes:

1. documents identifying the governing body;

2. a list of members and officers of the governing body, along with their addresses and terms of membership;

3. minutes of formal meetings and by-laws of the governing body, if applicable;

4. documentation of the provider's authority to operate under state law;

5. an organizational chart of the provider which clearly delineates the line of authority;

6. all leases, contracts and purchases-of-service agreements to which the provider is a party;

7. insurance policies;

8. annual budgets and audit reports; and

9. a master list of all the community resources used by the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5029. Policy and Procedures**

A. An HCBS provider shall provide supervision and services that:

1. conform to the department's rules and regulations;

2. meet the needs of the clients as identified and addressed in the ISP;

3. provide for the full protection of clients' rights; and

4. promote the social, physical and mental well-being of clients;

B. An HCBS provider shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to the department.

C. An HCBS provider shall allow designated representatives of the department, in performance of their mandated duties, to:

1. inspect all aspects of an HCBS provider's operations which directly or indirectly impact clients; and

2. conduct interviews with any staff member or client of the provider.

D. An HCBS provider shall, upon request by the department, make available the legal ownership documents.

E. The HCBS provider shall have written policies and procedures approved by the owner or governing body, which must be implemented and followed, that address at a minimum the following:

1. confidentiality and confidentiality agreements;

2. security of files;

3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation and kickbacks;

4. personnel;

5. client rights;

6. grievance procedures;

7. client funds;

8. emergency preparedness;

9. abuse and neglect;

10. incidents and accidents, including medical emergencies;

11. universal precautions;

12. documentation; and

13. admission and discharge procedures.

F. An HCBS provider shall have written personnel policies, which must be implemented and followed, that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members;

2. written job descriptions for each staff position, including volunteers;

3. policies that shall, at a minimum, be consistent with Office of Public Health guidelines to indicate whether, when, and how staff have a health assessment;

4. an employee grievance procedure;

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment, whether that abuse or mistreatment is done by another staff member, a family member, a client or any other person; and

6. a written policy to prevent discrimination.

G. An HCBS provider shall maintain, in force at all times, the requirements for financial viability under this rule.

H. The provider shall have written policies and procedures for behavior management which:

1. prohibits:

a. corporeal punishment;

b. chemical restraints;

- c. psychological and verbal abuse;
- d. seclusion;
- e. forced exercise;
- f. physical and mechanical restraints;
- f. any cruel, severe, unusual, degrading or unnecessary punishment; and
- g. any procedure which denies:
  - i. food;
  - ii. drink;
  - iii. visits with family; or
  - iv. use of restroom facilities;

2. ensure that non-intrusive positive approaches to address the meaning/origins of behaviors are used prior to the development of a restrictive plan; and

3. cover any behavioral emergency and provide documentation of the event in an incident report format.

I. An HCBS provider shall comply with all federal and state laws, rules and regulations in the development and implementation of its policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

**§5031. Business Location**

A. All HCBS providers shall have a business location in the DHH Region for which the license is issued. The business location shall be a part of the physical geographic licensed location and shall be where the provider:

- 1. maintains staff to perform administrative functions;
- 2. maintains the provider's personnel records;
- 3. maintains the provider's client service records; and
- 4. holds itself out to the public as being a location for receipt of client referrals.

B. The business location shall have a separate entrance and exit from any other entity, business or trade, and shall have appropriate signage indicating the legal or trade name and address of the health care provider. The HCBS provider shall operate independently from any other business or entity, and shall not operate office space with any other business or entity.

1. The HCBS provider may share common areas with another business or entity. Common areas include foyers, kitchens, conference rooms, hallways, stairs, elevators or escalators when used to provide access to the provider's separate entrance.

2. Records or other confidential information shall not be stored in areas deemed to be common areas.

C. The business location shall:

1. be commercial office space or, if located in a residential area, be zoned for appropriate commercial use and shall be used solely for the operation of the business;

a. the business location may not be located in an occupied personal residence;

2. have approval from the Louisiana Office of the State Fire Marshal;

3. have a published telephone number which is available and accessible 24 hours a day, seven days a week, including holidays;

4. have a business fax number that is operational 24 hours a day, 7 days a week;

5. have internet access and a working e-mail address;

a. the e-mail address shall be provided to the department;

6. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

7. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

**D. Branch Offices and Satellites of HCBS Providers**

1. An HCBS provider who currently provides in-home services such as PCA, respite or SIL services may apply to the department for approval to operate a branch office to provide those same services. The branch office falls under the license of the parent agency and shall be located in the same DHH Region as the parent agency.

2. An HCBS provider who currently provides ADC services or provides center-based respite services may apply to the department for approval to operate a satellite location to provide additional ADC services or center-based respite services at that satellite location. The satellite location falls under the license of the parent agency and shall be located in the same DHH Region as the parent agency.

3. No branch office or satellite location may be opened without written approval from the department. In order for a branch office or satellite location to be approved, the parent agency must have full licensure for at least one year. Branch office approvals and satellite location approvals will be renewed at the time of renewal of the parent agency's license, if the parent agency meets the requirements for licensure.

4. A branch office or a satellite location shall not be approved if any of the following conditions exist:

a. the parent agency was cited with more than five deficiencies on its last annual survey or on a complaint survey within the last 12 months;

b. the parent agency was cited with a deficiency resulting in immediate jeopardy or actual harm to a client on its last annual survey or on a complaint survey within the last 12 months;

c. the parent agency has a provisional license;

d. the parent agency is under license revocation;

e. the parent agency is undergoing a change of ownership; or

f. adverse action, including license revocation, denial or suspension, has been taken against the license of other agencies operated by the owner of the parent agency.

5. The branch office or satellite location shall be held out to the public as a branch, division, or satellite of the parent agency so that the public will be aware of the identity of the agency operating the branch or satellite.

a. Reference to the name of the parent agency shall be contained in any written documents, signs or other promotional materials relating to the branch or satellite.

6. Original personnel files shall not be maintained at the branch office or satellite location.

7. A branch office or a satellite location is subject to survey, including complaint surveys, by the department at any time to determine compliance with minimum licensing standards.

8. A branch office or a satellite location shall:

a. serve as part of the geographic service area approved for the parent agency;

b. retain all original clinical records for its clients. Duplicate records need not be maintained at the parent agency, but shall be made available to state surveyors during any survey upon request within a reasonable amount of time;

c. maintain a statement of personnel policies on-site for staff usage;

d. post and maintain regular office hours; and

e. staff the branch office or satellite location during regular office hours.

9. Each branch office shall be assessed a fee of \$200, assessed at the time the license application is made for the branch and once a year thereafter for renewal of the branch license. This fee is non-refundable and is in addition to any other fees that may be assessed according to the laws, rules, regulations and standards.

10. Each satellite location shall be assessed a fee of \$250, assessed at the time the license application is made for the satellite location and once a year thereafter for renewal of the satellite location license. This fee is non-refundable and is in addition to any other fees that may be assessed according to the laws, rules, regulations and standards.

11. The department at its sole discretion, and taking into consideration resources of the department, may approve branch offices for HCBS providers rendering in-home services.

12. The department at its sole discretion, and taking into consideration resources of the department, may approve satellite locations for HCBS providers rendering center-based respite or adult day care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **Subchapter C. Admission, Transfer and Discharge**

#### **Criteria**

#### **§5033. Admissions**

A. An HCBS provider shall have written admissions policies and criteria which shall include the following:

1. intake policy and procedures;
2. admission criteria and procedures;
3. admission criteria and procedures for minors;
4. policy regarding the determination of legal status, according to appropriate state laws, before admission;
5. the age of the populations served;
6. the services provided by the provider's program(s); and
7. criteria for discharge.

B. The written description of admissions policies and criteria shall be provided to the department upon request, and made available to the client and his/her legal representative.

C. An HCBS provider shall ensure that the client, the legal representative, where appropriate, or other persons are provided an opportunity to participate in the admission process and decisions.

1. Proper consents shall be obtained before admission.
2. Where such involvement of the client is not possible or not desirable, the reasons for their exclusion shall be recorded.

D. An HCBS provider shall not refuse admission to any client on the grounds of race, national origin, ethnicity or disability.

E. An HCBS provider shall meet the needs of each client admitted to his/her program as identified and addressed in the client's ISP.

F. When refusing admission to a client, a provider shall provide a written statement as to the reason for the refusal. This shall be provided to designated representatives of the department upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5035. Voluntary Transfers and Discharges**

A. A client has the right to choose a provider. This right includes the right to be discharged from his current provider, be transferred to another provider and to discontinue services altogether.

B. Upon notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services, the HCBS provider shall have the responsibility of planning for a client's voluntary transfer or discharge.

C. The transfer or discharge responsibilities of the HCBS provider shall include:

1. holding a transfer or discharge planning conference with the client, family, support coordinator, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge, unless the client declines such a meeting;

2. providing a current individual service plan (ISP). Upon written request and authorization by the client or authorized representative, a copy of the current ISP shall be provided to the client or receiving provider; and

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, developmental issues, behavioral issues, social issues, and nutritional status of the client. Upon written request and authorization by the client or authorized representative, a copy of the discharge summary shall be disclosed to the client or receiving provider.

D. The written discharge summary shall be completed within five working days of the notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services.

1. The provider's preparation of the discharge summary shall not impede or impair the client's right to be transferred or discharged immediately if the client so chooses.

E. The provider shall not coerce the client to stay with the provider agency or interfere in any way with the client's decision to transfer. Failure to cooperate with the client's decision to transfer to another provider will result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5037. Involuntary Transfers and Discharges**

A. An HCBS provider shall not transfer or discharge the client from the provider except under the following circumstances. These situations will be considered involuntary transfers or discharges.

1. The client's health has improved sufficiently so that the client no longer needs the services rendered by the provider.

2. The safety or health of a client(s) or provider staff is endangered.

3. The client has failed to pay any outstanding amounts for services for which he is liable within 15 days after receipt of written notice from the provider.

4. The provider ceases to operate.

5. The client moves from the geographical region serviced by the HCBS provider.

6. The client or family refuses to cooperate or interferes with attaining the objectives of the HCBS provider.

7. The HCBS provider closes a particular module so that certain services are no longer provided.

B. When the provider proposes to involuntarily transfer or discharge a client, compliance with the provisions of this Section shall be fully documented in the client's records.

C. An HCBS provider shall provide a written notice of the involuntary transfer or discharge to the client, a family member of the client, if known, and to the authorized representative, if known, at least 30 days prior to the transfer or discharge.

1. The written notice shall be sent via certified mail, return receipt requested.

2. When the safety or health of clients or provider staff is endangered, written notice shall be given as soon as practicable before the transfer or discharge.

3. When the client has failed to pay any outstanding amounts for services for which he is liable, written notice may be given immediately. Payment is due within 15 days of receipt of written notice from the provider that an amount is due and owing.

4. The notice of involuntary discharge or transfer shall be in writing and in a language and manner that the client understands.

5. A copy of the notice of involuntary discharge or transfer shall be placed in the client's clinical record.

D. The written notice of involuntary transfer or discharge shall include:

1. a reason for the transfer or discharge;

2. the effective date of the transfer or discharge;

3. an explanation of a client's right to personal and/or third party representation at all stages of the transfer or discharge process;

4. contact information for the Advocacy Center;

a. the contact information shall include the addresses and telephone numbers for the Advocacy Center locations in Shreveport, Lafayette, and New Orleans;

5. names of provider personnel available to assist the client and family in decision making and transfer arrangements;

6. the date, time and place for the discharge planning conference;

7. a statement regarding the client's appeal rights;

8. the name of the director, current address and telephone number of the Division of Administrative Law or its successor; and

9. a statement regarding the client's right to remain with the provider and not be transferred or discharged if an appeal is timely filed.

E. Appeal Rights for Involuntary Transfers or Discharges

1. If a timely appeal is filed by the client or authorized representative disputing the involuntary discharge, the provider shall not transfer or discharge the client pursuant to the provisions of this Section.

NOTE: The provider's failure to comply with these requirements may result in revocation of a provider's license.

2. If nonpayment is the basis of the involuntary transfer or discharge, the client shall have the right to pay the balance owed to the provider up to the date of the transfer or discharge and is then entitled to remain with the agency if outstanding balances are paid.

3. If a client files a timely appeal request, the Division of Administrative Law, or its successor, shall hold an appeal hearing at the agency or by telephone, if agreed upon by the appellant, within 30 days from the date the appeal is filed with the Division of Administrative Law or its successor.

a. If the basis of the involuntary discharge is due to endangerment of the health or safety of the staff or individuals, the provider may make a written request to the Division of Administrative Law, or its successor, to hold a pre-hearing conference.

i. If a pre-hearing conference request is received by the Division of Administrative Law, or its successor, the pre-hearing conference shall be held within 10 days of receipt of the written request from the provider.

4. The Division of Administrative Law, or its successor, shall issue a decision within 30 days from the date of the appeal hearing.

5. The burden of proof is on the provider to show, by a preponderance of the evidence, that the transfer or discharge of the client is justified pursuant to the provisions of the minimum licensing standards.

F. Client's Right to Remain with the Provider Pending the Appeal Process

1. If a client is given 30 days written notice of the involuntary transfer or discharge and the client or authorized representative files a timely appeal, the client may remain with the provider and not be transferred or discharged until the Division of Administrative Law, or its successor, renders a decision on the appeal.

2. If a client is given less than 30 days written notice and files a timely appeal of an involuntary transfer/discharge based on the health and safety of individuals or provider staff being endangered, the client may remain with the provider and not be transferred or discharged until one of the following occurs:

a. the Division of Administrative Law, or its successor, holds a pre-hearing conference regarding the safety or health of the staff or individuals; or

b. the Division of Administrative Law, or its successor, renders a decision on the appeal.

3. If a client is given less than 30 days written notice and files a timely appeal of an involuntary transfer/discharge based on the client's failure to pay any outstanding amounts for services within the allotted time, the provider may discharge or transfer the client.

4. If a client is given less than 30 days written notice and files a timely appeal of an involuntary transfer/discharge based on the client moving outside of the provider's geographic service area, the client may remain with the

provider and not be transferred or discharged until the Division of Administrative Law, or its successor, renders a decision on the appeal.

G. The transfer or discharge responsibilities of the HCBS provider shall include:

1. holding a transfer or discharge planning conference with the client, family, support coordinator, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge;

2. development of discharge options that will provide reasonable assurance that the client will be transferred or discharged to a setting that can be expected to meet his/her needs;

3. preparing an updated ISP; and

4. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary of the health, developmental issues, behavioral issues, social issues and nutritional status of the client. Upon written request and authorization by the client or authorized representative, a copy of the discharge summary and/or updated ISP shall be disclosed to the client or receiving provider.

H. The agency shall provide all services required prior to discharge that are contained in the final update of the individual service plan and in the transfer or discharge plan.

1. The provider shall not be required to provide services if the discharge is due to the client moving out of the provider's geographical region. An HCBS provider is prohibited from providing services outside of its geographical region without the Department's approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **Subchapter D. Service Delivery**

##### **§5039. General Provisions**

A. The HCBS provider shall ensure that the client receives the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being of the client, in accordance with the comprehensive assessment and individual service plan.

B. All services provided to the client shall be provided in accordance with an individual service plan.

C. Assessment of Needs

1. Prior to any service being rendered, an HCBS provider shall conduct an assessment of the client's needs. The assessment shall include, at a minimum:

a. risk assessment, including:

i. life safety (i.e. the ability to access emergency services, basic safety practices and evaluation of the living unit);

ii. home environment;

iii. environmental risk; and

iv. medical risk;

b. medical assessments, including:

i. diagnosis;

ii. medications, including methods of administration; and

iii. current services and treatment regimen;

c. activities of daily living;

d. instrumental activities of daily living including money management, if applicable;

e. communication skills;

f. social skills; and

g. psychosocial skills including behavioral needs.

2. Each assessment shall be conducted by a licensed professional or a team of licensed professionals who are qualified and appropriate to conduct the assessment, and shall determine the necessary supports and services which shall be addressed in the ISP. If medical issues are identified in the assessment, a licensed physician or licensed registered nurse (RN) shall perform a medical assessment to determine necessary supports and services which shall be addressed in the ISP.

3. The assessment shall be conducted prior to admission and at least annually thereafter. The assessment may be conducted more often as the client's needs change.

4. An HCBS comprehensive assessment performed for a client in accordance with policies and procedures established by Medicaid or by a DHH program office for reimbursement purposes can substitute for the assessment required under these provisions.

D. Service Agreement

1. An HCBS provider shall ensure that a written service agreement is completed prior to admission of a client. A copy of the agreement, signed by all parties involved, shall be maintained in the client's record and shall be made available upon request by the department, the client and the legal representative, where appropriate.

2. The service agreement shall include:

a. a delineation of the respective roles and responsibilities of the provider;

b. specification of all of the services to be rendered by the provider;

c. the provider's expectations concerning the client; and

d. specification of the financial arrangements, including any fees to be paid by the client.

3. An HCBS plan of care or agreement to provide services signed by the provider or client in accordance with policies and procedures established by Medicaid or by a DHH program office for reimbursement purposes can substitute for the agreement required under these provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

##### **§5041. Individual Service Plan**

A. Upon admission, an individual service plan shall be developed for each client based upon a comprehensive assessment.

B. The client shall participate in the planning process. If the client is unable to participate in all or part of the planning, the provider shall document the parts or times and reasons why the client did not participate.

C. The agency shall document that they consulted with the client or legal representative regarding who should be involved in the planning process.

D. The agency shall document who attends the planning meeting.

E. The provider shall ensure that the ISP and any subsequent revisions are explained to the client receiving services and, where appropriate, the legal representative, in language that is understandable to them.

F. The ISP shall include the following components:

1. the findings of the comprehensive assessment;

2. a statement of goals to be achieved or worked towards for the person receiving services and their family or legal representative;

3. daily activities and specialized services that will be provided directly or arranged for;

4. target dates for completion or re-evaluation of the stated goals; and

5. identification of all persons responsible for implementing or coordinating implementation of the plan.

G. The provider shall ensure that all agency staff working directly with the person receiving services are appropriately informed of and trained on the ISP.

H. A comprehensive plan of care or ISP prepared in accordance with policies and procedures established by Medicaid or by a DHH program office for reimbursement purposes may be substituted for the individual service plan.

I. Each client's ISP shall be reviewed, revised, updated and amended annually, and more often as necessary, to reflect changes in the client's needs, services and personal outcomes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5043. Contract Services**

A. A provider may enter into contracts or other agreements with other companies or individuals to provide services to a client. The provider is still responsible for the management of the client's care and for all services provided to the client by the contractor or its personnel.

B. When services are provided through contract, a written contract must be established. The contract shall include all of the following items:

1. designation of the services that are being arranged for by contract;

2. specification of the period of time that the contract is to be in effect;

3. a statement that the services provided to the client are in accordance with the individual service plan;

4. a statement that the services are being provided within the scope and limitations set forth in the individual service plan and may not be altered in type, scope or duration by the contractor;

5. assurance that the contractor meets the same requirements as those for the provider's staff, such as staff qualifications, functions, evaluations, orientation and in-service training;

a. the provider shall be responsible for assuring the contractor's compliance with all personnel and agency policies required for HCBS providers during the contractual period;

6. assurance that the contractor completes the clinical record in the same timely manner as required by the staff of the provider;

7. payment of fees and terms; and

8. assurance that reporting requirements are met.

C. The provider and contractor shall document review of their contract on an annual basis.

D. The provider shall coordinate services with contract personnel to assure continuity of client care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5045. Transportation**

A. An HCBS provider shall arrange for or provide transportation necessary for implementing the client's service plan.

B. Any vehicle owned by the agency or its employees used to transport clients shall be:

1. properly licensed and inspected in accordance with state law;

2. maintained in a safe condition;

3. operated at a temperature that does not compromise the health, safety or needs of the client; and

4. operated in conformity with all of the applicable motor vehicle laws.

C. The provider shall have documentation of liability insurance coverage for any vehicle owned by the agency or its employees and used to transport clients. The personal liability insurance of a provider's employee shall not be substituted for the required coverage.

D. Any staff member of the provider, or other person acting on behalf of the provider, who is operating a vehicle owned by the agency or its employees for the purpose of transporting clients shall be properly licensed to operate that class of vehicle in accordance with state law.

E. The provider shall have documentation of successful completion of a safe driving course for each employee who transports clients.

1. Employees shall successfully complete a safe driving course within 90 days of hiring, every three years thereafter, and within 90 days of the provider's discovery of any moving violation.

F. Upon hire, the provider shall conduct a driving history record of each employee, and annually thereafter.

G. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats with seatbelts in the vehicle.

H. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. This information shall be communicated to agency staff who will transport clients.

I. The following additional arrangements are required for transporting non-ambulatory clients and those who cannot otherwise be transferred to and from the vehicle.

1. A ramp device to permit entry and exit of a client from the vehicle shall be provided for vehicles.

a. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. Wheelchairs used in transit shall be securely fastened inside the vehicle utilizing approved wheelchair fasteners.

3. The arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

## Subchapter E. Client Protections

### §5049. Client Rights

A. Unless adjudicated by a court of competent jurisdiction, clients served by HCBS providers shall have the same rights, benefits and privileges guaranteed by the constitution and the laws of the United States and Louisiana.

B. There shall be written policies and procedures that protect the client's welfare, including the means by which the protections will be implemented and enforced.

C. Each HCBS provider's written policies and procedures, at a minimum, shall ensure the client's right to:

1. human dignity;
2. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
3. cultural access as evidenced by:
  - a. interpretive services;
  - b. translated materials;
  - c. the use of native language when possible; and
  - d. staff trained in cultural awareness;
4. have sign language interpretation, allow for the use of service animals and/or mechanical aids and devices that assist those persons in achieving maximum service benefits when the person has special needs;
5. privacy;
6. confidentiality;
7. access his/her records upon the client's written consent for release of information;
8. a complete explanation of the nature of services and procedures to be received, including:
  - a. risks;
  - b. benefits; and
  - c. available alternative services;
9. actively participate in services, including:
  - a. assessment/reassessment;
  - b. service plan development; and
  - c. discharge;
10. refuse specific services or participate in any activity that is against their will and for which they have not given consent;
11. obtain copies of the provider's complaint or grievance procedures;
12. file a complaint or grievance without retribution, retaliation or discharge;
13. be informed of the financial aspect of services;
14. be informed of the need for parental or guardian consent for treatment of services, if appropriate;
15. personally manage financial affairs, unless legally determined otherwise;
16. give informed written consent prior to being involved in research projects;
17. refuse to participate in any research project without compromising access to services;
18. be free from mental, emotional and physical abuse and neglect;
19. be free from chemical or physical restraints;
20. receive services that are delivered in a professional manner and are respectful of the client's wishes concerning their home environment;
21. receive services in the least intrusive manner appropriate to their needs;
22. contact any advocacy resources as needed, especially during grievance procedures; and

23. discontinue services with one provider and freely choose the services of another provider.

D. An HCBS provider shall assist in obtaining an independent advocate:

1. if the client's rights or desires may be in jeopardy;
2. if the client is in conflict with the provider; or
3. upon any request of the client.

E. The client has the right to select an independent advocate, which may be:

1. a legal assistance corporation;
2. a state advocacy and protection agency;
3. a trusted church or family member; or
4. any other competent key person not affiliated in any way with the licensed provider.

F. The client, client's family and legal guardian, if one is known, shall be informed of their rights, both verbally and in writing in a language they are able to understand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### §5051. Grievances

A. The agency shall establish and follow a written grievance procedure to be used to formally resolve complaints by clients, their family member(s) or a legal representative regarding provision of services. The written grievance procedure shall be provided to the client.

1. The notice of grievance procedure shall include the names of organizations that provide free legal assistance.

B. The client, family member or legal representative shall be entitled to initiate a grievance at any time.

C. The agency shall annually explain the grievance procedure to the client, family member(s) or a legal representative, utilizing the most appropriate strategy for ensuring an understanding of what the grievance process entails.

1. The agency shall provide the grievance procedure in writing and grievance forms shall be made available.

D. The administrator of the agency, or his/her designee, shall investigate all grievances and shall make all reasonable attempts to address the grievance.

E. The administrator of the agency, or his/her designee, shall issue a written report and/or decision within five business days of receipt of the grievance to the:

1. client;
2. client's advocate;
3. authorized representative; and
4. the person making the grievance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

## Subchapter F. Provider Responsibilities

### §5053. General Provisions

A. HCBS providers shall have qualified staff sufficient in number to meet the needs of each client as specified in the ISP and to respond in emergency situations.

B. Additional staff shall be employed as necessary to ensure proper care of clients and adequate provision of services.

C. Staff shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other staff persons.

D. All client calls to the provider's published telephone number shall be returned within an appropriate amount of time not to exceed 24 hours. Each client shall be informed of the provider's published telephone number, in writing, as well as through any other method of communication most readily understood by the client according to the following schedule:

1. upon admission to the HCBS provider agency;
2. at least once per year after admission; and
3. when the provider's published telephone number changes.

E. HCBS providers shall establish policies and procedures relative to the reporting of abuse and neglect of clients, pursuant to the provisions of R.S. 15:1504-1505, R.S. 40:2009.20 and any subsequently enacted laws. Providers shall ensure that staff complies with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5055. Core Staffing Requirements**

A. Administrative Staff. The following administrative staff is required for all HCBS providers:

1. a qualified administrator at each licensed geographic location who shall meet the qualifications as established in these provisions; and
2. other administrative staff as necessary to properly safeguard the health, safety and welfare of the clients receiving services.

#### **B. Administrator Qualifications**

1. The administrator shall be a resident of the state of Louisiana and shall have the following educational qualifications and experience:

a. a master's degree in a human services field including, but not limited to:

i. nursing, hospital or nursing facility administration;

ii. physical therapy;

iii. social work;

iv. psychology;

v. gerontology;

vi. rehabilitation counseling; or

vii. health care administration; plus

viii. a minimum of three years of verifiable work experience with persons with disabilities or the elderly, with one year of the three years being at the administrative level; or

b. a bachelor's degree in a human services field including, but not limited to:

i. nursing, hospital or nursing facility administration;

ii. physical therapy;

iii. social work;

iv. psychology

v. gerontology;

vi. rehabilitation counseling; or

vii. health care administration; plus

viii. a minimum of four years verifiable work experience with persons with disabilities or the elderly, with two years of the four years being at the administrative level;

c. be a registered nurse with a minimum of seven years of verifiable work experience with persons with disabilities or the elderly, with three years of the seven years being at the administrative level; or

d. have a Juris Doctorate or a Master's or PhD in business management, provided there is a full-time individual on staff in a managerial position who has a human service degree.

2. Any person convicted of a felony as defined in these provisions is prohibited from serving as the administrator of an HCBS provider agency.

C. Administrator Responsibilities. The administrator shall:

1. be a full time employee of the HCBS provider and shall not be a contract employee;

2. be available in person or by telecommunication at all times for all aspects of agency operation;

3. designate in writing an individual who meets the qualifications for an administrator to assume the authority and control of the agency if the administrator is unavailable;

4. direct the operations of the agency;

5. be responsible for compliance with all regulations, laws, policies and procedures applicable to home and community-based service providers;

6. employ qualified individuals and ensure adequate staff education and evaluations;

7. ensure the accuracy of public information and materials;

8. act as liaison between staff, contract personnel and the governing body;

9. implement an ongoing, accurate and effective budgeting and accounting system;

10. ensure that all staff receive proper orientation and training on policies and procedures, client care and services and documentation, as required by law or as necessary to fulfill each staff person's responsibilities;

11. assure that services are delivered according to the client's individual service plan; and

12. not serve as administrator for more than one licensed HCBS provider.

#### **D. Professional Services Staff**

1. The provider shall employ, contract with or assure access to all necessary professional staff to meet the needs of each client as identified and addressed in the client's ISP. The professional staff shall include, but not be limited to:

a. licensed practical nurses;

b. registered nurses;

c. speech therapists;

d. physical therapists;

e. occupational therapists;

f. social workers; and

g. psychologists.

2. Professional staff employed or contracted by the provider shall hold a current, valid license issued by the appropriate licensing board and shall comply with continuing education requirements of the appropriate board.

3. The provider shall maintain proof of annual verification of current license of all professional staff.

4. All professional services furnished or provided shall be provided in accordance with acceptable professional practice standards, according to the scope of practice requirements for each licensed discipline.



#### E. Direct Care Staff

1. The provider shall be staffed with direct care staff to properly safeguard the health, safety and welfare of clients.

2. The provider shall employ direct care staff to ensure the provision of home and community-based services as required by the ISP.

3. The HCBS provider shall have back-up staff available on a 24-hour basis to ensure that services to the client are uninterrupted in the event that the primary direct care staff for the client is unable to report to work.

#### F. Direct Care Staff Qualifications

1. All providers who receive state or federal funds, and compensate their direct service workers with such funds, shall ensure that all non-licensed direct care staff meet the minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-40:2179.1 or a subsequently amended statute and any rules published pursuant to those statutes.

2. All direct care staff shall have the ability to read, write and carry out directions competently as assigned.

a. The training must address areas of weakness, as determined by the worker's performance reviews, and may address the special needs of clients.

3. All direct care staff shall be trained in recognizing and responding to the medical emergencies of clients.

G. Direct Care Staff Responsibilities. The direct care staff shall:

1. provide personal care services to the client, per the ISP;

2. provide the direct care services to the client at the time and place assigned;

3. report and communicate changes in a client's condition to a supervisor immediately upon discovery of the change;

4. report and communicate a client's request for services or change in services to a supervisor on the date of such request;

5. follow emergency medical training while attending the client;

6. subsequently report any medical emergencies to the supervisor, the provider or others, pursuant to the provider policies and procedures;

7. report any suspected abuse, neglect or exploitation of clients to a supervisor on the date of discovery, and as required by law;

8. be trained on daily documentation such as progress notes and progress reports; and

9. be responsible for daily documentation of services provided and status of clients to be reported on progress notes and/or progress reports.

#### H. Volunteers/Student Interns

1. A provider utilizing volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

a. be directly supervised by a paid staff member;

b. be oriented and trained in the philosophy, policy and procedures of the provider, confidentiality requirements and the needs of clients; and

c. have documentation of three reference checks.

2. Volunteer/student interns shall be a supplement to staff employed by the provider but shall not provide direct care services to clients.

I. Direct Care Staff Supervisor. The HCBS provider shall designate and assign a direct care staff supervisor to monitor and supervise the direct care staff.

1. The supervisor shall be selected based upon the needs of the client outlined in the ISP.

2. A provider may have more than one direct care staff supervisor.

3. Staff in supervisor positions shall have annual training in supervisory and management techniques.

#### J. Direct Care Supervision

1. A direct care staff supervisor shall make an onsite supervisor visit of each direct care staff not to exceed 90 days between visits. Supervisory visits should occur more frequently:

a. if dictated by the ISP;

b. as needed to address worker performance;

c. to address a client's change in status; or

d. to assure services are provided in accordance with the ISP.

2. The supervisory visit shall be unannounced and utilized to evaluate the direct care staff's ability to perform assigned duties, determine whether services are being provided in accordance with the ISP and whether goals are being met.

3. Documentation of supervision shall include:

a. the worker/client relationship;

b. services provided;

c. observations of the worker performing assigned duties;

d. instructions and comments given to the worker during the onsite visit;

e. verification that the worker is actually reporting to the work site according to the frequency specified in the ISP; and

f. client satisfaction with service delivery.

4. An annual performance evaluation for each direct care staff person shall be documented in his/her personnel record.

#### K. Direct Care Staff Training

1. The provider shall ensure that each direct care staff satisfactorily completes a minimum of 16 hours of training upon hire and before providing direct care and services to clients. Such training shall include the following topics and shall be documented in each employee's personnel record:

a. the provider's policies and procedures;

b. emergency and safety procedures;

c. recognizing and responding to medical emergencies that require an immediate call to 911;

d. client's rights;

e. detecting and reporting suspected abuse and neglect, utilizing the department's approved training curriculum;

f. reporting critical incidents;

g. universal precautions;

h. documentation;

i. implementing service plans;

j. confidentiality;

k. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

1. basic skills required to meet the health needs and problems of the client; and
- m. the management of aggressive behavior, including acceptable and prohibited responses.

2. The provider shall ensure that each direct care staff satisfactorily completes a basic first aid course within 45 days of hire.

#### L. Competency Evaluation

1. A competency evaluation must be developed and conducted to ensure that each direct care staff, at a minimum, is able to demonstrate competencies in the training areas in §5055.K.

2. Written or oral examinations shall be provided.

3. The examination shall reflect the content and emphasis of the training curriculum components in §5055.K and shall be developed in accordance with accepted educational principles.

4. A substitute examination, including an oral component, will be developed for those direct care staff with limited literacy skills. This examination shall contain all of the content that is included in the written examination and shall also include a written reading comprehension component that will determine competency to read job-related information.

#### M. Continuing Education

1. Annually thereafter, the provider shall ensure that each direct care staff person satisfactorily completes a minimum of 16 hours of continuing training in order to ensure continuing competence. Orientation and normal supervision shall not be considered for meeting this requirement. This training shall address the special needs of clients and may address areas of employee weakness as determined by the direct care staff's performance reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### §5057. Client Records

A. Client records shall be maintained in the HCBS provider's office. Current progress notes shall be maintained at the home. The provider shall have a written record for each client which shall include:

1. other identifying data including:

- a. name;
- b. date of birth;
- c. address;
- d. telephone number;
- e. social security number; and
- f. legal status;

2. a copy of the client's ISP or Medicaid comprehensive plan of care, as well as any modifications or updates to the service plan;

3. the client's history including, where applicable:

- a. family data;
- b. next of kin;
- c. educational background;
- d. employment record;
- e. prior medical history; and
- f. prior service history;

4. the service agreement or comprehensive plan of care;

5. written authorization signed by the client or, where appropriate, the legally responsible person for emergency care;

6. written authorization signed by the client or, where appropriate, the legally responsible person for managing the client's money, if applicable;

7. a full and complete separate accounting of each client's personal funds which includes a written record of all of the financial transactions involving the personal funds of the client deposited with the provider;

a. the client (or his legal representative) shall be afforded reasonable access to such record;

b. the financial records shall be available through quarterly statements;

c. the provider shall safeguard and account for any such funds;

8. required assessment(s) and additional assessments that the provider may have received or is privy to;

9. the names, addresses and telephone numbers of the client's physician(s) and dentist;

10. written progress notes or equivalent documentation and reports of the services delivered for each client for each visit. The written progress notes shall include, at a minimum:

a. the date and time of the visit and services;

b. the services delivered;

c. who delivered or performed the services;

d. observed changes in the physical and mental condition(s) of the client, if applicable; and

e. doctor appointments scheduled or attended that day;

11. health and medical records of the client, including:

a. a medical history, including allergies;

b. a description of any serious or life threatening medical condition(s);

c. a description of any medical treatment or medication necessary for the treatment of any medical condition; and

d. physician delegation form for the administration of medication or treatment, if applicable; and

12. a copy of any advance directive that has been provided to the HCBS provider, or any physician orders relating to end of life care and services.

B. HCBS providers shall maintain client records for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### §5059. Client Funds and Assets

A. The HCBS provider shall develop and implement written policies and procedures to protect client funds.

B. If the provider manages a client's personal funds, the provider must furnish a written statement which includes the client's rights regarding personal funds, a list of the services offered and charges, if any, to the client and/or his/her legal or responsible representative.

C. If a client chooses to entrust funds with the provider, the provider shall obtain written authorization from the client and/or his/her legal or responsible representative for the safekeeping and management of the funds.

D. The provider shall:

1. provide each client with an account statement on a quarterly basis with a receipt listing the amount of money the provider is holding in trust for the client;
2. maintain a current balance sheet containing all financial transactions to include the signatures of staff and the client for each transaction;
3. provide a list or account statement regarding personal funds upon request of the client;
4. maintain a copy of each quarterly account statement in the client's record;
5. keep funds received from the client for management in a separate account and maintain receipts from all purchases with each receipt being signed by the client and the staff assisting the client with the purchase, or by the staff assisting the client with the purchase and an independent staff when the client is not capable of verifying the purchase; and
6. not commingle the clients' funds with the provider's operating account.

E. A client with a personal fund account managed by the HCBS provider may sign an account agreement acknowledging that any funds deposited into the personal account, by the client or on his/her behalf, are jointly owned by the client and his legal representative or next of kin. The account agreement shall state that:

1. the funds in the account shall be jointly owned with the right of survivorship;
2. the funds in the account shall be used by the client or on behalf of the client;
3. the client or the joint owner may deposit funds into the account; and
4. the client or joint owner may endorse any check, draft or other instrument to the order of any joint owner, for deposit into the account.

F. If the provider is managing funds for a client and he/she is discharged, any remaining funds shall be refunded to the client or his/her legal or responsible representative within five business days of notification of discharge.

G. Distribution of Funds upon the Death of a Client

1. Unless otherwise provided by state law, upon the death of a client, the provider shall provide the executor or administrator of the client's estate or the client's responsible representative with a complete account statement of the client's funds and personal property being held by the provider.

2. If a valid account agreement has been executed by the client, the provider shall transfer the funds in the client's personal fund account to the joint owner within 30 days of the client's death. This provision only applies to personal fund accounts not in excess of \$2,000.

3. If a valid account agreement has not been executed, the provider shall comply with the federal and state laws and regulations regarding the disbursement of funds in the account and the properties of the deceased. The provider shall comply with R.S. 9:151-181, the Louisiana Uniform Unclaimed Property Act, and the procedures of the Louisiana Department of the Treasury regarding the handling of a deceased client's funds that remain unclaimed.

H. A termination date of the account and the reason for termination shall be recorded on the client's participation

file. A notation shall read, "to close account." The endorsed cancelled check with check number noted on the ledger sheet shall serve as sufficient receipt and documentation.

I. Burial or Insurance Policies

1. Upon discharge of a client, the provider shall immediately remit any burial policies or insurance policies to the client or his/her legal or responsible representative.

2. Upon the death of a client, the provider shall act upon any burial or insurance policies of the client accordingly.

J. The provisions of this Section shall have no effect on federal or state tax obligations or liabilities of the deceased client's estate. If there are other laws or regulations which conflict with these provisions, those laws or regulations will govern over and supersede the conflicting provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5061. Quality Enhancement Plan**

A. An HCBS provider shall have a quality enhancement (QE) plan which puts systems in place to effectively identify issues for which quality monitoring, remediation and improvement activities are necessary. The QE plan includes plans of action to correct identified issues including monitoring the effect of implemented changes and making needed revisions to the action plan.

B. The QE plan shall include:

1. a process for obtaining input annually from the client/guardian/authorized representatives and family members, as applicable. This process shall include, but not be limited to:

- a. satisfaction surveys done by mail or telephone;
- b. focus groups; and
- c. other processes for receiving input regarding the quality of services received;

2. a 10 percent sample review of client case records and/or site visits on a quarterly bases to assure that:

- a. individual service plans are up to date;
- b. records are complete and current; and
- c. supervisory visits are current and documented;

3. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of individuals being supported which includes, but is not limited to:

- a. review and resolution of complaints;
- b. review and resolution of incidents; and
- c. Office of Protective Services' investigations of

abuse, neglect and exploitation;

4. a process to review and resolve individual client issues that are identified; and

5. a process to review and develop action plans to resolve all system wide issues identified as a result of the processes above.

C. The QE program outcomes shall be reported to the administrator for action, as necessary, for any identified systemic problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### §5063. Emergency Preparedness

A. A disaster or emergency may be a local, community-wide, regional or statewide event. Disasters or emergencies may include, but are not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

B. Providers shall ensure that each client has an individual plan for dealing with emergencies and disasters and shall assist clients in identifying the specific resources available through family, friends, the neighborhood and the community.

C. Continuity of Operations. The provider shall have an emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the provider's ability to render care and treatment, or threatens the lives or safety of the clients.

D. The provider shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency. The plan shall include, at a minimum:

1. provisions for the delivery of essential services to each client as identified in the individualized emergency plan for each client, whether the client is in a shelter or other location;
2. provisions for the management of staff, including provisions for adequate, qualified staff as well as for distribution and assignment of responsibilities and functions;
3. provisions for back-up staff;
4. the method that the provider will utilize in notifying the client's family or caregiver if the client is evacuated to another location either by the provider or with the assistance or knowledge of the provider. This notification shall include:
  - a. the date and approximate time that the facility or client is evacuating;
  - b. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and
  - c. a telephone number that the family or responsible representative may call for information regarding the provider's evacuation;
5. provisions for ensuring that supplies, medications, clothing and a copy of the service plan are sent with the client, if the client is evacuated; and
6. the procedure or methods that will be used to ensure that identification accompanies the individual. The identification shall include the following information:
  - a. current and active diagnosis;
  - b. medication, including dosage and times administered;
  - c. allergies;
  - d. special dietary needs or restrictions; and
  - e. next of kin, including contact information.

E. If the state, parish or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or the area in which the agency is serving, the agency shall ensure that all clients are evacuated according to the client's individual plan and the agency's emergency preparedness plan.

1. The provider shall not abandon a client during a disaster or emergency. The provider shall not evacuate a client to a shelter without ensuring staff and supplies remain with the client at the shelter, in accordance with the client's service plan.

F. Emergency Plan Review and Summary. The provider shall review and update its emergency preparedness plan, as well as each client's emergency plan at least annually.

G. The provider shall cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested.

H. The provider shall monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials.

I. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

J. Upon request by the department, the HCBS shall submit a copy of its emergency preparedness plan and a written summary attesting how the plan was followed and executed. The summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

K. Inactivation of License due to a Declared Disaster or Emergency.

1. An HCBS provider licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster, as issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

a. the licensed provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

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

ii. the licensed HCBS provider intends to resume operation as an HCBS provider in the same service area;

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

iv. includes an attestation that all clients have been properly discharged or transferred to another provider; and

v. provides a list of each client and where that client is discharged or transferred to;

b. the licensed HCBS provider resumes operating as a HCBS provider in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

c. the licensed HCBS provider continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

d. the licensed HCBS provider continues to submit required documentation and information to the department.

2. Upon receiving a completed written request to inactivate a HCBS provider license, the department shall issue a notice of inactivation of license to the HCBS provider.

3. Upon completion of repairs, renovations, rebuilding or replacement, an HCBS provider which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met.

a. The HCBS provider shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening.

b. The license reinstatement request shall inform the department of the anticipated date of opening, and shall request scheduling of a licensing survey.

c. The license reinstatement request shall include a completed licensing application with appropriate licensing fees.

d. The provider resumes operating as an HCBS provider in the same service area within one year.

4. Upon receiving a completed written request to reinstate an HCBS provider license, the department shall conduct a licensing survey. If the HCBS provider meets the requirements for licensure and the requirements under this Section, the department shall issue a notice of reinstatement of the HCBS provider license.

a. The licensed capacity of the reinstated license shall not exceed the licensed capacity of the HCBS provider at the time of the request to inactivate the license.

5. No change of ownership in the HCBS provider shall occur until such HCBS provider has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as an HCBS provider.

6. The provisions of this Section shall not apply to an HCBS provider which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the HCBS provider license and any applicable facility need review approval for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

## Subchapter G. Adult Day Care Module

### §5071. General Provisions

A. Providers applying for the Adult Day Care module under the HCBS license shall meet the core licensing requirements as well as the module specific requirements of this Section.

B. Adult Day Care is designed to meet the individual needs of functionally impaired adults. This is a structured and comprehensive group program which provides a variety of health, social, and related support services in a protective setting for a portion of the 24-hour day.

C. An ADC program shall provide services for 10 or more functionally impaired adults who are not related to the owner or operator of the HCBS provider.

1. For the purposes of this Section, *functionally impaired adult* shall be defined as individuals 17 years of age or older who are physically, mentally or socially impaired to a degree that requires supervision.

D. The following two programs shall be provided under the ADC Module.

#### 1. Day Habilitation Services

a. Day habilitation services include assistance with acquisition, retention or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting separate from the recipient's private residence or other residential living arrangement. Day habilitation services provide activities and environments designed to foster the acquisition of skills, appropriate behavior, greater independence and personal choice.

b. Services are furnished to a client who is 17 years of age or older and has a developmental disability, or who is a functionally impaired adult, on a regularly scheduled basis during normal daytime working hours for one or more days per week, or as specified in the recipient's service plan.

c. Day habilitation services focus on enabling the recipient to attain or maintain his or her maximum functional level, and shall be coordinated with any physical, occupational, or speech therapies in the service plan. These services may also serve to reinforce skills or lessons taught in other settings.

#### 2. Prevocational/Employment-Related Services

a. Prevocational/employment-related services prepare a recipient for paid or unpaid employment. Services include teaching such concepts as compliance, attendance, task completion, problem solving and safety. Services are not job-task oriented, but are aimed at a generalized result. These services are reflected in the recipient's service plan and are directed to habilitative (e.g. attention span, motor skills) rather than explicit employment objectives.

b. Prevocational services are provided to clients who are not expected to join the general work force or participate in a transitional sheltered workshop within one year of service initiation.

c. This service is not available to clients eligible to receive services under a program funded under the Rehabilitation Act of 1973 or the IDEA.

E. When applying for the ADC module under the HCBS provider license, the provider shall indicate whether it is providing day habilitation, prevocational/employment-related services or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5073. Operational Requirements**

A. The client/staff ratio in an ADC facility shall be one staff person per eight clients, unless additional staff coverage is needed to meet the needs of the client, as specified in the service plan.

#### **B. Staff Training**

1. ADC staff in supervisory positions shall have annual training in supervisory and management techniques.

2. Each ADC facility shall have a training supervisor who shall receive at least 15 hours of annual vocational and/or community-based employment training.

3. Once the training supervisor receives all of the required training, he/she shall be responsible for ensuring that direct care staff receives training on vocational and/or community-based employment training.

#### **C. Food and Nutrition**

1. If meals are prepared by the facility or contracted from an outside source, the following conditions shall be met:

a. menus shall be written in advance and shall provide for a variety of nutritional foods;

b. records of menus, as served, shall be filed and maintained for at least 30 days;

c. modified diets shall be prescribed by a physician;

d. only food and drink of safe quality shall be purchased;

e. storage, preparation, and serving techniques shall be provided to ensure nutrients are retained and spoilage is prevented;

f. food preparation areas and utensils shall be kept clean and sanitary;

g. there shall be an adequate area for eating; and

h. the facility shall designate one staff member who shall be responsible for meal preparation/serving if meals are prepared in the facility.

2. When meals are not prepared by the facility, the following conditions shall be met:

a. provisions shall be made for obtaining food for clients who do not bring their lunch; and

b. there shall be an adequate area for eating.

3. Drinking water shall be readily available. If a water fountain is not available, single-use disposable cups shall be used.

4. Dining areas shall be adequately equipped with tables, chairs, eating utensils and dishes designed to meet the functional needs of clients.

5. Adequate refrigeration of food shall be maintained.

#### **D. General Safety Practices**

1. A facility shall not maintain any firearms or chemical weapons at any time.

2. A facility shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers and labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff and visitors.

3. Adequate supervision/training shall be provided where potentially harmful materials such as cleaning solvents and/or detergents are used.

4. A facility shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

5. Medication shall be locked in a secure storage area or cabinet.

6. Fire drills shall be performed at least once a month.

#### **E. Physical Environment**

1. The ADC building shall be constructed, equipped and maintained to ensure the safety of all individuals. The building shall be maintained in good repair and kept free from hazards such as those created by any damage or defective parts of the building.

2. The provider shall maintain all areas of the facility that are accessible to individuals, and ensure that all structures on the ground of the facility are in good repair and kept free from any reasonable foreseeable hazards to health or safety.

3. The facility shall be accessible to and functional for those cared for, the staff and the public. All necessary accommodations shall be made to meet the needs of clients. Training or supports shall be provided to help clients effectively negotiate their environments.

4. There shall be a minimum of 35 square feet of space per client. Kitchens, bathrooms and halls used as passageways, and other spaces not directly associated with program activities, shall not be considered as floor space available to clients.

5. There shall be storage space, as needed by the program, for training and vocational materials, office supplies, etc.

6. Rooms used for recipient activities shall be well ventilated and lighted.

7. There shall be separate space for storage of a client's personal belongings.

8. Chairs and tables shall be adequate in number to serve the clients.

9. Bathrooms and lavatories shall be accessible, operable and equipped with toilet paper, soap and paper towels or hand drying machines. Every bathroom shall be wheelchair accessible.

a. For existing, licensed ADCs, there shall be one bathroom per every 12 persons at the ADC facility.

b. For newly licensed, newly constructed, renovated or relocated ADCs, there shall be two bathrooms, one for male and one for female, each having a commode/toilet and lavatory for every 15 persons at the ADC facility.

c. Individuals shall be provided privacy when using bathroom facilities.

d. Every bathroom door shall be designed to permit opening of the locked door from the outside, in an emergency, and the opening device shall be readily accessible to the staff.

10. Stairways shall be kept free of obstruction and fire exit doors shall be maintained in working order. All stairways shall be equipped with handrails.

11. There shall be a telephone available and accessible to all clients.

12. The ADC shall be equipped with a functional air conditioning and heating unit(s) which maintains an ambient temperature between 65 and 80 degrees Fahrenheit throughout the ADC.

13. The building in which the ADC is located shall meet the standards of the Americans with Disabilities Act.

## F. Employment of Clients

1. The provider shall meet all of the state and federal wage and hour regulations regarding employment of clients who are admitted to the agency.

a. The provider must maintain full financial records of clients' earnings if the facility pays the client.

b. The provider shall have written assurance that the conditions and compensation of work are in compliance with applicable state and federal employment regulations.

c. The provider must have a U.S. Department of Labor Sub-Minimum Wage Certificate if the provider pays sub-minimum wage.

2. Clients shall not be required to perform any kind of work involving the operation or maintenance of the facility without compensation in accordance with the U.S. Department of Labor sub-minimum standard.

3. Clients shall be directly supervised when operating any type of power driven equipment such as lawn mowers or electrical saws, unless:

a. the ID team has determined that direct supervision is not necessary;

b. equipment has safety guards or devices; and

c. adequate training is given to the recipient and the training is documented.

4. Clients shall be provided with the necessary safety apparel and safety devices to perform the job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **Subchapter H. Family Support Module**

#### **§5075. General Provisions**

A. Providers applying for the Family Support module under the HCBS license shall meet the core licensing requirements as well as the module specific requirements of this Section.

B. The purpose of family support services is to:

1. keep the family of a person with a disability together by promoting unity, independence of the family in problem solving and maintenance of the family as the primary responsible caretaker;

2. determine if barriers to home placement for persons with a disability can be eliminated or relocated through financial assistance for purchases, special equipment and supplies;

3. allow a person with a disability to remain in or return to a family setting as an alternative to placement in a more restrictive setting; and

4. link families of a person with a disability to existing support services and to supplement those services where necessary (i.e. transportation to reach services when not otherwise provided).

C. Services covered by the family support module may include:

1. special equipment;
2. limited adaptive housing;
3. medical expenses and medications;
4. nutritional consultation and regime;
5. related transportation;
6. special clothing;
7. special therapies;
8. respite care;

9. dental care; and

10. family training and therapy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5077. Operational Requirements**

A. Providers shall ensure that each family receiving services is assigned a service coordinator.

B. The service coordinator shall perform the following tasks:

1. prepare a family study, based on a home visit interview with the client, in order to ascertain what appropriate family support services may be provided;

2. visit each client at least quarterly;

3. maintain documentation of all significant contacts; and

4. review and evaluate, at least every six months, the care, support and treatment each client is receiving.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **Subchapter I. Personal Care Attendant Module**

#### **§5079. General Provisions**

A. Providers applying for the Personal Care Attendant module under the HCBS license shall meet the core licensing requirement as well as the module specific requirements of this Section.

B. Personal care attendant services may include:

1. assistance and prompting with:

a. personal hygiene;

b. dressing;

c. bathing;

d. grooming;

e. eating;

f. toileting;

g. ambulation or transfers;

h. behavioral support;

i. other personal care needs; and

j. any medical task which can be delegated;

2. assistance and/or training in the performance of tasks related to:

a. maintaining a safe and clean home environment such as housekeeping, bed making, dusting, vacuuming and laundry;

b. cooking;

c. shopping;

d. budget management;

e. bill paying; and

f. evacuating the home in emergency situations;

3. personal support and assistance in participating in community, health and leisure activities which may include transporting and/or accompanying the participant to these activities;

4. support and assistance in developing relationships with neighbors and others in the community and in strengthening existing informal, social networks and natural supports; and

5. enabling and promoting individualized community supports targeted toward inclusion into meaningful, integrated experiences (e.g. volunteer work and community awareness) activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5081. Operational Requirements**

A. PCA providers shall schedule personal care attendant staff in the manner and location as required by each client's ISP.

B. PCA providers shall have a plan that identifies at least one trained and qualified back-up worker for each client served.

1. It is the responsibility of the provider to ensure that a trained and qualified back-up worker is available as needed to meet the requirements of the ISP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **Subchapter J. Respite Care**

#### **§5083. General Provisions**

A. Providers applying for the respite care module under the HCBS license shall meet the core licensing requirement as well as the applicable module specific requirements of this Section.

B. The goal of respite care is to provide temporary, intermittent relief to informal caregivers in order to help prevent unnecessary or premature institutionalization while improving the overall quality of life for both the informal caregiver and the client.

C. Respite care may be provided as an in-home or center-based service. The services may be provided in the client's home or in a licensed respite center.

D. Providers of in-home respite care services must comply with:

1. all HCBS providers core licensing requirements;
2. PCA module specific requirements; and
3. the respite care services module in-home requirements.

E. Providers of center-based respite care services must comply with:

1. all HCBS providers core licensing requirements;
2. respite care services module in-home requirements; and
3. respite care services module center-based requirements.

F. When applying for the respite care service module under the HCBS provider license, the provider shall indicate whether it is providing in-home respite care, center-based respite care or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5085. Operational Requirements for In-Home Respite Care**

- A. All in-home respite care service providers shall:
1. make available to clients, the public and HSS the day and hours that respite is to be provided;
  2. make available to clients, the public and HSS a detailed description of populations served as well as services and programming; and

B. In-home respite care service providers shall have adequate administrative, support, professional and direct care staff to meet the needs of clients at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5087. Operational Requirements for Center-Based Respite Care**

A. All center-based respite care service providers shall meet the following daily aspects of care.

1. The daily schedule shall be developed in relation to the needs of the clients.

2. Clients shall be assisted in ADL's as needed.  
a. The provider shall ensure that the family supplies the client with his/her own clothing.

3. The provider shall make available to each client an adequate number of supervised recreational activities.

B. All center-based respite care service providers shall meet the following health aspects of care.

1. Responsibility for the health supervision of the client shall be placed with the client's personal physician.

a. The provider shall have written agreements for obtaining diagnosis and treatment of medical and dental problems for clients who do not have a personal physician. This agreement can be with a local hospital, clinic or physician.

2. Arrangements for medical isolation shall be available. The provider shall inform the family to remove the client when necessary.

3. Medication shall be prescribed only by a licensed physician.

#### **C. Food and Nutrition**

1. Planning, preparation and serving of foods shall be in accordance with the nutritional, social, emotional and medical needs of the clients. The diet shall include a variety of food, and be attractively served. Clients shall be encouraged, but not forced, to eat all of the food served.

2. Food provided shall be of adequate quality and in sufficient quantity to provide the nutrients for proper growth and development.

3. Clients shall be provided a minimum of three meals daily, plus snacks.

4. All milk and milk products used for drinking shall be Grade A and pasteurized.

5. There shall be no more than 14 hours between the last meal or snack on one day and the first meal of the following day.

D. The provider shall request from the family that all clients over five years of age have money for personal use. Money received by a client shall be his own personal property and shall be accounted for separately from the provider's funds.

#### **E. Privacy**

1. The HCBS provider staff shall function in a manner that allows appropriate privacy for each client.

2. The space and furnishings shall be designed and planned to enable the staff to respect the clients' right to privacy and at the same time provide adequate supervision according to the ages and developmental needs of the client.



3. The provider shall not use reports or pictures, nor release (or cause to be released) research data, from which clients can be identified without written consent from the client, parents or legal guardians.

F. Contact with Family, Friends and Representatives

1. Clients in care shall be allowed to send and receive uncensored mail and conduct private telephone conversations with family members.

2. If it has been determined that the best interests of the client necessitate restrictions on communications or visits, these restrictions shall be documented in the service plan.

3. If limits on communication or visits are indicated for practical reasons, such as expense of travel or telephone calls, such limitations shall be determined with the participation of the client and family.

G. Furnishings and Equipment

1. Furnishings and equipment shall be adequate, sufficient and substantial for the needs of the age groups in care.

2. All bedrooms shall be on or above street grade level and be outside rooms. Bedrooms shall accommodate no more than four residents. Bedrooms must provide at least 60 square feet per person in multiple sleeping rooms and not less than 80 square feet in single rooms.

3. Each resident shall be provided a separate bed of proper size and height, a clean, comfortable mattress and bedding appropriate for weather and climate.

4. There shall be separate sleeping rooms for adults and for adolescents. When possible, there should be individual sleeping rooms for clients whose behavior would be upsetting to others.

5. Appropriate furniture shall be provided, such as a chest of drawers, a table or desk, an individual closet with clothes racks and shelves accessible to the residents.

6. Individual storage space reserved for the client's exclusive use shall be provided for personal possessions such as clothing and other items so that they are easily accessible to the resident during his/her stay.

H. Bath and Toilet Facilities

1. There shall be a separate toilet/bathing area for males and females beyond pre-school age. The provider shall have one toilet/bathing area for each eight clients admitted, but in no case shall have less than two toilet/bathing areas.

2. Toilets should be convenient to sleeping rooms and play rooms.

3. Toilets, bathtubs and showers shall provide for individual privacy unless specifically contraindicated for the individual, as stated in the service plan.

4. Bath/toilet area shall be accessible, operable and equipped with toilet paper, soap and paper towels or hand drying machines.

5. Every bath/toilet shall be wheelchair accessible.

6. Individuals shall be provided privacy when using a bath/toilet area.

7. Every bath/toilet area door shall be designed to permit opening of the locked door from the outside, in an emergency. The opening device shall be readily accessible to the staff.

I. There shall be a designated space for dining. Dining room tables and chairs shall be adjusted in height to suit the ages of the clients.

J. Heat and Ventilation

1. The temperature shall be maintained within a reasonable comfort range (65 to 80 degrees Fahrenheit).

2. Each habitable room shall have access to direct outside ventilation by means of windows, louvers, air conditioner, or mechanical ventilation horizontally and vertically.

K. Health and Safety

1. The facility shall comply with all applicable building codes, fire and safety laws, ordinances and regulations.

2. Secure railings shall be provided for flights of more than four steps and for all galleries more than four feet from the ground.

3. Where clients under age two are in care, gates shall be provided at the head and foot of each flight of stairs accessible to these clients.

4. Before swimming pools are made available for client use, written documentation must be received by DHH confirming that the pool meets the requirements of the Virginia Graeme Baker Pool and Spa Safety Act of 2007 or, in lieu of, written documentation confirming that the pool meets the requirements of ANSI/APSP-7 (2006 Edition) which is entitled the "American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading pools, Spas, Hot Tubs and Catch Basins."

a. An outdoor swimming pool shall be enclosed by a six foot high fence. All entrances and exits to pools shall be closed and locked when not in use. Machinery rooms shall be locked to prevent clients from entering.

b. An individual, 18 years of age or older, shall be on duty when clients are swimming in ponds, lakes or pools where a lifeguard is not on duty. The individual is to be certified in water safety by the American Red Cross.

c. There shall be written plans and procedures for water safety.

5. Storage closets or chests containing medicine or poisons shall be securely locked.

6. Garden tools, knives and other dangerous instruments shall be inaccessible to clients without supervision.

7. Electrical devices shall have appropriate safety controls.

L. Maintenance

1. Buildings and grounds shall be kept clean and in good repair.

2. Outdoor areas shall be well drained.

3. Equipment and furniture shall be safely and sturdily constructed and free of hazards to clients and staff.

4. The arrangement of furniture in living areas shall not block exit ways.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

**Subchapter K. Substitute Family Care Module §5089. General Provisions**

A. Providers applying for the Substitute Family Care module under the HCBS license shall meet the core

licensing requirements as well as the module specific requirements of this Section. In addition to complying with the appropriate licensing regulations, SFC providers shall also establish:

1. an advisory committee comprised of persons with developmental disabilities and their families to provide guidance on the aspirations of persons with developmental disabilities who live in home and community settings.

2. a medical decision-making committee for each SFC client who is unable to give informed consent for surgical or medical treatment which shall fulfill the requirements for executing medical decision-making for those clients as required by R.S. 40.1299.53 or its successor statute.

B. Substitute family care services provide 24-hour personal care, supportive services, and supervision to adults who meet the criteria for having a developmental disability.

C. The SFC Program is designed to:

1. support individuals with developmental disabilities in a home environment in the community through an array of naturally occurring and arranged community resources similar to those enjoyed by most individuals living in the community in all stages of life;

2. expand residential options for persons with developmental disabilities;

a. this residential option also takes into account compatibility of the substitute family and the participant, including individual interests, age, health, needs for privacy, supervision and support needs;

3. provide meaningful opportunities for people to participate in activities of their choosing whereby creating a quality of life not available in other settings;

4. serve persons who require intensive services for medical, developmental or psychological challenges;

a. The SFC provider is required to provide the technical assistance, professional resources and more intensive follow-up to assure the health, safety and welfare of the client(s).

D. Substitute family care services are delivered by a principal caregiver, in the caregiver's home, under the oversight and management of a licensed SFC provider.

1. The SFC caregiver is responsible for providing the client with a supportive family atmosphere in which the availability, quality and continuity of services are appropriate to the age, capabilities, health conditions and special needs of the individual.

2. The licensed SFC provider shall not be allowed to serve as the SFC caregiver.

E. Potential clients of the SFC program shall meet the following criteria:

1. have a developmental disability as defined in R.S. 28:451.1-455.2 of the Louisiana Developmental Disability Law or its successor statute;

2. be at least 18 years of age; and

3. have an assessment and service plan pursuant to the requirements of the HCBS provider licensing rule;

a. the assessment and service plan shall assure that the individual's health, safety and welfare needs can be met in the SFC setting.

F. SFC Caregiver Qualifications

1. An SFC caregiver shall be certified by the SFC provider before any clients are served. In order to be certified, the SFC caregiver applicant shall:

a. undergo a professional home study;

b. participate in all required orientations, trainings, monitoring and corrective actions required by the SFC provider; and

c. meet all of the caregiver specific requirements of this Section.

2. The personal qualifications required for certification include:

a. residency. The caregiver shall reside in the state of Louisiana and shall provide SFC services in the caregiver's home. The caregiver's home shall be located in the state of Louisiana and in the region in which the SFC provider is licensed;

b. criminal record and background clearance. Members of the SFC caregiver's household shall not have any felony convictions. Other persons approved to provide care or supervision of the SFC client for the SFC caregiver shall not have any felony convictions;

i. prior to certification, the SFC caregiver, all members of the SFC caregiver applicant's household and persons approved to provide care or supervision of the SFC client on a regular or intermittent basis, shall undergo a criminal record and background check;

ii. annually thereafter, the SFC caregiver, all members of the SFC caregiver applicant's household and persons approved to provide care or supervision of the SFC client on a regular or intermittent basis, shall have background checks;

c. age. The SFC principal caregiver shall be at least 21 years of age. Maximum age of the SFC principal caregiver shall be relevant only as it affects his/her ability to provide for the SFC client as determined by the SFC provider through the home assessment. The record must contain proof of age.

3. The SFC caregiver may be either single or married. Evidence of marital status must be filed in the SFC provider's records and may include a copy of legal documents adequate to verify marital status.

4. The SFC caregiver is not prohibited from employment outside the home or from conducting a business in the home provided that:

a. the SFC home shall not be licensed as another healthcare provider;

b. such employment or business activities do not interfere with the care of the client;

c. such employment or business activities do not interfere with the responsibilities of the SFC caregiver to the client;

d. a pre-approved, written plan for supervision of the participant which identifies adequate supervision for the participant is in place; and

e. the plan for supervision is signed by both the SFC caregiver and the administrator or designee of the SFC provider.

G. The SFC caregiver shall not be certified as a foster care parent(s) for the Department of Children and Family Services (DCFS) while serving as a caregiver for a licensed SFC provider.

1. The SFC provider, administrator or designee shall request confirmation from DCFS that the SFC caregiver applicant is not presently participating as a foster care parent

and document this communication in the SFC provider's case record.

H. In addition to the discharge criteria in the core requirements, the client shall be discharged from the SFC program upon the client meeting any of the following criteria:

1. incarceration or placement under the jurisdiction of penal authorities or courts for more than 30 days;
2. lives in or changes his/her residence to another region in Louisiana or another state;
3. admission to an acute care hospital, rehabilitation hospital, intermediate care facility for persons with developmental disabilities (ICF/DD) or nursing facility with the intent to stay longer than 90 consecutive days;
4. the client and/or his legally responsible party(s) fails to cooperate in the development or continuation of the service planning process or service delivery;
5. a determination is made that the client's health and safety cannot be assured in the SFC setting; or
6. failure to participate in SFC services for 30 consecutive days for any reason other than admission to an acute care hospital, rehabilitation hospital, ICF/DD facility or nursing facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5090. Operational Requirements for Substitute Family Care Providers**

##### **A. Training**

1. Prior to the introduction of an SFC client into a SFC home, the SFC provider shall ensure that the caregiver receives a minimum of six hours of training designed to assure the health and safety of the client, including any areas relevant to the SFC client's support needs.

a. The provider shall also conduct a formal review of the SFC client's support needs, particularly regarding medical and behavioral concerns as well as any other pertinent areas.

2. Within the first 90 days following the client's move into the home, the SFC provider shall provide and document training to the SFC caregiver(s) on:

- a. the client's support plan and the provider's responsibilities to assure successful implementation of the plan;
- b. emergency plans and evacuation procedures;
- c. client rights and responsibilities; and
- d. any other training deemed necessary to support the person's individual needs.

3. Annually, the SFC provider shall provide the following training to the SFC caregiver:

- a. six hours of approved training related to the client's needs and interests including the client's specific priorities and preferences; and
- b. six hours of approved training on issues of health and safety such as the identification and reporting of allegations of abuse, neglect or exploitation.

4. On an as needed basis the SFC provider shall provide the SFC caregiver with additional training as may be deemed necessary by the provider.

B. Supervision and Monitoring. The SFC provider shall provide ongoing supervision of the SFC caregiver to ensure

quality of services and compliance with licensing standards. Ongoing supervision and monitoring shall consist of the following.

1. The SFC provider shall conduct in-person monthly reviews of each SFC caregiver and/or household in order to:

- a. monitor the health and safety status of the client through visits;
  - i. more frequent visits shall be made when concerns are identified;
  - b. monitor the implementation of the client's service plan to ensure that it is effective in promoting accomplishment of the client's goals;
  - c. assure that all services included in the service plan are readily available and utilized as planned;
  - d. assure that the objectives of the medical, behavioral or other plans are being accomplished as demonstrated by the client's progress; and
  - e. resolve discrepancies or deficiencies in service provision.

2. The SFC provider shall conduct annual reviews of each SFC caregiver and/or household in order to assure the annual certification relating to health, safety and welfare issues and the client's adjustment to the SFC setting. The annual review shall include:

- a. written summaries of the SFC caregiver's performance of responsibilities and care for the client(s) placed in the home;
- b. written evaluation of the strengths and needs of the SFC home and the client's relationship with the SFC caregiver, including the goals and future performance;
- c. review of all of the licensing standards to ensure compliance with established standards;
- d. review of any concerns or the need for corrective action, if indicated; and
- e. complete annual inventory of the client's possessions.

C. The SFC provider shall assure the following minimum services are provided by the SFC caregiver:

1. 24-hour care and supervision, including provisions for:
  - a. a flexible, meaningful daily routine;
  - b. household tasks;
  - c. food and nutrition;
  - d. clothing;
  - e. care of personal belongings;
  - f. hygiene; and
  - g. routine medical and dental care;
2. room and board;
3. routine and reasonable transportation;
4. assurance of minimum health, safety and welfare needs;
5. participation in school, work or recreational/leisure activities, as appropriate;
6. access to a 24-hour emergency response through written emergency response procedures for handling emergencies and contact numbers for appropriate staff for after hours; and
  - a. for purposes of these provisions, after hours shall include holidays, weekends, and hours between 4:31 p.m. and 7:59 a.m. on Monday through Friday;
7. general supervision of personal needs funds retained for the client's use if specified in the service plan.

#### D. Client Records

1. SFC providers shall ensure that the SFC caregiver complies with the following standards for client records.

a. Information about clients and services of the contract agency shall be kept confidential and shared with third parties only upon the written authorization of the client or his/her authorized representative, except as otherwise specified in law.

b. The SFC caregiver shall make all client records available to the department or its designee and any other state or federal agency having authority to review such records.

c. The SFC caregiver shall ensure the privacy of the client's protected health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

#### **§5091. Operational Requirements for Substitute Family Care Caregivers**

A. The SFC caregiver(s) shall provide adequate environments that meet the needs of the clients.

B. The SFC caregiver's home shall be located within a 25 mile radius of community facilities, resources and services such as medical care, schools, recreation facilities, churches and other community facilities, unless a waiver is granted by the department.

C. The home of the SFC family shall not be used as lodging for any person(s) who is not subject to the prior approval certification process of the SFC family. The SFC family shall notify the administrator, or designee of the SFC provider, of any person(s) allowed to live in the home following the initial certification.

1. In a non-emergent situation, prior notification is required. In an emergent situation, notification shall be made within 48 hours of the additional person's move into the substitute's family home.

2. All persons residing with the SFC family, even on a non-permanent basis, shall undergo criminal record and background checks.

3. The SFC family shall accept persons requiring care or supervision only through the SFC provider with whom they have a current contract.

D. The SFC caregiver shall care for no more than two SFC clients in the caregiver's home. The SFC caregiver shall allow no more than three persons unrelated to the principal caregiver to live in the home. These three persons include the SFC clients.

E. The SFC caregiver shall have a stable income sufficient to meet routine expenses, independent of the payments for their substitute family care services, as demonstrated by a reasonable comparison between income and expenses conducted by the administrator or designee of the SFC provider.

F. The SFC caregiver must have a plan that outlines in detail the supports to be provided. This plan shall be approved and updated as required by the SFC provider. The SFC caregiver shall allow only approved persons to provide care or supervision to the SFC client.

1. An adequate support system for the supervision and care of the participant in both on-going and emergent situations shall include:

a. identification of any person(s) who will supervise the participant on a regular basis which must be prior approved by the administrator or designee of the SFC agency provider;

b. identification of any person(s) who will supervise for non-planned (emergency) assumption of supervisory duties who has not been previously identified and who shall be reported to the agency provider administrator or designee within 12 hours; and

c. established eligibility for available and appropriate community resources.

G. The SFC caregiver and/or household shall receive referrals only from the licensed SFC provider with whom it has a contract.

#### H. SFC Caregiver's Home Environment

1. The home of the SFC caregiver shall be safe and in good repair, comparable to other family homes in the neighborhood. The home and its exterior shall be free from materials and objects which constitute a danger to the individual(s) who reside in the home.

2. SFC homes featuring either a swimming or wading pool must ensure that safety precautions prevent unsupervised accessibility to clients.

3. The home of the SFC caregiver shall have:

a. functional air conditioning and heating units which maintain an ambient temperature between 65 and 80 degrees Fahrenheit;

b. a working telephone;

c. secure storage of drugs and poisons;

d. secure storage of alcoholic beverages;

e. pest control;

f. secure storage of fire arms and ammunition;

g. household first aid supplies to treat minor cuts or burns;

h. plumbing in proper working order and availability of a method to maintain safe water temperatures for bathing; and

i. a clean and sanitary home, free from any health and/or safety hazards.

4. The SFC home shall be free from fire hazards such as faulty electrical cords, faulty appliances and non-maintained fireplaces and chimneys, and shall have the following:

a. operating smoke alarms within 10 feet of each bedroom;

b. portable chemical fire extinguishers located in the kitchen area of the home;

c. posted emergency evacuation plans which shall be practiced at least quarterly; and

d. two unrestricted doors which can be used as exits.

5. The SFC home shall maintain environments that meet the following standards.

a. There shall be a bedroom for each client with at least 80 square feet exclusive of closets, vestibules and bathrooms and equipped with a locking door, unless contraindicated by any condition of the client.

i. The department may grant a waiver from individual bedroom and square feet requirements upon good cause shown, as long as the health, safety and welfare of the client are not at risk.

b. Each client shall have his own bed unit, including frame, which is appropriate to his/her size and is fitted with a non-toxic mattress with a water proof cover.

c. Each client shall have a private dresser or similar storage area for personal belongings that is readily accessible to the client.

d. There shall be a closet, permanent or portable, to store clothing or aids to physical functioning, if any, which is readily accessible to the client.

e. The client shall have access to a working telephone.

f. The home shall have one bathroom for every two members of the SFC household, unless waived by the department.

g. The home shall have cooking and refrigeration equipment and kitchen and or dining areas with appropriate furniture that allows the client to participate in food preparation and family meals.

h. The home shall have sufficient living or family room space, furnished comfortably and accessible to all members of the household.

i. The home shall have adequate light in each room, hallway and entry to meet the requirements of the activities that occur in those areas.

j. The home shall have window coverings to ensure privacy.

#### I. Automobile Insurance and Safety Requirements

1. Each SFC caregiver shall have a safe and dependable means of transportation available as needed for the client.

2. The SFC caregiver shall provide the following information to the SFC provider who is responsible for maintaining copies in its records:

a. current and valid driver's licenses of persons routinely transporting the client;

b. current auto insurance verifications demonstrating at least minimal liability insurance coverage;

c. documentation of visual reviews of current inspection stickers; and

d. documentation of a driving history report on each family member who will be transporting the client.

3. If the client(s) are authorized to operate the family vehicle, sufficient liability insurance specific to the client(s) use shall be maintained at all times.

#### J. Client Records

1. The SFC caregiver shall forward all client records, including progress notes and client service notes to the SFC provider on a monthly basis. The following information shall be maintained in the client records in the SFC caregiver's home:

a. client's name, sex, race and date of birth;

b. client's address and the telephone number of the client's current place of employment, school or day provider;

c. clients' Medicaid/Medicare and other insurance cards and numbers;

d. client's social security number and legal status;

e. name and telephone number of the client's preferred hospital, physician and dentist;

f. name and telephone number of the closest living relative or emergency contact person for the client;

g. preferred religion (optional) of the client;

h. Medicaid eligibility information;

i. medical information, including, but not limited to:

i. current medications, including dosages, frequency and means of delivery;

ii. the condition for which each medication is prescribed; and

iii. allergies;

j. identification and emergency contact information on persons identified as having authority to make emergency medical decisions in the case of the individual's inability to do so independently;

k. progress notes written on at least a monthly basis summarizing services and interventions provided and progress toward service objectives; and

i. checklists alone are not adequate documentation for progress notes;

1. a copy of the client's ISP and any vocational and behavioral plans.

2. Each SFC family shall have documentation attesting to the receipt of an adequate explanation of:

a. the client's rights and responsibilities;

b. grievance procedures;

c. critical incident reports; and

d. formal grievances filed by the client.

3. All records maintained by the SFC caregiver shall clearly identify the:

a. date the information was entered or updated in the record;

b. signature or initials of the person entering the information; and

c. documentation of the need for ongoing services.

K. The SFC caregiver shall be required to take immediate actions to protect the health, safety and welfare of clients at all times.

1. When a client has been involved in a critical incident or is in immediate jeopardy, the SFC caregiver shall seek immediate assistance from emergency medical services and local law enforcement agencies, as needed.

2. If abuse, neglect or exploitation is suspected or alleged, the SFC caregiver is required to report such abuse, neglect or exploitation in accordance with R.S. 40:2009.20 or any successor statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **Subchapter L. Supervised Independent Living Module**

#### **§5093. General Provisions**

A. Providers applying for the supervised independent living module under the HCBS license shall meet the core licensing requirements as well as the module specific requirements of this Section.

B. When applying for the SIL module under the HCBS provider license, the provider shall indicate whether the provider is initially applying as an SIL or as an SIL via shared living conversion process, or both.

C. Clients receiving SIL services must be at least 18 years of age. An SIL living situation is created when an SIL client utilizes an apartment, house or other single living unit as his place of residence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

**§5094. Operational Requirements for the Supervised Independent Living Module**

A. A provider shall ensure that the living situation is freely selected by the client and that the living situation shall be:

1. accessible and functional, considering any physical limitations or other disability of the client;
2. free from any hazard to the health or safety of the client;
3. properly equipped with accommodations for activities of daily living;
4. in compliance with applicable health, safety, sanitation and zoning codes;
5. a living situation that affords the client individual privacy;
6. arranged such that if there is more than one client in the living situation, the living environment does not conflict with the individual clients ISP;
7. equipped with a separate functional kitchen area including space for food storage and a preparation area;
8. equipped with a separate functional private bathroom. There shall be at least one bathroom for every two clients residing at the SIL. Entrance to a bathroom from one bedroom shall not be through another bedroom. Entrance to the client's bathroom shall be accessible without the client having to traverse through another client's bedroom;
9. equipped with a separate living area;
10. equipped with a separate private bedroom with a locking door, if not contraindicated by a condition of the client residing in the room;
  - a. there shall be at least one bedroom for each two clients living in the SIL. There shall be a window in each bedroom. Each bedroom shall contain a minimum of 80 square feet for single resident bedrooms or 120 square feet for two resident bedrooms. This square footage shall be exclusive of closets, vestibules and bathrooms;
  - b. there shall be no more than two clients per bedroom. Each client shall be provided his own bed. However, a married couple may share a bed;
11. equipped with hot and cold water faucets that are easily identifiable and are equipped with a method for scald control;
12. equipped with functional utilities, including:
  - a. water;
  - b. sewer; and
  - c. electricity;
13. equipped with functional air conditioning and heating units which maintain an ambient temperature between 65 and 80 degrees Fahrenheit throughout the SIL;
14. kept in a clean, comfortable home-like environment;
15. equipped with the following furnishings:
  - a. a bed unit per client which includes a frame, clean mattress and clean pillow;
  - b. a private dresser or similar storage area for personal belongings that is readily accessible to the resident. There shall be one dresser per client;
  - c. one closet, permanent or portable, to store clothing or aids to physical functioning, if any, which is

readily accessible to the resident. There shall be one closet per client;

- d. a minimum of two chairs per client;
  - e. a table for dining;
  - f. window treatments to ensure privacy; and
  - g. adequate light in each room, hallway and entry to meet the requirements of the activities that occur in those areas; and
16. equipped with a functional smoke detector and fire extinguisher.
- B. An SIL shall provide any client placed in the living situation:
1. 24-hour access to a working telephone in the SIL;
  2. access to transportation; and
  3. access to any services in the client's approved ISP.
- C. The department shall have the right to inspect the SIL and client's living situation.
- D. An SIL provider shall ensure that no more than four clients are placed in an apartment, house or other single living unit utilized as a supervised independent living situation.
1. A SIL living situation shall make allowances for the needs of each client to ensure reasonable privacy which shall not conflict with the program plan of any resident of the living situation.
  2. No clients shall be placed together in a living situation against their choice. The consent of each client shall be documented in the clients' record.
- E. Supervision
1. For purposes of this Section, a supervisor is defined as a person, so designated by the provider agency, due to experience and expertise relating to client needs.
  2. The licensed/certified professional shall meet the following requirements:
    - a. have one year of experience working directly with persons with mental retardation or other developmental disabilities and is one of the following:
      - i. a doctor of medicine or osteopathy;
      - ii. a registered nurse;
      - iii. an individual who holds at least a bachelor's degree in a health care service field such as occupational therapy, physical therapy, psychology, or social work.
  3. A supervisor or a licensed/certified professional qualified in the state of Louisiana must have a minimum of three documented contacts per week with the client, with at least one contact being face-to-face in the home with the client. The other two contacts may be made by telephone.
    - a. No combination of SIL telephone contacts and the face-to-face contact will be accepted as having met more than one of the required contacts on the same date. Providers may make as many contacts in a day as are necessary to meet the needs of the client. However, only one of those contacts will be accepted as having met one of the three required contacts.
  4. Attempted face-to-face contacts or telephone contacts are unacceptable and will not count towards meeting the requirements.
- F. In addition to the core licensing requirements, the SIL provider shall:
1. provide assistance to the client in obtaining and maintaining housing;

2. allow participation in the development, administration and oversight of the client's service plan to assure its effectiveness in meeting the client's needs; and

3. assure that bill payment is completed monthly in the plan of care, if applicable.

G. An SIL provider shall assess the following in conjunction with the client or client's legal representative when selecting the location of the SIL situation for the client:

- a. risks associated with the location;
- b. client cost;
- c. proximity to the client's family and friends;
- d. access to transportation;
- e. proximity to health care and related services;
- f. client choice;
- g. proximity to the client's place of employment;

and

- h. access to community services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **§5095. Supervised Independent Living Shared Living Conversion Process**

A. The SIL shared living conversion process is a situation in which a home and community-based shared living model, for up to six persons, may be chosen as a living option for participants in the Residential Options Waiver or any successor waiver.

B. Only an existing ICF/DD group or community home with up to eight beds as of promulgation of the final Rule governing these provisions, may voluntarily and permanently close its home and its related licensed, Medicaid certified and enrolled ICF/DD beds to convert to new community-based waiver opportunities (slots) for up to six persons in shared living model or in combination with other ROW residential options. These shared living models will be located in the community.

1. Notwithstanding any other provision to the contrary, an SIL shared living conversion model shall ensure that no more than six ROW waiver clients live in an apartment, house or other single living situation upon conversion.

C. The DHH Office for Citizens with Developmental Disabilities (OCDD) shall approve all individuals who may be admitted to live in and to receive services in an SIL shared living conversion model.

D. The ICF/DD provider who wishes to convert an ICF/DD to an SIL via the shared living conversion model shall be approved by OCDD and shall be licensed by HSS prior to providing services in this setting, and prior to accepting any ROW participant or applicant for residential or any other developmental disability service(s).

E. An ICF/DD provider who elects to convert to an SIL via the shared living conversion model may convert to one or more conversion models, provided that the total number of SIL shared living conversion slots; beds shall not exceed the number of Medicaid facility need review bed approvals of the ICF(s)/DD so converted.

1. The conversion of an ICF(s)/DD to an SIL via the shared living conversion process may be granted only for the number of beds specified in the applicant's SIL shared living conversion model application to OCDD.

2. At no point in the future may the provider of a converted SIL, which converted via the shared living conversion process, be allowed to increase the number of SIL slots approved at the time of conversion.

3. Any remaining Medicaid facility need review bed approvals associated with an ICF/DD that is being converted cannot be sold or transferred and are automatically considered terminated.

F. An ICF/DD provider who elects to convert to an SIL via the shared living conversion process shall obtain the approval of all of the residents of the home(s) (or the responsible parties for these residents) regarding the conversion of the ICF/DD prior to beginning the process of conversion.

### **G. Application Process**

1. The ICF/DD owner or governing board must sign a conversion agreement with OCDD regarding the specific beds to be converted and submit a plan for the conversion of these beds into ROW shared living or other ROW residential waiver opportunities, along with a copy of the corresponding and current ICF/DD license(s) issued by HSS.

a. This conversion plan must be approved and signed by OCDD and the owner or signatory of the governing board prior to the submittal of a HCBS provider, SIL module licensing application to DHH-HSS.

2. A licensed and certified ICF/DD provider who elects to convert an ICF/DD to an SIL via the shared living conversion process shall submit a licensing application for a HCBS provider license, SIL Module. The ICF/DD applicant seeking to convert shall submit the following information with his licensing application:

a. a letter from OCDD stating that the owner or governing board has completed the assessment and planning requirements for conversion and that the owner or governing board may begin the licensing process for an HCBS provider, SIL Module;

b. a letter of intent from the owner or authorized representative of the governing board stating:

i. that the license to operate an ICF/DD will be voluntarily surrendered upon successfully completing an initial licensing survey and becoming licensed as an SIL via the Shared Living Conversion process; and

ii. that the ICF/DD Medicaid facility need review bed approvals will be terminated upon the satisfactory review of the conversion as determined by OCDD, pursuant to its 90 day post conversion site visit; and

3. an executed copy of the conversion agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

### **Subchapter M. Supported Employment Module**

#### **§5099. General Provisions**

A. The provider applying to be licensed as a supported employment provider agency shall meet all of the HCBS provider core licensing requirements with the exception of the following requirements. The supported employment provider agency is not required to:

1. return all telephone calls from clients within one hour, other than during working hours;

2. have written policies and procedures approved by the owner or governing body that addresses client funds and emergency preparedness;

3. have written policies and procedures for behavior management, provided that the provider has no client with behavior management issues;

4. ensure that the administrator shall be available to be onsite at the supported employment provider location within one hour;

5. have nursing services staff and direct care staff;

6. have a client's assessment of needs conducted by a registered nurse; and

7. maintain two weeks of progress notes at the client's home.

B. The administrator of the supported employment provider agency shall be exempt from the education qualifications listing in the core licensing requirements of this Chapter.

C. The assessment of needs shall be done prior to placement of the client on a job site. A Medicaid HCBS comprehensive assessment approved by a DHH program office for a Medicaid recipient shall not substitute for the assessment of needs. A comprehensive plan of care approved by the department for Medicaid or waiver reimbursement shall not substitute for the ISP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to 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

1110#064

## 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 Repeal of Standards for Participation (LAC 50:XXI.Chapter 1)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services repeal LAC 50:XXI.Chapter 1 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 Community Supports and Services adopted provisions to establish minimum standards for participation for enrolled home and community-based

services (HCBS) waiver providers, with the exception of adult day health care facilities (*Louisiana Register*, Volume 29, Number 9).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services now proposes to repeal the provisions governing the Standards for Participation for HCBS waiver providers as a result of the promulgation of new minimum licensing standards governing these providers which revise and stipulate the new participation requirements. This action is being taken to avoid federal sanctions due to inconsistent minimum standards for HCBS waiver providers. It is anticipated that implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program in state fiscal year 2011-2012.

Effective November 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services repeal the provisions governing the Standards for Participation for home and community-based services waiver providers.

## Title 50

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

#### Subpart 1. General Provisions

#### Chapter 1. Standards for Participation

#### §101. Provider Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:1829 (September 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

#### §103. Agency Responsibilities

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:1833 (September 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

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

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

Bruce D. Greenstein  
Secretary

1110#067



## DECLARATION OF EMERGENCY

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

#### Inpatient Hospital Services—Major Teaching Hospitals Supplemental Payments (LAC 50:V.1333)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.1333 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

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

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services.

Effective October 30, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals designated as major teaching hospitals.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 1. Inpatient Hospitals

#### Chapter 13. Teaching Hospitals

#### Subchapter B. Reimbursement Methodology

#### §1333. Major Teaching Hospitals

A. ...

B. Effective for dates of service on or after July 1, 2011, a quarterly supplemental payment shall be issued to non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. These payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid

recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the quarter.

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

a. be designated as a major teaching hospital by the Department of Health and Hospitals in state fiscal year 2011;

b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2010 dates of service; and

c. have provided at least 5,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2010 dates of service.

2. Payments shall be distributed quarterly and shall be calculated using the Medicaid paid days for service dates in state fiscal year 2010 as a proxy for SFY 2012 service dates.

3. Payments are applicable to Medicaid service dates provided during the first quarter of state fiscal year 2012 only and shall not exceed \$14,000,000.

AUTHORITY NOTE: Promulgated in 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 all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1110#063

## DECLARATION OF EMERGENCY

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

#### Inpatient Hospital Services—Major Teaching Hospitals Qualifying Criteria (LAC 50:V.1301-1309)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.1301-1309 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 that established the reimbursement of major and minor teaching hospitals as peer groups under the prospective reimbursement methodology for hospitals (*Louisiana Register*, Volume 20, Number 6). The department amended the June 20, 1994 Rule to adopt new criteria for the

reimbursement of graduate medical education (GME) pursuant to section 15 schedule 09 of Act 19 of the 1998 Regular Session of the Louisiana Legislature and R.S. 39:71 et seq. (*Louisiana Register*, Volume 26, Number 3).

Act 347 of the 2009 Regular Session of the Louisiana Legislature revised the qualifying criteria for major teaching hospitals. In compliance with Act 347, the department promulgated an Emergency Rule which amended the provisions governing the qualifying criteria for major teaching hospitals. This Emergency Rule also repromulgated the March 20, 2000 Rule governing teaching hospitals in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 6). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services.

Effective October 28, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing inpatient hospital services rendered by non-rural, non-state hospitals designated as teaching hospitals.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospital Services**

##### **Chapter 13. Teaching Hospitals**

##### **Subchapter A. General Provisions**

##### **§1301. Major Teaching Hospitals**

A. The Louisiana Medical Assistance Program's recognition of a major teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the Liaison Committee on Medical Education (LCME). A major teaching hospital shall meet one of the following criteria:

1. be a major participant in at least four approved medical residency programs. At least two of the programs must be in medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry; or

2. maintain an intern and resident full-time equivalency of at least 20 filled positions with an approved medical residency program in family practice located more than 150 miles from the medical school accredited by the LCME.

B. For the purposes of recognition as a major teaching hospital, a facility shall be considered a "major participant" in a graduate medical education program if it meets the following criteria. The facility must:

1. pay for all of the costs of the training program in the non-hospital or hospital setting, including:

a. the residents' salaries and fringe benefits;

b. the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education; and

c. other direct administrative costs of the program; and

2. participate in residency programs that:

a. require residents to rotate for a required experience;

b. require explicit approval by the appropriate Residency Review Committee (RRC) of the medical school with which the facility is affiliated prior to utilization of the facility; or

c. provide residency rotations of more than one sixth of the program length or more than a total of six months at the facility and are listed as part of an accredited program in the *Graduate Medical Education Directory* of the Accreditation Council for Graduate Medical Education (ACGME).

AUTHORITY NOTE: Promulgated in 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:

##### **§1303. Minor Teaching Hospitals**

A. The Louisiana Medical Assistance Program's recognition of a minor teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the LCME. A minor teaching hospital shall meet the following criteria:

1. must participate significantly in at least one approved medical residency program in either medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry; and

2. maintain an intern and resident full time equivalency of at least six filled positions.

B. For the purposes of recognition as a minor teaching hospital, a facility is considered to "participate significantly" in a graduate medical education program if it meets the following criteria. The facility must:

1. pay for all of the costs of the training program in the non-hospital or hospital setting, including:

a. the residents' salaries and fringe benefits;

b. the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education; and

c. other direct administrative costs of the program; and

2. participate in residency programs that:

a. require residents to rotate for a required experience;

b. require explicit approval by the appropriate Residency Review Committee of the medical school with which the facility is affiliated prior to utilization of the facility; or

c. provide residency rotations of more than one sixth of the program length or more than a total of six months at the facility and are listed as part of an accredited program in the *Graduate Medical Education Directory* of the Accreditation Council for Graduate Medical Education.

i. If not listed, the sponsoring institution must have notified the ACGME, in writing, that the residents rotate through the facility and spend more than 1/6th of the program length or more than a total of six months at the facility.

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

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

##### **§1305. Approved Medical Residency Program**

A. An approved medical residency program is one that meets one of the following criteria:

1. counts toward certification of the participant in a specialty or sub-specialty listed in the current edition of either *The Directory of Graduate Medical Education Programs* published by the American Medical Association, Department of Directories and Publications, or *The Annual Report and Reference Handbook* published by the American Board of Medical Specialties;

2. is approved by the ACGME as a fellowship program in geriatric medicine; or

3. is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training regardless of whether the standard provides exceptions or exemptions.

B. A residency program at a non-hospital facility may be counted by a hospital if:

1. there is a written agreement with the non-hospital facility that requires the hospital facility to pay for the cost of the training program; and

2. the agreement requires that the time that residents spend in the non-hospital setting is for patient care.

AUTHORITY NOTE: Promulgated in 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:

### **§1307. Graduate Medical Education**

A. The bureau adopts criteria for the reimbursement of graduate medical education (GME) in facilities that do not qualify as major or minor teaching facilities. GME recognized by the Medical Assistance Program for reimbursement shall be limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the LCME.

B. Payment for GME costs shall be limited to the direct cost of interns and residents in addition to the teaching physician supervisory costs. Teaching physician supervisory costs shall be limited in accordance with the provisions of the Medicare Provider Reimbursement Manual. The GME component of the rate shall be based on hospital specific graduate medical education Medicaid cost for the latest year on which hospital prospective reimbursements are rebased trended forward in accordance with the prospective reimbursement methodology for hospitals.

C. Hospitals implementing GME programs approved after the latest year on which hospital prospective reimbursements have been rebased shall have a GME component based on the first full cost reporting period that the approved GME program is in existence trended forward in accordance with the prospective reimbursement methodology for hospitals.

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

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

### **§1309. Requirements for Reimbursement**

A. Qualification for teaching hospital status or to receive reimbursement for GME costs shall be re-established at the beginning of each fiscal year.

B. To be reimbursed as a teaching hospital or to receive reimbursement for GME costs, a facility shall submit the

following documentation to the Bureau of Health Services, Program Operations Section within 30 days of the beginning of each state fiscal year:

1. a copy of the executed affiliation agreement for the time period for which the teaching hospital status or GME reimbursement applies;

2. a copy of any agreements with non-hospital facilities; and

3. a signed Certification For Teaching Hospital Recognition.

C. Each hospital which is reimbursed as a teaching hospital or receives reimbursement for GME costs shall submit the following documentation to the Bureau of Health Services, Program Operations Section, within 90 days of the end of each state fiscal year:

1. a copy of the Intern and Resident Information System report that is submitted annually to the Medicare intermediary; and

2. a copy of any notice given to the ACGME that residents rotate through a facility for more than one sixth of the program length or more than a total of six months.

D. Copies of all contracts, payroll records and time allocations related to graduate medical education must be maintained by the hospital and available for review by the state and federal agencies or their agents upon request.

E. No teaching hospital shall receive a per diem rate greater than 115 percent of its facility specific cost based on the latest rebasing year trended forward to the rate year in accordance with the prospective reimbursement methodology for hospitals.

F. The peer group maximum for minor teaching hospitals shall be the peer group maximum for minor teaching hospitals or the peer group maximum for peer group five, whichever is greater.

G. If it is subsequently discovered that a hospital has been reimbursed as a major or minor teaching hospital and did not qualify for that peer group for any reimbursement period, retroactive adjustment shall be made to reflect the correct peer group to which the facility should have been assigned. The resulting overpayment will be recovered through either immediate repayment by the hospital or recoupment from any funds due to the hospital from 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 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 all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1110#062

## DECLARATION OF EMERGENCY

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

Inpatient Hospital Services  
Neonatal and Pediatric Intensive Care Units and  
Outlier Payment Methodologies  
(LAC 50:V.953, 954, and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953, 954, and 967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals to align the prospective per diem rates more closely with reported costs, including the neonatal intensive care unit (NICU) and pediatric intensive care unit (PICU) rates (*Louisiana Register*, Volume 35, Number 9).

The Department of Health and Hospitals, Bureau of Health Services Financing repromulgated all of the provisions governing outlier payments for inpatient hospital services in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 3).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to adjust the reimbursement rates paid for NICU and PICU services rendered by non-rural, non-state hospitals and to revise the outlier payment methodology (*Louisiana Register*, Volume 37, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining access to neonatal and pediatric intensive care unit services and encouraging the continued participation of hospitals in the Medicaid Program.

Effective October 29, 2011 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to adjust the reimbursement rates paid to non-rural, non-state hospitals for neonatal and pediatric intensive care unit services and to revise the provisions governing outlier payments.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 9. Non-Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §953. Acute Care Hospitals

A.- G. ...

#### H. Neonatal Intensive Care Units (NICU)

1. - 2. ...

3. Effective for dates of service on or after March 1, 2011, the per diem rates for Medicaid inpatient services rendered by NICU Level III and NICU Level III regional units, recognized by the department as such on December 31, 2010, shall be adjusted to include an increase that varies based on the following five tiers:

a. Tier 1. If the qualifying hospital's average percentage exceeds 10 percent, the additional per diem increase shall be \$601.98;

b. Tier 2. If the qualifying hospital's average percentage is less than or equal to 10 percent, but exceeds 5 percent, the additional per diem increase shall be \$624.66;

c. Tier 3. If the qualifying hospital's average percentage is less than or equal to 5 percent, but exceeds 1.5 percent, the additional per diem increase shall be \$419.83;

d. Tier 4. If the qualifying hospital's average percentage is less than or equal to 1.5 percent, but greater than 0 percent, and the hospital received greater than .25 percent of the outlier payments for dates of service in state fiscal year (SFY) 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$263.33; or

e. Tier 5. If the qualifying hospital received less than .25 percent, but greater than 0 percent of the outlier payments for dates of service in SFY 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$35.

4. A qualifying hospital's placement into a tier will be determined by the average of its percentage of paid NICU Medicaid days for SFY 2010 dates of service to the total of all qualifying hospitals' paid NICU days for the same time period, and its percentage of NICU patient outlier payments made as of December 31, 2010 for dates of service in SFY 2008 and SFY 2009 and calendar year 2010 to the total NICU outlier payments made to all qualifying hospitals for these same time periods.

a. This average shall be weighted to provide that each hospital's percentage of paid NICU days will comprise 25 percent of this average, while the percentage of outlier payments will comprise 75 percent. In order to qualify for Tiers 1 through 4, a hospital must have received at least .25 percent of outlier payments in SFY 2008, SFY 2009, and calendar year 2010.

b. SFY 2010 is used as the base period to determine the allocation of NICU and PICU outlier payments for hospitals having both NICU and PICU units.

c. If the daily paid outlier amount per paid NICU day for any hospital is greater than the mean plus one standard deviation of the same calculation for all NICU Level III and NICU Level III regional hospitals, then the basis for calculating the hospital's percentage of NICU patient outlier payments shall be to substitute a payment amount equal to the highest daily paid outlier amount of any hospital not exceeding this limit, multiplied by the exceeding hospital's paid NICU days for SFY 2010, to take the place of the hospital's actual paid outlier amount.

NOTE: Children's specialty hospitals are not eligible for the per diem adjustments established in §953.H.3.

5. The department shall evaluate all rates and tiers two years after implementation.

I. Pediatric Intensive Care Unit (PICU)

1. - 2. ...

3. Effective for dates of service on or after March 1, 2011, the per diem rates for Medicaid inpatient services rendered by PICU Level I and PICU Level II units, recognized by the department as such on December 31, 2010, shall be adjusted to include an increase that varies based on the following four tiers:

a. Tier 1. If the qualifying hospital's average percentage exceeds 20 percent, the additional per diem increase shall be \$418.34;

b. Tier 2. If the qualifying hospital's average percentage is less than or equal to 20 percent, but exceeds 10 percent, the additional per diem increase shall be \$278.63;

c. Tier 3. If the qualifying hospital's average percentage is less than or equal to 10 percent, but exceeds 0 percent and the hospital received greater than .25 percent of the outlier payments for dates of service in SFY 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$178.27; or

d. Tier 4. If the qualifying hospital received less than .25 percent, but greater than 0 percent of the outlier payments for dates of service in SFY 2008, SFY 2009 and calendar year 2010, the additional per diem increase shall be \$35.

4. A qualifying hospital's placement into a tier will be determined by the average of its percentage of paid PICU Medicaid days for SFY 2010 dates of service to the total of all qualifying hospitals' paid PICU days for the same time period, and its percentage of PICU patient outlier payments made as of December 31, 2010 for dates of service in SFY 2008 and SFY 2009 and calendar year 2010 to the total PICU outlier payments made to all qualifying hospitals for these same time periods.

a. This average shall be weighted to provide that each hospital's percentage of paid PICU days will comprise 25 percent of this average, while the percentage of outlier payments will comprise 75 percent. In order to qualify for Tiers 1 through 3, a hospital must have received at least .25 percent of outlier payments in SFY 2008, SFY 2009, and calendar year 2010.

b. SFY 2010 is used as the base period to determine the allocation of NICU and PICU outlier payments for hospitals having both NICU and PICU units.

c. If the daily paid outlier amount per paid PICU day for any hospital is greater than the mean plus one standard deviation of the same calculation for all PICU Level I and PICU Level II hospitals, then the basis for calculating the hospital's percentage of PICU patient outlier payments shall be to substitute a payment amount equal to the highest daily paid outlier amount of any hospital not exceeding this limit, multiplied by the exceeding hospital's paid PICU days for SFY 2010, to take the place of the hospital's actual paid outlier amount.

NOTE: Children's specialty hospitals are not eligible for the per diem adjustments established in §953.I.3.

5. The department shall evaluate all rates and tiers two years after implementation.

J. - O.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals,

Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:

### §954. Outlier Payments

A. - B. ...

C. To qualify as a payable outlier claim, a deadline of not later than six months subsequent to the date that the final claim is paid shall be established for receipt of the written request for outlier payments.

1. Effective March 1, 2011, in addition to the 6 month timely filing deadline, outlier claims for dates of service on or before February 28, 2011 must be received by the department on or before May 31, 2011 in order to qualify for payment. Claims for this time period received by the department after May 31, 2011 shall not qualify for payment.

D. Effective for dates of service on or after March 1, 2011, a catastrophic outlier pool shall be established with annual payments limited to \$10,000,000. In order to qualify for payments from this pool, the following conditions must be met:

1. the claims must be for cases for:

a. children less than six years of age who received inpatient services in a disproportionate share hospital setting; or

b. infants less than one year of age who receive inpatient services in any acute care hospital setting; and

2. the costs of the case must exceed \$150,000.

a. The hospital specific cost to charge ratio utilized to calculate the claim costs shall be calculated using the Medicaid NICU or PICU costs and charge data from the most current cost report.

E. The initial outlier pool will cover eligible claims with admission dates from the period beginning March 1, 2011 through June 30, 2011.

1. Payment for the initial partial year pool will be \$3,333,333 and shall be the costs of each hospital's qualifying claims net of claim payments divided by the sum of all qualifying claims costs in excess of payments, multiplied by \$3,333,333.

2. Cases with admission dates on or before February 28, 2011 that continue beyond the March 1, 2011 effective date, and that exceed the \$150,000 cost threshold, shall be eligible for payment in the initial catastrophic outlier pool.

3. Only the costs of the cases applicable to dates of service on or after March 1, 2011 shall be allowable for determination of payment from the pool.

F. Beginning with SFY 2012, the outlier pool will cover eligible claims with admission dates during the state fiscal year (July 1 through June 30) and shall not exceed \$10,000,000 annually. Payment shall be the costs of each hospital's eligible claims less the prospective payment, divided by the sum of all eligible claims costs in excess of payments, multiplied by \$10,000,000.

G. The claim must be submitted no later than six months subsequent to the date that the final claim is paid and no later than September 15 of each year.

H. Qualifying cases for which payments are not finalized by September 1 shall be eligible for inclusion for payment in the subsequent state fiscal year outlier pool.

I. Outliers are not payable for:

1. transplant procedures; or

2. services provided to patients with Medicaid coverage that is secondary to other payer sources.

AUTHORITY NOTE: Promulgated in 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 36:519 (March 2010), amended LR 37:

### **§967. Children's Specialty Hospitals**

A. - F. ...

G. Children's specialty hospitals are not eligible for the per diem adjustments established in §953.H.3 and §953.I.3.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November 2010), amended LR 37:

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

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

Bruce D. Greenstein  
Secretary

1110#061

## **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*. The department promulgated an Emergency Rule which amended the August 1, 2010 Emergency Rule to revise the provisions governing transitional rates for public facilities (*Louisiana Register*, Volume 37, Number 6). The department now proposes to amend the July 1, 2011 Emergency Rule to clarify the provisions for facilities serving a high concentration of medically fragile individuals. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the July 1, 2011 Emergency Rule 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 37:

### **§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 37:

### **§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;

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; and

4. shall have no more than six beds.

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.

G. Effective July 1, 2011, the transitional rate for public facilities over 50 beds that are privatizing shall be restored to the rates in effect on January 1, 2009 for a six to eight bed facility.

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

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

1110#066

## **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, 503, 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, 503, 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, the 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 promulgated an Emergency Rule which amended 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 (*Louisiana Register*, Volume 36 Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions 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 38:

#### **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 38:

##### **§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 38:

##### **§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 38:

## **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: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:2565 (November 2010), LR 38:

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

Bruce D. Greenstein  
Secretary

1110#060

## **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 promulgated an Emergency Rule which amended 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 (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for multi-systemic therapy services to reduce the reimbursement rates.

## **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 38:

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

Bruce D. Greenstein  
Secretary

1110#059

## DECLARATION OF EMERGENCY

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

Nursing Facilities  
Reimbursement Methodology  
Private Room Conversions  
(LAC 50:II.20010)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20010 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 if the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to allow for additional payments for private room conversions when a Medicaid participating nursing facility converts one or more semi-private rooms to private rooms for occupancy by Medicaid recipients (*Louisiana Register*, Volume 33, Number 8). Act 150 of the 2010 Regular Session of the Louisiana Legislature directed the department to increase the fair rental value minimum occupancy percentage from 70 percent to 85 percent. The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities to ensure that the provisions governing private room conversions are consistent with the increase in the fair rental value minimum occupancy percentage which was adopted on July 1, 2011.

This action is being taken in order to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$74,864 for FY 2011-12.

Effective November 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities.

#### Title 50

#### PUBLIC HEALTH-MEDICAL ASSISTANCE

#### Part II. Nursing Facilities

#### Subpart 5. Reimbursement

#### Chapter 200. Reimbursement Methodology

#### §20010. Additional Payments and Square Footage Adjustments for Private Room Conversion [Formerly LAC 50:VII.1310]

A. - D.2.c. ...

3. Resident days used in the fair rental value per diem calculation will be the greater of the annualized actual resident days from the base year cost report or 85 percent of the revised annual bed days available after the change in licensed beds.

D.4 - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1646 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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

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

Bruce D. Greenstein  
Secretary

1110#065

## 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 promulgated an Emergency Rule which amended 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 (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

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 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions 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 38:

## **Chapter 53. Outpatient Surgery**

### **Subchapter B. Reimbursement Methodology**

#### **§5313. 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 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 38:

#### **§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 38:

## **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 38:

#### **§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 38:

**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 38:

**§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 38:

**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 38:

**§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 38:

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

Bruce D. Greenstein  
Secretary

1110#058

**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 promulgated an Emergency Rule which amended 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 (*Louisiana Register*, Volume 36, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women to reduce the reimbursement rates.

#### **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 38:

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

Bruce D. Greenstein  
Secretary

1110#057

### **DECLARATION OF EMERGENCY**

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

Professional Services Program  
Reimbursement Methodology  
Supplemental Payments  
(LAC 50:IX.15151 and 15153)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts §15151 and §15153 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions in the Professional Services Program to provide supplemental payments to physicians and other eligible professional service practitioners employed by state-owned or operated entities (*Louisiana Register*, Volume 32, Number 6). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for professional services to provide a supplemental payment to physicians and other professional practitioners employed by, or under contract with, non-state owned or operated governmental entities (*Louisiana Register*, Volume 36, Number 6). In addition, this Emergency Rule also repromulgated the provisions of the June 20, 2006 Rule in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule is being promulgated to continue the provisions of the July 1, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by

encouraging continued provider participation in the Medicaid Program and ensuring recipient access to services.

Effective October 28, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for services rendered by physicians and other professional service practitioners.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part IX. Professional Services Program**

#### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

#### **Subchapter F. Supplemental Payments**

#### **§15151. Qualifying Criteria—State Owned or Operated Professional Services Practices**

A. In order to qualify to receive supplemental payments, physicians and other eligible professional service practitioners must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. employed by a state-owned or operated entity, such as a state-operated hospital or other state entity, including a state academic health system, which:
  - a. has been designated by the bureau as an essential provider; and
  - b. has furnished satisfactory data to DHH regarding the commercial insurance payments made to its employed physicians and other professional service practitioners.

B. The supplemental payment to each qualifying physician or other eligible professional services practitioner in the practice plan will equal the difference between the Medicaid payments otherwise made to these qualifying providers for professional services and the average amount that would have been paid at the equivalent community rate. The community rate is defined as the average amount that would have been paid by commercial insurers for the same services.

C. The supplemental payments shall be calculated by applying a conversion factor to actual charges for claims paid during a quarter for Medicaid services provided by the state-owned or operated practice plan providers. The commercial payments and respective charges shall be obtained for the state fiscal year preceding the reimbursement year. If this data is not provided satisfactorily to DHH, the default conversion factor shall equal "1". This conversion factor shall be established annually for qualifying physicians/practitioners by:

1. determining the amount that private commercial insurance companies paid for commercial claims submitted by the state-owned or operated practice plan or entity; and
2. dividing that amount by the respective charges for these payers.

D. The actual charges for paid Medicaid services shall be multiplied by the conversion factor to determine the maximum allowable Medicaid reimbursement. For eligible non-physician practitioners, the maximum allowable Medicaid reimbursement shall be limited to 80 percent of this amount.

E. The actual base Medicaid payments to the qualifying physicians/practitioners employed by a state-owned or

operated entity shall then be subtracted from the maximum Medicaid reimbursable amount to determine the supplemental payment amount.

F. The supplemental payment for services provided by the qualifying state-owned or operated physician practice plan will be implemented through a quarterly supplemental payment to providers, based on specific Medicaid paid claim data.

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

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

#### **§15153. Qualifying Criteria—Non-State Owned or Operated Professional Services Practices**

A. Effective for dates of service on or after July 1, 2010, physicians and other professional service practitioners who are employed by, or under contract with, a non-state owned or operated governmental entity, such as a non-state owned or operated public hospital, may qualify for supplemental payments for services rendered to Medicaid recipients. To qualify for the supplemental payment, the physician or professional service practitioner must be:

1. licensed by the state of Louisiana; and
2. enrolled as a Louisiana Medicaid provider.

B. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level.

1. For purposes of these provisions, the community rate shall be defined as the rates paid by commercial payers for the same service.

C. The non-state governmental entity shall periodically furnish satisfactory data for calculating the community rate as requested by DHH.

D. The supplemental payment amount shall be determined by establishing a Medicare to community rate conversion factor for the physician or physician practice plan. At the end of each quarter, for each Medicaid claim paid during the quarter, a Medicare payment amount will be calculated and the Medicare to community rate conversion factor will be applied to the result. Medicaid payments made for the claims paid during the quarter will then be subtracted from this amount to establish the supplemental payment amount for that quarter.

E. The supplemental payments shall be made on a quarterly basis and the Medicare to community rate conversion factor shall be recalculated periodically as determined 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 38:

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

Bruce D. Greenstein  
Secretary

1110#056

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Licensed Professional Counselors Board of Examiners

Practice of Mental Health Counseling for  
Serious Mental Illnesses (LAC 46:LX.505)

The Louisiana Department of Health and Hospitals, Louisiana Professional Counselors Board of Examiners has exercised the emergency provisions of the Administrative Procedures Act, specifically R.S. 49:953(B), to adopt rules relative to the practice of mental health counseling, to be designated Section 505 of the board rules. This Emergency Rule containing all new material was initially effective July 1, 2011, for a period of 120 days. The same Emergency Rule is now effective October 1, 2011 for a period of 120 days. The Licensed Professional Counselor Board of Examiners is still in the process of developing permanent rules for Act 320 of 2011.

This action is necessary due to the immediate effect of Act 320 of 2011, which places additional duties on Louisiana professional counselors who treat serious mental illnesses. Because Act 320 was effective on June 28, 2011 upon the governor's signature, and because of the substantive changes made, there is insufficient time to promulgate these rules under the usual Administrative Procedures Act rulemaking process. However, a Notice of Intent to adopt a permanent Rule will be promulgated in connection with the proposed adoption of Emergency Rule on this subject.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LX. Licensed Professional Counselors Board of Examiners

##### Subpart 1. Licensed Professional Counselors

##### Chapter 5. License and Practice of Counseling

##### §505. Serious Mental Illnesses

A. Introduction. Act 320 of the 2011 Regular Session of the Louisiana Legislative amended the Louisiana Professional Counselors Practice Act as follows.

1. *Mental Health Counseling Services*—rendering or offering prevention, assessment, diagnosis, and treatment, which include psychotherapy, of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensed professional counselor, which is consistent with his professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession.

2. However, an LPC may not assess, diagnose, or provide treatment to any individual suffering from a serious mental illness unless that individual is under the active care of a practitioner who is licensed by the State Board of Medical Examiners and is authorized to prescribe medications in the management of psychiatric illness and only in the context of an ongoing consultation and collaboration with that practitioner.

B. Applicability. The requirement for collaboration and consultation set forth above shall apply only if any of the following conditions are assessed, diagnosed, or treated by the counselor:

1. schizophrenia or schizoaffective disorder;
2. bipolar disorder;
3. panic disorder;
4. obsessive-compulsive disorder;
5. major depressive disorder;
6. anorexia/bulimia;
7. intermittent explosive disorder;
8. autism;
9. psychosis NOS (not otherwise specified) when diagnosed in a child under 17 years of age;
10. Rett's disorder;
11. Tourette's disorder;
12. dementia.

#### C. Definitions

1. As used herein *ongoing consultation and collaboration*—upon the initial diagnosis of a serious mental illness, the counselor shall initiate contact with the medical practitioner for the purpose of communicating the diagnosis and plan of care. The counselor will provide information to the medical practitioner regarding client progress as conditions warrant. Ongoing consultation and collaboration, for purposes of these rules and otherwise, shall not be construed as supervision. Further, “ongoing consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

2. As used herein *active care*—the individual has or agrees to maintain or initiate a relationship with a practitioner who is licensed by the Louisiana State Board of Medical Examiners.

D. Effect on existing rules. All existing rules or parts thereof are hereby superceded and amended to the extent that they specifically conflict with these emergency rules. Existing board rules shall be revised and re-codified at such time as the final board rules implementing Act 320 are adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1105(D).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:

Mary Alice Olsan  
Executive Director

1110#033

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of Public Health

Added Use of Vital Records in Program Administration  
(LAC 48:V.11710)

The Department of Health and Hospitals, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted to the secretary of DHH by R.S. 40:962(C), hereby adopts the following Rule for the protection of public health. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950, et seq.).

The secretary, through DHH/OPH, finds it necessary to promulgate an Emergency Rule effective October 6, 2011.

The Emergency Rule is scheduled to terminate 120 days from October 6, 2011. A Notice of Intent will be published in the October 20, 2011 issue of the Louisiana Register with the goal of adopting a permanent rule soon, but no earlier than January 20, 2011. A public hearing for the proposed permanent rule will be held on Tuesday, November 29, 2011. This Emergency Rule is being re-published as the oversight committees were not informed of the Emergency Rule and the Notice of Intent was not published as indicated.

Pursuant to R.S. 40:41(D)(1), the substance of the Emergency Rule promulgated herein provides for the use of data contained in the vital records by the Department of Health and Hospitals for program administration. Realizing the importance of measuring quality outcomes and the need to streamline access to data between offices within the department and vital records, this Rule is being promulgated to provide for the development of uniform procedures to accomplish the same.

#### **Title 48**

#### **PUBLIC HEALTH—GENERAL**

#### **Part V. Preventative Health Services**

#### **Chapter 117. Availability of Records**

#### **§11710. Use of Vital Records in Program Administration**

A. Data contained in vital records shall be made available upon request by the Department of Health and Hospitals for use in the administration of the programs of the department, provided that such access and use of data shall be solely for that purpose.

B. The state health officer shall establish procedures to ensure that all identifying information is kept confidential. Any Department of Health and Hospitals employee using data that contains identifying information must establish reasonable administrative, physical and technical safeguards to prevent unauthorized use or disclosure of such information. Any information that allows an individual to be identified must be removed or destroyed at the earliest time which is consistent with the purpose for which it is being used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:41(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:

Bruce D. Greenstein  
Secretary

1110#012

#### **DECLARATION OF EMERGENCY**

#### **Department of Natural Resources Office of Conservation**

Statewide Orders No. 29-B and 29-B-a—Extension of  
Deadline of Drilling and Completion Operation and Safety  
Requirements (LAC 43:XIX.Chapters 2 and 11)

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, Title 49, sections 953(B)(1) and (2), 954(B)(2), as amended, the following Emergency Rule and reasons therefore are now adopted and promulgated by the commissioner of

conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by extending the effectiveness of the emergency rule it supersedes for drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. The following Emergency Rule provides for the extension of the Rule allowing more time to complete comprehensive rule amendments.

In light of the Gulf of Mexico Deepwater Horizon oil spill incident in federal waters approximately 50 miles off Louisiana's coast and the threat posed to the natural resources of the state, and the economic livelihood and property of the citizens of the state caused thereby, the Office of Conservation began a new review of its current drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. While the incidents of blowout of Louisiana wells is minimal, occurring at less than three-tenths of one percent of the wells drilled in Louisiana since 1987, the great risk posed by blowouts at water locations to the public health, safety and welfare of the people of the state, as well as the environment generally, necessitated the rule amendments contained herein.

After implementation of the Emergency Rule, conservation formed an ad hoc committee to further study comprehensive rulemaking in order to promulgate new permanent regulations which ensure increased operational and safety requirements for the drilling or completion of oil and gas wells at water locations within the state.

The Emergency Rule set forth hereinafter is intended to provide greater protection to the public health, safety and welfare of the people of the State, as well as the environment generally by extending the effectiveness of new operational and safety requirements for the drilling and completion of oil and gas wells at water locations. Following the Gulf of Mexico-Deepwater Horizon oil spill, the Office of Conservation ("Conservation") investigated the possible expansion of Statewide Orders No. 29-B and 29-B-a requirements relating to well control at water locations. As part of the rule expansion project, Conservation reviewed the well control regulations of the U.S. Department of the Interior's Mineral Management Service or MMS (now named the Bureau of Ocean Energy Management, Regulation and Enforcement). Except in the instances where it was determined that the MMS provisions were repetitive of other provisions already being incorporated, were duplicative of existing conservation regulations or were not applicable to the situations encountered in Louisiana's waters, all provisions of the MMS regulations concerning well control issues at water locations were by the preceding Emergency Rules, which this rule supersedes, integrated into Conservation's Statewide Orders No. 29-B and 29-B-a. Conservation is currently performing a comprehensive review of its regulations as it considers future amendments to its operational rules and regulations found in Statewide Order No. 29-B and elsewhere. Specifically, the Emergency Rule extends the effectiveness of a new Chapter within Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) to provide additional rules concerning the drilling and completion of oil and gas wells at water locations, specifically providing for the following: rig movement and



reporting requirements, additional requirements for applications to drill, casing program requirements, mandatory diverter systems and blowout preventer requirements, oil and gas well-workover operations, diesel engine safety requirements, and drilling fluid regulations. Further, the Emergency Rule amends Statewide Order No. 29-B-a (LAC 43:XIX.Chapter 11) to provide for and expand upon rules concerning the required use of storm chokes in oil and gas wells at water locations.

Recognizing the potential advantages of expanding the operational and safety requirements for the drilling and completion of oil and gas wells at water locations within the State, it has been determined that failure to establish such requirements in the form of an administrative rule may lead to the existence of an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally. By this Rule Conservation extends the effectiveness of the following requirements until such time as final comprehensive rules may be promulgated or 120 days from the effective date of this Rule, whichever occurs first.

Protection of the public and our environment therefore requires the commissioner of conservation to extend the following rules in order to assure that drilling and completion of oil and gas wells at water locations within the State are undertaken in accordance with all reasonable care and protection to the health, safety of the public, oil and gas personnel and the environment generally. The Emergency Rule, Amendment to Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) and Statewide Order No. 29-B-a (LAC 43:XIX.Chapter 11) (“Emergency Rule”) set forth hereinafter are adopted and extended by the Office of Conservation.

The Emergency Rule signed by the commissioner and effective May 12, 2011 is hereby rescinded and replaced by the following Emergency Rule.

The effective date of this Emergency Rule will be September 23, 2011. The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, or until the adoption of the final version of an amendment to Statewide Order No. 29-B and Statewide Order No. 29-B-a as noted herein, whichever occurs first.

### **Title 43**

### **NATURAL RESOURCES**

### **Part XIX. Office of Conservation—General Operations**

#### **Subpart 1. Statewide Order No. 29-B**

#### **Chapter 2. Additional Requirements for Water Locations**

#### **§201. Applicability**

A. In addition to the requirements set forth in Chapter 1 of this Subpart, all oil and gas wells being drilled or completed at a water location within the State shall comply with this Chapter.

B. Unless otherwise stated herein, nothing within this Chapter shall alter the obligation of oil and gas operators to meet the requirements of Chapter 1 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

#### **§203. Application to Drill**

A. In addition to the requirements set forth in Section 103 of this Subpart, at the time of submittal of an application for permit to drill, the applicant will provide an electronic copy on a disk of the Spill Prevention Control (SPC) plan that was submitted to DEQ pursuant to the provisions of Part IX of Title 33 of the Louisiana Administrative Code or any successor rule. Such plan shall become a part of the official well file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

#### **§204. Rig Movement and Reporting**

A. The operator must report the movement of all drilling and workover rig units on and off locations to the appropriate district manager with the rig name, well serial number and expected time of arrival and departure.

B. Drilling operations on a platform with producing wells or other hydrocarbon flow must comply with the following.

1. An emergency shutdown station must be installed near the driller’s console.

2. All producible wells located in the affected wellbay must be shut in below the surface and at the wellhead when:

a. a rig or related equipment is moved on and off a platform. This includes rigging up and rigging down activities within 500 feet of the affected platform;

b. a drilling unit is moved or skid between wells on a platform;

c. a mobile offshore drilling unit (MODU) moves within 500 feet of a platform.

3. Production may be resumed once the MODU is in place, secured, and ready to begin drilling operations.

C. The movement of rigs and related equipment on and off a platform or from well to well on the same platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving well-completion rigs and related equipment, unless otherwise approved by the district manager. A closed surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation. The well from which the rig or related equipment is to be moved shall also be equipped with a back-pressure valve prior to removing the blowout preventer (BOP) system and installing the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

#### **§205. Casing Program**

##### **A. General Requirements**

1. The operator shall case and cement all wells with a sufficient number of strings of casing and quantity and quality of cement in a manner necessary to prevent fluid migration in the wellbore, protect the underground source of drinking water (USDW) from contamination, support

unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids.

2. The operator shall install casing necessary to withstand collapse, bursting, tensile, and other stresses that may be encountered and the well shall be cemented in a manner which will anchor and support the casing. Safety factors in casing program design shall be of sufficient magnitude to provide optimum well control while drilling and to assure safe operations for the life of the well.

3. All tubulars and cement shall meet or exceed API standards. Cementing jobs shall be designed so that cement composition, placement techniques, and waiting times ensure that the cement placed behind the bottom 500 feet of casing attains a minimum compressive strength of 500 psi before drilling out of the casing or before commencing completion operations.

4. Centralizers

a. Surface casing shall be centralized by means of placing centralizers in the following manner.

i. A centralizer shall be placed on every third joint from the shoe to surface, with two centralizers being placed on each of the lowermost three joints of casing.

ii. If conductor pipe is set, three centralizers shall be equally spaced on surface casing to fall within the conductor pipe.

b. Intermediate and production casing, and drilling and production liners shall be centralized by means of a centralizer placed every third joint from the shoe to top of cement. Additionally, two centralizers shall be placed on each of the lowermost three joints of casing.

c. All centralizers shall meet API standards.

5. A copy of the documentation furnished by the manufacturer, if new, or supplier, if reconditioned, which certifies tubular condition, shall be provided with the Well History and Work Resume Report (Form WH-1).

B. Conductor Pipe. A conductor pipe is that pipe ordinarily used for the purpose of supporting unconsolidated surface deposits. A conductor pipe shall be used during the drilling of any oil and gas well and shall be set at depth that allows use of a diverter system.

C. Surface Casing

1. Where no danger of pollution of the USDW exists, the minimum amount of surface or first-intermediate casing to be set shall be determined from Table 1 hereof, except that in no case shall less surface casing be set than an amount needed to protect the USDW unless an alternative method of USDW protection is approved by the district manager.

<b>Total Depth of Contact</b>	<b>Casing Required</b>	<b>Surface Casing Test Pressure (lbs. per sq. in.)</b>
0-2500	100	300
2500-3000	150	600
3000-4000	300	600
4000-5000	400	600
5000-6000	500	750
6000-7000	800	1000
7000-8000	1000	1000
8000-9000	1400	1000
9000-Deeper	1800	1000

a. In known low-pressure areas, exceptions to the above may be granted by the commissioner or his agent. If, however, in the opinion of the commissioner, or his agent, the above regulations shall be found inadequate, and additional or lesser amount of surface casing and/or test pressure shall be required for the purpose of safety and the protection of the USDW.

2. Surface casing shall be cemented with a sufficient volume of cement to insure cement returns to the surface.

3. Surface casing shall be tested before drilling the plug by applying a minimum pump pressure as set forth in Table 1 after at least 200 feet of the mud-laden fluid has been displaced with water at the top of the column. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of test pressure as outlined in Table 1, the operator shall be required to take such corrective measures as will insure that such surface casing will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure. The provisions of Paragraph E.7, below, for the producing casing, shall also apply to the surface casing.

4. Cement shall be allowed to stand a minimum of 12 hours under pressure before initiating test or drilling plug. Under pressure is complied with if one float valve is used or if pressure is held otherwise.

D. Intermediate Casing/Drilling Liner

1. Intermediate casing is that casing used as protection against caving or heaving formations or when other means are not adequate for the purpose of segregating upper oil, gas or water-bearing strata. Intermediate casing/drilling liner shall be set when required by abnormal pressure or other well conditions.

2. If an intermediate casing string is deemed necessary by the district manager for the prevention of underground waste, such regulations pertaining to a minimum setting depth, quality of casing, and cementing and testing of sand, shall be determined by the Office of Conservation after due hearing. The provisions of Paragraph E.7 below, for the producing casing, shall also apply to the intermediate casing.

3. Intermediate casing/drilling liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as an intermediate string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The drilling liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. Before drilling the plug in the intermediate string of casing, the casing shall be tested by pump pressure, as determined from Table 2 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

<b>Depth Set</b>	<b>Test Pressure (lbs. per sq. in.)</b>
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. If the test is unsatisfactory, the operator shall not proceed with the drilling of the well until a satisfactory test has been obtained.

**E. Producing String**

1. Producing string, production casing or production liner is that casing used for the purpose of segregating the horizon from which production is obtained and affording a means of communication between such horizons and the surface.

2. The producing string of casing shall consist of new or reconditioned casing, tested at mill test pressure or as otherwise designated by the Office of Conservation.

3. Cement shall be by the pump-and-plug method, or another method approved by the Office of Conservation. Production casing/production liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as a producing string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The production liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. The amount of cement to be left remaining in the casing, until the requirements of Paragraph 5 below have been met, shall be not less than 20 feet. This shall be accomplished through the use of a float-collar, or other approved or practicable means, unless a full-hole cementer, or its equivalent, is used.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours

before initiating pressure test in the producing or oil string. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. Before drilling the plug in the producing string of casing, the casing shall be tested by pump pressure, as determined from Table 3 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

<b>Depth Set</b>	<b>Test Pressure (lbs. per sq. in.)</b>
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that the producing string of casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

7. If the commissioner's agent is not present at the time designated by the operator for inspection of the casing tests of the producing string, the operator shall have such tests witnessed, preferably by an offset operator. An affidavit of test, on the form prescribed by the district office, signed by the operator and witness, shall be furnished to the district office showing that the test conformed satisfactorily to the above mentioned regulations before proceeding with the completion. If test is satisfactory, normal operations may be resumed immediately.

8. If the test is unsatisfactory, the operator shall not proceed with the completion of the well until a satisfactory test has been obtained.

**F. Cement Evaluation**

1. Cement evaluation tests (cement bond or temperature survey) shall be conducted for all casing and liners installed below surface casing to assure compliance with LAC 43:XIX.205.D.3 and E.3.

2. Remedial cementing operations that are required to achieve compliance with LAC 43:XIX.205.D.3 and E.3 shall be conducted following receipt of an approved work permit from the district manager for the proposed operations.

3. Cementing and wireline records demonstrating the presence of the required cement tops shall be retained by the operator for a period of two years.

**G. Leak-Off Tests**

1. A pressure integrity test must be conducted below the surface casing or liner and all intermediate casings or liners. The district manager may require a pressure-integrity test at the conductor casing shoe if warranted by local geologic conditions or the planned casing setting depth. Each pressure integrity test must be conducted after drilling at least 10 feet but no more than 50 feet of new hole below the casing shoe and must be tested to either the formation

leak-off pressure or to the anticipated equivalent drilling fluid weight at the setting depth of the next casing string.

a. The pressure integrity test and related hole-behavior observations, such as pore-pressure test results, gas-cut drilling fluid, and well kicks must be used to adjust the drilling fluid program and the setting depth of the next casing string. All test results must be recorded and hole-behavior observations made during the course of drilling related to formation integrity and pore pressure in the driller's report.

b. While drilling, a safe drilling margin must be maintained. When this safe margin cannot be maintained, drilling operations must be suspended until the situation is remedied.

#### H. Prolonged Drilling Operations

1. If wellbore operations continue for more than 30 days within a casing string run to the surface:

a. drilling operations must be stopped as soon as practicable, and the effects of the prolonged operations on continued drilling operations and the life of the well evaluated. At a minimum, the operator shall:

i. caliper or pressure test the casing; and  
ii. report evaluation results to the district manager and obtain approval of those results before resuming operations.

b. If casing integrity as determined by the evaluation has deteriorated to a level below minimum safety factors, the casing must be repaired or another casing string run. Approval from the district manager shall be obtained prior to any casing repair activity.

#### I. Tubing and Completion

1. Well-completion operations means the work conducted to establish the production of a well after the production-casing string has been set, cemented, and pressure-tested.

2. Prior to engaging in well-completion operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review by the Office of Conservation.

3. When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

4. No tubing string shall be placed in service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

5. A valve, or its equivalent, tested to a pressure of not less than the calculated bottomhole pressure of the well, shall be installed below any and all tubing outlet connections.

6. When a well develops a casing pressure, upon completion, equivalent to more than three-quarters of the internal pressure that will develop the minimum yield point of the casing, such well shall be required by the district manager to be killed, and a tubing packer to be set so as to keep such excessive pressure off of the casing.

7. Wellhead Connections. Wellhead connections shall be tested prior to installation at a pressure indicated by the district manager in conformance with conditions existing in areas in which they are used. Whenever such tests are made in the field, they shall be witnessed by an agent of the Office of Conservation. Tubing and tubingheads shall be free from obstructions in wells used for bottomhole pressure test purposes.

8. When the tree is installed, the wellhead shall be equipped so that all annuli can be monitored for sustained pressure. If sustained casing pressure is observed on a well, the Operator shall immediately notify the district manager.

9. Wellhead, tree, and related equipment shall have a pressure rating greater than the shut-in tubing pressure and shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve, installed above the master valve, in the vertical run of the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

#### **§207. Diverter Systems and Blowout Preventers**

A. Diverter System. A diverter system shall be required when drilling surface hole in areas where drilling hazards are known or anticipated to exist. The district manager may, at his discretion, require the use of a diverter system on any well. In cases where it is required, a diverter system consisting of a diverter sealing element, diverter lines, and control systems must be designed, installed, used, maintained, and tested to ensure proper diversion of gases, water, drilling fluids, and other materials away from facilities and personnel. The diverter system shall be designed to incorporate the following elements and characteristics:

1. dual diverter lines arranged to provide for maximum diversion capability;

2. at least two diverter control stations. One station shall be on the drilling floor. The other station shall be in a readily accessible location away from the drilling floor;

3. remote-controlled valves in the diverter lines. All valves in the diverter system shall be full-opening. Installation of manual or butterfly valves in any part of the diverter system is prohibited;

4. minimize the number of turns in the diverter lines, maximize the radius of curvature of turns, and minimize or eliminate all right angles and sharp turns;

5. anchor and support systems to prevent whipping and vibration;

6. rigid piping for diverter lines. The use of flexible hoses with integral end couplings in lieu of rigid piping for diverter lines shall be approved by the district manager.

#### B. Diverter Testing Requirements

1. When the diverter system is installed, the diverter components including the sealing element, diverter valves, control systems, stations and vent lines shall be function and pressure tested.

2. For drilling operations with a surface wellhead configuration, the system shall be function tested at least once every 24-hour period after the initial test.

3. After nipping-up on conductor casing, the diverter sealing element and diverter valves are to be pressure tested to a minimum of 200 psig. Subsequent pressure tests are to be conducted within seven days after the previous test.

4. Function tests and pressure tests shall be alternated between control stations.

5. Recordkeeping Requirements

a. Pressure and function tests are to be recorded in the driller's report and certified (signed and dated) by the operator's representative.

b. The control station used during a function or pressure test is to be recorded in the driller's report.

c. Problems or irregularities during the tests are to be recorded along with actions taken to remedy same in the driller's report.

d. All reports pertaining to diverter function and/or pressure tests are to be retained for inspection at the wellsite for the duration of drilling operations.

C. BOP Systems. The operator shall specify and insure that contractors design, install, use, maintain and test the BOP system to ensure well control during drilling, workover and all other appropriate operations. The surface BOP stack shall be installed before drilling below surface casing.

1. BOP system components for drilling activity located over a body of water shall be designed and utilized, as necessary, to control the well under all potential conditions that might occur during the operations being conducted and at minimum, shall include the following components:

- a. annular-type well control component;
- b. hydraulically-operated blind rams;
- c. hydraulically-operated shear rams;
- d. two sets of hydraulically-operated pipe rams.

2. Drilling activity with a tapered drill string shall require the installation of two or more sets of conventional or variable-bore pipe rams in the BOP stack to provide, at minimum, two sets of rams capable of sealing around the larger-size drill string and one set of pipe rams capable of sealing around the smaller-size drill string.

3. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

4. All connections used in the surface BOP system must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

5. The commissioner of conservation, following a public hearing, may grant exceptions to the requirements of LAC 43:XIX.207.C-J.

D. BOP Working Pressure. The working pressure rating of any BOP component, excluding annular-type preventers, shall exceed the maximum anticipated surface pressure (MASP) to which it may be subjected.

E. BOP Auxiliary Equipment. All BOP systems shall be equipped and provided with the following:

1. a hydraulically actuated accumulator system which shall provide 1.5 times volume of fluid capacity to close and hold closed all BOP components, with a minimum pressure of 200 psig above the pre-charge pressure without assistance from a charging system;

2. a backup to the primary accumulator-charging system, supplied by a power source independent from the

power source to the primary, which shall be sufficient to close all BOP components and hold them closed;

3. accumulator regulators supplied by rig air without a secondary source of pneumatic supply shall be equipped with manual overrides or other devices to ensure capability of hydraulic operation if the rig air is lost;

4. at least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor. If a BOP control station does not perform properly, operations shall be suspended until that station is operable;

5. a drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines;

6. a kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. The choke line shall be installed above the bottom ram. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore;

7. a valve installed below the swivel (upper kelly cock), essentially full-opening, and a similar valve installed at the bottom of the kelly (lower kelly cock). An operator must be able to strip the lower kelly cock through the BOP stack. A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew. If drilling with a mud motor and utilizing drill pipe in lieu of a kelly, you must install one kelly valve above, and one strippable kelly valve below the joint of pipe used in place of a kelly. On a top-drive system equipped with a remote-controlled valve, you must install a strippable kelly-type valve below the remote-controlled valve;

8. an essentially full-opening drill-string safety valve in the open position on the rig floor shall be available at all times while drilling operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew;

9. a safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string being run in the hole;

10. locking devices installed on the ram-type preventers.

F. BOP Maintenance and Testing Requirements

1. The BOP system shall be visually inspected on a daily basis.

2. Pressure tests (low and high pressure) of the BOP system are to be conducted at the following times and intervals:

a. during a shop test prior to transport of the BOPs to the drilling location. Shop tests are not required for

equipment that is transported directly from one well location to another;

b. immediately following installation of the BOPs;

c. within 14 days of the previous BOP pressure test, alternating between control stations and at a staggered interval to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional, system is operable. Exceptions may be granted by the district manager in cases where a trip is scheduled to occur within 2 days after the 14-day testing deadline;

d. before drilling out each string of casing or liner (The district manager may require that a conservation enforcement specialist witness the test prior to drilling out each casing string or liner.);

e. not more than 48 hours before a well is drilled to a depth that is within 1000 feet of a hydrogen sulfide zone (The district manager may require that a conservation enforcement specialist witness the test prior to drilling to a depth that is within 1000 feet of a hydrogen sulfide zone.);

f. when the BOP tests are postponed due to well control problem(s), the BOP test is to be performed on the first trip out of the hole, and reasons for postponing the testing are to be recorded in the driller's report.

3. Low pressure tests (200-300 psig) of the BOP system (choke manifold, kelly valves, drill-string safety valves, etc.) are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2. in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Variable bore pipe rams are to be tested against the largest and smallest sizes of pipe in use, excluding drill collars and bottom hole assembly.

c. Bonnet seals are to be tested before running the casing when casing rams are installed in the BOP stack.

4. High pressure tests of the BOP system are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2 in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Ram-type BOP's, choke manifolds, and associated equipment are to be tested to the rated working pressure of the equipment or 500 psi greater than the calculated MASP for the applicable section of the hole.

c. Annular-type BOPs are to be tested to 70 percent of the rated working pressure of the equipment.

5. The annular and ram-type BOPs with the exception of the blind-shear rams are to be function tested every seven days between pressure tests. All BOP test records should be certified (signed and dated) by the operator's representative.

a. Blind-shear rams are to be tested at all casing points and at an interval not to exceed 30 days.

6. If the BOP equipment does not hold the required pressure during a test, the problem must be remedied and a retest of the affected component(s) performed. Additional BOP testing requirements:

a. use water to test the surface BOP system;

b. if a control station is not functional operations shall be suspended until that station is operable;

c. test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly.

G. BOP Record Keeping. The time, date and results of pressure tests, function tests, and inspections of the BOP system are to be recorded in the driller's report. All pressure tests shall be recorded on an analog chart or digital recorder. All documents are to be retained for inspection at the wellsite for the duration of drilling operations and are to be retained in the operator's files for a period of two years.

H. BOP Well Control Drills. Weekly well control drills with each drilling crew are to be conducted during a period of activity that minimizes the risk to drilling operations. The drills must cover a range of drilling operations, including drilling with a diverter (if applicable), on-bottom drilling, and tripping. Each drill must be recorded in the driller's report and is to include the time required to close the BOP system, as well as, the total time to complete the entire drill.

I. Well Control Safety Training. In order to ensure that all drilling personnel understand and can properly perform their duties prior to drilling wells which are subject to the jurisdiction of the Office of Conservation, the operator shall require that contract drilling companies provide and/or implement the following:

1. periodic training for drilling contractor employees which ensures that employees maintain an understanding of, and competency in, well control practices;

2. procedures to verify adequate retention of the knowledge and skills that the contract drilling employees need to perform their assigned well control duties.

J. Well Control Operations

1. The operator must take necessary precautions to keep wells under control at all times and must:

a. use the best available and safest drilling technology to monitor and evaluate well conditions and to minimize the potential for the well to flow or kick;

b. have a person onsite during drilling operations who represents the operators interests and can fulfill the operators responsibilities;

c. ensure that the tool pusher, operator's representative, or a member of the drilling crew maintains continuous surveillance on the rig floor from the beginning of drilling operations until the well is completed or abandoned, unless you have secured the well with blowout preventers (BOPs), bridge plugs, cement plugs, or packers;

d. use and maintain equipment and materials necessary to ensure the safety and protection of personnel, equipment, natural resources, and the environment.

2. Whenever drilling operations are interrupted, a downhole safety device must be installed, such as a cement plug, bridge plug, or packer. The device must be installed at an appropriate depth within a properly cemented casing string or liner.

a. Among the events that may cause interruption to drilling operations are:

i. evacuation of the drilling crew;

ii. inability to keep the drilling rig on location; or

iii. repair to major drilling or well-control equipment.

3. If the diverter or BOP stack is nipped down while waiting on cement, it must be determined, before nipping down, when it will be safe to do so based on knowledge of formation conditions, cement composition, effects of nipping down, presence of potential drilling hazards, well conditions during drilling, cementing, and post cementing, as well as past experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

### **§209. Casing-Heads**

A. All wells shall be equipped with casing-heads with a test pressure in conformance with conditions existing in areas in which they are used. Casing-head body, as soon as installed shall be equipped with proper connections and valves accessible to the surface. Reconditioning shall be required on any well showing pressure on the casing-head, or leaking gas or oil between the oil string and next larger size casing string, when, in the opinion of the district managers, such pressure or leakage assume hazardous proportions or indicate the existence of underground waste. Mud-laden fluid may be pumped between any two strings of casing at the top of the hole, but no cement shall be used except by special permission of the commissioner or his agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

### **§211. Oil and Gas Well-Workover Operations**

A. Definitions. When used in this Section, the following terms shall have the meanings given below.

*Expected Surface Pressure*—the highest pressure predicted to be exerted upon the surface of a well. In calculating expected surface pressure, reservoir pressure as well as applied surface pressure must be considered.

*Routine Operations*—any of the following operations conducted on a well with the tree installed including cutting paraffin, removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations, bailing sand, pressure surveys, swabbing, scale or corrosion treatment, caliper and gauge surveys, corrosion inhibitor treatment, removing or replacing subsurface pumps, through-tubing logging, wireline fishing, and setting and retrieving other subsurface flow-control devices.

*Workover Operations*—the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

B. When well-workover operations are conducted on a well with the tree removed, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well or other hydrocarbon flow on the platform.

C. Prior to engaging in well-workover operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review.

D. Well-control fluids, equipment, and operations. The following requirements apply during all well-workover operations with the tree removed.

1. The minimum BOP-system components when the expected surface pressure is less than or equal to 5,000 psi shall include one annular-type well control component, one set of pipe rams, and one set of blind-shear rams.

2. The minimum BOP-system components when the expected surface pressure is greater than 5,000 psi shall include one annular-type well control component, two sets of pipe rams, and one set of blind-shear rams.

3. BOP auxiliary equipment in accordance with the requirements of LAC 43:XIX.207.E.

4. When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hold shall be utilized.

5. The following well-control-fluid equipment shall be installed, maintained, and utilized:

a. a fill-up line above the uppermost BOP;

b. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

c. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

E. The minimum BOP-system components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usual 3/4 inch to 1 1/4 inch) as a work string, i.e., small-tubing operations, shall include two sets of pipe rams, and one set of blind rams.

1. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

F. For coiled tubing operations with the production tree in place, you must meet the following minimum requirements for the BOP system:

1. BOP system components must be in the following order from the top down when expected surface pressures are less than or equal to 3,500 psi:

a. stripper or annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. kill line inlet;

e. hydraulically operated two-way slip rams;

f. hydraulically operated pipe rams.

2. BOP system components must be in the following order from the top down when expected surface pressures are greater than 3,500 psi:

- a. stripper or annular-type well control component;
- b. hydraulically-operated blind rams;
- c. hydraulically-operated shear rams;
- d. kill line inlet;
- e. hydraulically-operated two-way slip rams;
- f. hydraulically-operated pipe rams;
- g. hydraulically-operated blind-shear rams. These rams should be located as close to the tree as practical.

3. BOP system components must be in the following order from the top down for wells with returns taken through an outlet on the BOP stack:

- a. stripper or annular-type well control component;
- b. hydraulically-operated blind rams;
- c. hydraulically-operated shear rams;
- d. kill line inlet;
- e. hydraulically-operated two-way slip rams;
- f. hydraulically-operated pipe rams;
- g. a flow tee or cross;
- h. hydraulically-operated pipe rams;
- i. hydraulically-operated blind-shear rams on wells with surface pressures less than or equal to 3,500 psi. As an option, the pipe rams can be placed below the blind-shear rams. The blind-shear rams should be placed as close to the tree as practical.

4. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

5. A set of hydraulically-operated combination rams may be used for the hydraulic two-way slip rams and the hydraulically-operated pipe rams.

6. A dual check valve assembly must be attached to the coiled tubing connector at the downhole end of the coiled tubing string for all coiled tubing well-workover operations. To conduct operations without a downhole check valve, it must be approved by the district manager.

7. A kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore.

8. The hydraulic-actuating system must provide sufficient accumulator capacity to close-open-close each component in the BOP stack. This cycle must be completed with at least 200 psi above the pre-charge pressure without assistance from a charging system.

9. All connections used in the surface BOP system from the tree to the uppermost required ram must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

10. The coiled tubing connector must be tested to a low pressure of 200 to 300 psi, followed by a high pressure test to the rated working pressure of the connector or the expected surface pressure, whichever is less. The dual check

valves must be successfully pressure tested to the rated working pressure of the connector, the rated working pressure of the dual check valve, expected surface pressure, or the collapse pressure of the coiled tubing, whichever is less.

G. The minimum BOP-system components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall include the following:

1. one set of pipe rams hydraulically operated; and
2. two sets of stripper-type pipe rams hydraulically operated with spacer pool.

H. Test pressures must be recorded during BOP and coiled tubing tests on a pressure chart, or with a digital recorder, unless otherwise approved by the district manager. The test interval for each BOP system component must be 5 minutes, except for coiled tubing operations, which must include a 10 minute high-pressure test for the coiled tubing string.

I. Wireline Operations. The operator shall comply with the following requirements during routine, as defined in Subsection A of this Section, and nonroutine wireline workover operations.

1. Wireline operations shall be conducted so as to minimize leakage of well fluids. Any leakage that does occur shall be contained to prevent pollution.

2. All wireline perforating operations and all other wireline operations where communication exists between the completed hydrocarbon-bearing zone(s) and the wellbore shall use a lubricator assembly containing at least one wireline valve.

3. When the lubricator is initially installed on the well, it shall be successfully pressure tested to the expected shut-in surface pressure.

J. Following completion of the well-workover activity, all such records shall be retained by the operator for a period of two years.

K. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

### **§213. Diesel Engine Safety Requirements**

A. Each diesel engine with an air take device must be equipped to shut down the diesel engine in the event of a runaway.

1. A diesel engine that is not continuously manned, must be equipped with an automatic shutdown device.

2. A diesel engine that is continuously manned, may be equipped with either an automatic or remote manual air intake shutdown device.

3. A diesel engine does not have to be equipped with an air intake device if it meets one of the following criteria:

- a. starts a larger engine;
- b. powers a firewater pump;



- c. powers an emergency generator;
- d. powers a BOP accumulator system;
- e. provides air supply to divers or confined entry personnel;
- f. powers temporary equipment on a nonproducing platform;
- g. powers an escape capsule; or
- h. powers a portable single-cylinder rig washer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

### **§215. Drilling Fluids**

A. The inspectors and engineers of the Office of Conservation shall have access to the mud records of any drilling well, except those records which pertain to special muds and special work with respect to patentable rights, and shall be allowed to conduct any essential test or tests on the mud used in the drilling of a well. When the conditions and tests indicate a need for a change in the mud or drilling fluid program in order to insure proper control of the well, the district manager shall require the operator or company to use due diligence in correcting any objectionable conditions.

B. Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances.

C. The well shall be continuously monitored during all operations and shall not be left unattended at any time unless the well is shut in and secured.

D. The following well-control-fluid equipment shall be installed, maintained, and utilized:

- 1. a fill-up line above the uppermost BOP;
- 2. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and
- 3. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

#### **E. Safe Practices**

1. Before starting out of the hole with drill pipe, the drilling fluid must be properly conditioned. A volume of drilling fluid equal to the annular volume must be circulated with the drill pipe just off-bottom. This practice may be omitted if documentation in the driller's report shows:

- a. no indication of formation fluid influx before starting to pull the drill pipe from the hole;
- b. the weight of returning drilling fluid is within 0.2 pounds per gallon of the drilling fluid entering the hole;

2. Record each time drilling fluid is circulated in the hole in the driller's report.

3. When coming out of the hole with drill pipe, the annulus must be filled with drilling fluid before the hydrostatic pressure decreases by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that you may pull must be calculated before you fill the hole. Both sets of numbers must be posted near the driller's station. A mechanical, volumetric, or electronic device must be used to measure the drilling fluid required to fill the hole.

4. Controlled rates must be used to run and pull drill pipe and downhole tools so you do not swab or surge the well.

5. When there is an indication of swabbing or influx of formation fluids, appropriate measures must be taken to control the well. Circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom.

6. The maximum pressures must be calculated and posted near the driller's console that you may safely contain under a shut-in BOP for each casing string. The pressures posted must consider the surface pressure at which the formation at the shoe would break down, the rated working pressure of the BOP stack, and 70 percent of casing burst (or casing test as approved by the district manager). As a minimum, you must post the following two pressures:

- a. the surface pressure at which the shoe would break down. This calculation must consider the current drilling fluid weight in the hole; and
- b. the lesser of the BOP's rated working pressure or 70 percent of casing-burst pressure (or casing test otherwise approved by the district manager).

7. An operable drilling fluid-gas separator and degasser must be installed before you begin drilling operations. This equipment must be maintained throughout the drilling of the well.

8. The test fluids in the hole must be circulated or reverse circulated before pulling drill-stem test tools from the hole. If circulating out test fluids is not feasible, with an appropriate kill weight fluid test fluids may be bullhead out of the drill-stem test string and tools.

9. When circulating, the drilling fluid must be tested at least once each work shift or more frequently if conditions warrant. The tests must conform to industry-accepted practices and include density, viscosity, and gel strength; hydrogen ion concentration; filtration; and any other tests the district manager requires for monitoring and maintaining drilling fluid quality, prevention of downhole equipment problems and for kick detection. The test results must be recorded in the drilling fluid report.

#### **F. Monitoring Drilling Fluids**

1. Once drilling fluid returns are established, the following drilling fluid-system monitoring equipment must be installed throughout subsequent drilling operations. This equipment must have the following indicators on the rig floor:

- a. pit level indicator to determine drilling fluid-pit volume gains and losses. This indicator must include both a visual and an audible warning device;
- b. volume measuring device to accurately determine drilling fluid volumes required to fill the hole on trips;
- c. return indicator devices that indicate the relationship between drilling fluid-return flow rate and pump discharge rate. This indicator must include both a visual and an audible warning device; and
- d. gas-detecting equipment to monitor the drilling fluid returns. The indicator may be located in the drilling fluid-logging compartment or on the rig floor. If the indicators are only in the logging compartment, you must continually man the equipment and have a means of immediate communication with the rig floor. If the indicators are on the rig floor only, an audible alarm must be installed.

## G. Drilling Fluid Quantities

1. Quantities of drilling fluid and drilling fluid materials must be maintained and replenished at the drill site as necessary to ensure well control. These quantities must be determined based on known or anticipated drilling conditions, rig storage capacity, weather conditions, and estimated time for delivery.

2. The daily inventories of drilling fluid and drilling fluid materials must be recorded, including weight materials and additives in the drilling fluid report.

3. If there are not sufficient quantities of drilling fluid and drilling fluid material to maintain well control, the drilling operations must be suspended.

## H. Drilling Fluid-Handling Areas

1. Drilling fluid-handling areas must be classified according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Division 1 and Division 2 or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class 1, Zone 0, Zone 1, and Zone 2. In areas where dangerous concentrations of combustible gas may accumulate. A ventilation system and gas monitors must be installed and maintained. Drilling fluid-handling areas must have the following safety equipment:

a. a ventilation system capable of replacing the air once every five minutes or 1.0 cubic feet of air-volume flow per minute, per square foot of area, whichever is greater. In addition:

i. if natural means provide adequate ventilation, then a mechanical ventilation system is not necessary;

ii. if a mechanical system does not run continuously, then it must activate when gas detectors indicate the presence of 1 percent or more of combustible gas by volume; and

iii. if discharges from a mechanical ventilation system may be hazardous, the drilling fluid-handling area must be maintained at a negative pressure. The negative pressure area must be protected by using at least one of the following:

- (a). a pressure-sensitive alarm;
- (b). open-door alarms on each access to the area;
- (c). automatic door-closing devices;
- (d). air locks; or
- (e). other devices approved by the district manager;

b. gas detectors and alarms except in open areas where adequate ventilation is provided by natural means. Gas detectors must be tested and recalibrated quarterly. No more than 90 days may elapse between tests;

c. explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressuring equipment, the air intake must be located outside of and as far as practicable from hazardous areas; and

d. alarms that activate when the mechanical ventilation system fails.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

## Subpart 4. Statewide Order No. 29-B-a

### Chapter 11. Required Use of Storm Chokes

#### §1101. Scope

A. Order establishing rules and regulations concerning the required use of storm chokes to prevent blowouts or uncontrolled flow in the case of damage to surface equipment.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by the Department of Natural Resources, Office of Conservation, LR 20:1127 (October 1994), LR 37:

#### §1103. Applicability

A. All wells capable of flow with a surface pressure in excess of 100 pounds, falling within the following categories, shall be equipped with storm chokes:

1. any locations inaccessible during periods of storm and/or floods, including spillways;

2. located in bodies of water being actively navigated;

3. located in wildlife refuges and/or game preserves;

4. located within 660 feet of railroads, ship channels, and other actively navigated bodies of water;

5. located within 660 feet of state and federal highways in southeast Louisiana, in that area east of a north-south line drawn through New Iberia and south of an east-west line through Opelousas;

6. located within 660 feet of state and federal highways in northeast Louisiana, in that area bounded on the west by the Ouachita River, on the north by the Arkansas-Louisiana line, on the east by the Mississippi River, and on the south by the Black and Red Rivers;

7. located within 660 feet of the following highways:

a. U.S. Highway 71 between Alexandria and Krotz Springs;

b. U.S. Highway 190 between Opelousas and Krotz Springs;

c. U.S. Highway 90 between Lake Charles and the Sabine River;

8. located within the corporate limits of any city, town, village, or other municipality.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 37:

#### §1104. General Requirements for Storm Choke Use at Water Locations

A. This Section only applies to oil and gas wells at water locations.

B. A subsurface safety valve shall be designed, installed, used, maintained, and tested to ensure reliable operation.

1. The device shall be installed at a depth of 100 feet or more below the seafloor within two days after production is established.

2. Until a subsurface safety device is installed, the well shall be attended in the immediate vicinity so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface-safety device has been installed in the well.

3. The well shall not be open to flow while the subsurface safety device is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

4. All SSSV's must be inspected, installed, used, maintained, and tested in accordance with American Petroleum Institute Recommended Practice 14B, Recommended Practice for Design, Installation, Repair, and Operation of Subsurface Safety Valve Systems.

C. Temporary Removal for Routine Operations

1. Each wireline or pumpdown-retrievable subsurface safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of Form DM-4R.

2. The well shall be identified by a sign on the wellhead stating that the subsurface safety device has been removed. If the master valve is open, a trained person shall be in the immediate vicinity of the well to attend the well so that emergency actions may be taken, if necessary.

3. A platform well shall be monitored, but a person need not remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mud line and the master valve closed, unless otherwise approved by the district manager.

4. Each operator shall maintain records indicating the date a subsurface safety valve is removed, the reason for its removal, and the date it is reinstalled.

D. Emergency Action. In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device and which is capable of natural flow shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

E. Design and Operation

1. All SSSVs must be inspected, installed, maintained, and tested in accordance with API RP 14H, Recommended Practice for Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore.

2. Testing requirements for subsurface safety devices are as follows.

a. All SSSV's shall be tested for operation and for leakage at least once each calendar month, but at no time shall more than six weeks elapse between tests. SSSV's must be tested in accordance with the test procedures specified in API RP 14H. If a SSSV does not operate properly or if any fluid flow is observed during the leakage test, the valve shall be repaired or replaced.

b. Each subsurface-controlled SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced at intervals not exceeding 6 months for those valves not installed in a landing nipple and 12 months for those valves installed in a landing nipple.

3. Records must be retained for a period of two years for each safety device installed.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 37:

**§1105. Waivers**

A. Onshore Wells. Where the use of storm chokes would unduly interfere with normal operation of a well, the district manager may, upon submission of pertinent data, in writing, waive the requirements of this order.

B. Offshore Wells

1. The district manager, upon submission of pertinent data, in writing explaining the efforts made to overcome the particular difficulties encountered, may waive the use of a subsurface safety valve under the following circumstances, and may, in his discretion, require in lieu thereof a surface safety valve:

a. where sand is produced to such an extent or in such a manner as to tend to plug the tubing or make inoperative the subsurface safety valve;

b. when the flowing pressure of the well is in excess of 100 psi but is inadequate to activate the subsurface safety valve;

c. where flow rate fluctuations or water production difficulties are so severe that the subsurface safety valve would prevent the well from producing at its allowable rate;

d. where mechanical well conditions do not permit the installation of a subsurface safety valve;

e. in such other cases as the district manager may deem necessary to grant an exception.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 1, 1961, amended March 15, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 37:

James H. Welsh  
Commissioner

1110#001

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**2011-12 Commercial King Mackerel Closure**

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by the commission in its resolution of January 6, 2011, to close the 2011-12 commercial king mackerel season in Louisiana state waters when he is informed that the designated portion of the commercial king mackerel quota for the Gulf of Mexico has been filled, or was projected to be filled, the secretary hereby declares:

Effective 12:00 noon, September 16, 2011, the commercial fishery for king mackerel in Louisiana waters will close and remain closed through June 30, 2012. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with this closure, no person shall commercially harvest, possess,

purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with this closure, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in federal waters of the Gulf of Mexico will close at 12 noon, September 16, 2011 and remain closed through June 30, 2012. Closing the season in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Robert J. Barham  
Secretary

1110#004

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **2011-2012 Oyster Season—Delay Opening**

In accordance with the emergency provisions of the Administrative Procedure Act, 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 secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

The secretary of the Department of Wildlife and Fisheries is hereby authorized to delay the opening of the Public Oyster Seed Grounds as described in R.S. 56:434.E, *Louisiana Administrative Code* (LAC) 76:VII.507, LAC 76:VII.509, LAC 76:VII.511, LAC 76:VII.513, LAC 76:VII.517, and LAC 76:VII.521, including the Lake Machais/Fortuna sacking-only area of the public grounds and the sacking-only area in the American Bay area, for a period of up to two weeks from the previously established opening date of October 17 2011, to allow sampling for Natural Resource Damage Assessment (NRDA) associated with the Deep Water Horizon incident in those areas. Any area designated by the secretary for a delayed opening pursuant to this declaration shall remain closed for a period of up to two weeks as a result of the Deep Water Horizon incident.

This action becomes effective October 6, 2011. All other season rules established by the commission for the public oyster seed grounds remain in effect.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Stephen W. Sagera  
Chairman

1110#015

## **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, 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 May 5, 2011 which 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, the secretary hereby closes all commercial fishing, effective immediately September 14, 2011, in the following areas:

Those waters north of 28 degrees 56 minutes 30 seconds north latitude and south of 28 degrees 59 minutes 30 seconds north latitude from the eastern shore of Southwest Pass of the Mississippi River eastward to a line beginning at 28 degrees 59 minutes 30 seconds north latitude and 89 degrees 19 minutes 50 seconds west longitude and ending at 28 degrees 56 minutes 30 seconds north latitude and 89 degrees 23 minutes 00 seconds west longitude, and those waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 02 minutes 20 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude, and those waters north of 28 degrees 59 minutes 40 seconds north latitude and south of 29 degrees 02 minutes 00 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude and southeastward along a line beginning at 29 degrees 02 minutes 00 seconds north latitude and 89 degrees 15 minutes 25 seconds west longitude and ending at 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters west of the western shore of South Pass of the Mississippi River south of 28 degrees 59 minutes 40 seconds north latitude bounded by the following coordinates: 1) 28 degrees 59 minutes 15 seconds north latitude and 89 degrees 08 minutes 15 seconds west longitude, 2) 28 degrees 58 minutes 20 seconds north latitude and 89 degrees 10 minutes 00 seconds west longitude, 3) 28 degrees 59 minutes 01 seconds north latitude and 89 degrees 11 minutes 00 seconds west longitude, 4) 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters east of the eastern shore of South Pass of the Mississippi River and south of 29 degrees 01 minutes 50 seconds north latitude eastward to a line beginning at 29 degrees 01 minutes 50 seconds north latitude and 89 degrees 07 minutes 20 seconds west longitude and

ending at 28 degrees 59 minutes 35 seconds north latitude and 89 degrees 08 minutes 00 seconds west longitude, and those waters adjacent to but not including Northeast Pass and Southeast Pass of the Mississippi River and bounded by the following coordinates: 1) 29 degrees 08 minutes 35 seconds north latitude and 89 degrees 04 minutes 20 seconds west longitude, 2) 29 degrees 08 minutes 15 seconds north latitude and 89 degrees 02 minutes 10 seconds west longitude, 3) 29 degrees 04 minutes 50 seconds north latitude and 89 degrees 04 minutes 10 seconds west longitude, 4) 29 degrees 05 minutes 30 seconds north latitude and 89 degrees 05 minutes 10 seconds west longitude, and those waters south and west of Pass a Loure of the Mississippi River and east of 89 degrees 05 minutes 35 seconds west longitude bounded by the following coordinates: 1) 29 degrees 11 minutes 25 seconds north latitude and 89 degrees 03 minutes 30 seconds west longitude, 2) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 02 minutes 25 seconds west longitude, 3) 29 degrees 09 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, 4) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, and those waters south of North Pass of the Mississippi River bounded by the following coordinates: 1) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 02 minutes 55 seconds west longitude, 2) 29 degrees 12 minutes 35 seconds north latitude and 89 degrees 01 minutes 05 seconds west longitude, 3) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 01 minutes 10 seconds west longitude, 4) 29 degrees 11 minutes 10 seconds north latitude and 89 degrees 02 minutes 00 seconds west longitude, and those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 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: those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds

north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 minutes 00 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 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 continue to remain closed to all commercial fishing and certain recreational fishing activities until further notice.

Robert J. Barham  
Secretary

1110#003

## **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 October 6, 2011, in the following areas:

Those waters north of 28 degrees 56 minutes 30 seconds north latitude and south of 28 degrees 59 minutes 30 seconds north latitude from the eastern shore of Southwest Pass of the Mississippi River eastward to a line beginning at 28 degrees 59 minutes 30 seconds north latitude and 89 degrees 19 minutes 50 seconds west longitude and ending at 28 degrees 56 minutes 30 seconds north latitude and 89 degrees 23 minutes 00 seconds west longitude, and those waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 02 minutes 20 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude, and those waters north of 28 degrees 59 minutes 40 seconds north latitude and south of 29 degrees 02 minutes 00 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude and southeastward along a line beginning at 29 degrees 02 minutes 00 seconds north latitude and 89 degrees 15 minutes 25 seconds west longitude and ending at 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters west of the western shore of South Pass of the Mississippi River south of 28 degrees 59 minutes 40 seconds north latitude bounded by the following coordinates: 1) 28 degrees 59 minutes 15 seconds north latitude and 89 degrees 08 minutes 15 seconds west longitude, 2) 28 degrees 58 minutes 20 seconds north latitude and 89 degrees 10 minutes 00 seconds west longitude, 3) 28 degrees 59 minutes 01 seconds north latitude and 89 degrees 11 minutes 00 seconds west longitude, 4) 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters east of the eastern shore of South

Pass of the Mississippi River and south of 29 degrees 01 minutes 50 seconds north latitude eastward to a line beginning at 29 degrees 01 minutes 50 seconds north latitude and 89 degrees 07 minutes 20 seconds west longitude and ending at 28 degrees 59 minutes 35 seconds north latitude and 89 degrees 08 minutes 00 seconds west longitude, and those waters adjacent to but not including Northeast Pass and Southeast Pass of the Mississippi River and bounded by the following coordinates: 1) 29 degrees 08 minutes 35 seconds north latitude and 89 degrees 04 minutes 20 seconds west longitude, 2) 29 degrees 08 minutes 15 seconds north latitude and 89 degrees 02 minutes 10 seconds west longitude, 3) 29 degrees 04 minutes 50 seconds north latitude and 89 degrees 04 minutes 10 seconds west longitude, 4) 29 degrees 05 minutes 30 seconds north latitude and 89 degrees 05 minutes 10 seconds west longitude, and those waters south and west of Pass a Loutre of the Mississippi River and east of 89 degrees 05 minutes 35 seconds west longitude bounded by the following coordinates: 1) 29 degrees 11 minutes 25 seconds north latitude and 89 degrees 03 minutes 30 seconds west longitude, 2) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 02 minutes 25 seconds west longitude, 3) 29 degrees 09 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, 4) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, and those waters south of North Pass of the Mississippi River bounded by the following coordinates: 1) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 02 minutes 55 seconds west longitude, 2) 29 degrees 12 minutes 35 seconds north latitude and 89 degrees 01 minutes 05 seconds west longitude, 3) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 01 minutes 10 seconds west longitude, 4) 29 degrees 11 minutes 10 seconds north latitude and 89 degrees 02 minutes 00 seconds west longitude, and those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds

west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 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: those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 minutes 00 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 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 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 upon notification to the Chairman of the Wildlife and Fisheries Commission.

Stephen W. Sagrera  
Chairman

1110#014

# Rules

## RULE

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

Seed Labeling; Seed Certifications; Fees  
(LAC 7:XIII.121, 125, 131, 143, 171, 183 and 193)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:1433, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, amends these regulations to allow the statement that the package contains coated seed and the maximum amount of coating to be placed on the front of the package separately from the label, along with a statement to see the label for more information; define plant clones and clonally propagated plants; establish application deadlines for certifying clonally propagated plant species; reword the fee schedule; establish a fee for certifying clonally propagated plant species; limit refunds to no more than 70 percent of unsold certified seeds; repeal the certification standards for Harding Grass Seed, Rescue Grass Seed, and Sesame Seed; and establish certification standards for California Bulrush, Sea Oats, and Smooth Cordgrass.

The requirements for the labeling of coated seed become effective after December 31, 2011. After discussions with representatives of seed companies and the seed industry it was decided to amend the requirements to allow seed companies more flexibility in providing consumers with needed information regarding coated seed. A definition of plant clones and clonally propagated plants is needed because of the increase in the production of these types of plants. The fee schedule is being revised to make it more understandable and to include fees for certifying certain clonally propagate plant species. Refunds are being limited to 70 percent of unsold certified seeds to prevent the total cost of certification from being absorbed by the department. The certifications standards for Harding Grass Seed, Rescue Grass Seed, and Sesame Seed have been repealed because these types of grasses are not grown in this state for the production of certified seeds. Certification standards for California Bulrush, Sea Oats, and Smooth Cordgrass have been added because these seeds are being produced in this state and certification of these seeds are being requested by seed producers.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XIII. Seeds

#### Chapter 1. Louisiana Seed Law

##### Subchapter A. Enforcement of the Louisiana Seed Law

##### §121. Labeling of Seed

A. - G. ...

H. After December 31, 2011 each package of coated seed shall have the following additional information on the front of the package which shall be set forth in a clear and

conspicuous manner so that the ultimate purchaser is able to read the information easily and without strain:

1. the words "coated seed;"
2. a statement giving the maximum amount of coating material contained within the package;
3. a statement referring purchaser to the product label for additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and 3:1436.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 16:492 (June 1990), LR 37:270 (January 2011), LR 37:2979 (October 2011).

#### Subchapter B. General Seed Certification Requirements

##### §125. Definitions

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*Clonally Propagated Plant*—a plant that is duplicated or propagated as a plant clone from vegetative cuttings or plant divisions using one or more of an aerial stem, rhizome, stolon, leave, or root.

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*Plant Clone*—a genetically identical plant or plant material derived originally from a single ancestor individual over one or more vegetative generations.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and 3:1436.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:564 (November 1982), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:642 (June 1994), LR 31:420 (February 2005), LR 37:2979 (October 2011).

##### §131. Application Deadlines

A. - N.2.b. ...

O. Clonally propagated plant species, except for plant species for which a deadline is specifically provided in this Section:

1. new plantings-submit application at least 15 days prior to land preparation for planting;
2. established stands (fields certified the previous year)- submit renewal application by April 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:195 (April 1983), amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 13:155 (March 1987), LR 13:232 (April 1987), LR 14:603 (September 1988), LR 23:1283 (October 1997), LR 25:1617 (September 1999), LR 34:863 (May 2008), LR 37:2979 (October 2011).

##### §143. Fees

A. All fees shall be paid before the requested work is performed, as follows.

1. All application fees and fees for inspections, re-inspections, sampling and re-sampling shall be paid at the time the application or request for work is submitted to the department, except for those crop kinds where the fee is based on an hourly rate and mileage.

2. Fees for certification of seeds by laboratory analysis shall be paid prior to submission of the certified sample to the State Seed Testing Laboratory.

3. Requests for different payment arrangements shall be made to and must be approved by the director or assistant director.

#### B. Application Fees

1. The application fee for certification for each producer shall be \$23 for each variety with only one variety per application if the application is timely submitted.

2. The application fee for certification shall be \$100 for each application submitted after the deadline shown in §131 of this Part.

C. Field inspection fees shall be charged as follows:

1. all crop, grass, and other seeds not listed in this Section—\$.90 per acre;

2. for the following species, California Bulrush, Sea Oats, and Smooth Cordgrass:

a. an hourly fee of \$25 per hour, per inspector shall be charged for each inspection of native plants; and

b. mileage for travel to and from inspection location shall be charged at the mileage reimbursement rate established by the Division of Administration's state travel regulations;

3. rice—\$.90 per acre

4. small grains—\$.90 per acre

5. sugarcane—\$1.80 per acre

6. sweet potato;

a. field inspection (including seed bed inspection)—\$1.80 per acre;

b. greenhouse inspections—\$50 per crop year plus a fee of five cents per 1,000 plants for each 1,000 sweet potato plants inspected for certification purposes;

7. turf and pasture grass—\$25 per acre

D. Reinspection Fees—\$50 for each re-inspection.

E. Fees for Phytosanitary Inspections—\$.50 per acre

F. Fees for Resampling Certified Seed—\$30 for each re-sample.

G. Fees for bulk sampling—\$30 for each bulk sample by vacuum probe.

#### H. Seed Certification Fees

1. Fees for certified seed shall be 16 cents per weight unit and be calculated on the total weight units in the certifiable lot. The number of weight units for a particular lot of seed shall be reported when the certified sample is taken.

a. The weight unit for all seeds is 50 pounds except for rice which has a weight unit of 100 pounds

b. A person who sells, distributes, or offers for sale certified seed in Louisiana and who has paid certification fees for a particular lot of seed may request a partial refund, not to exceed seventy-percent on the unsold portion of the certified lot.

c. A person requesting a refund must submit a written request, along with all unused tags from the certified lot, within nine months of the certified test date, stating:

i. the lot number for the seed that the request is being made;

ii. the number of weight units sold from the certified lot; and

iii. the number of weight units partitioned for refund from the certified lot.

d. A request for a refund shall be approved upon verification of the unused tags and information submitted with the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 10:495 (July, 1984); amended by the Department of Agriculture and Forestry, Seed Commission, LR 12:825 (December 1986), LR 14:604 (September 1988), LR 16:847 (October 1990), LR 25:1617 (September 1999), LR 26:235 (February 2000), LR 29:2632 (December 2003), LR 31:420 (February 2005), LR 31:1511 (July 2005), LR 34:2339 (November 2008), LR 37:2979 (October 2011).

### Subchapter C. Certification of Specific Crops/Varieties §171. California Bulrush (*Schoenoplectus Californicus*) Clonally Propagated Plant Certification Standards

A. The department shall issue numbered certification tags when requested to do so by a grower who has met the requirement and standards set forth in this Part. The numbered certification tags shall be attached by the grower to each container of certified material prior to shipment.

B. Definition of Classes. For the purpose of this Section, the word "material" refers to clonally propagated plants with identical genotypes.

1. Breeder material shall be maintained by the plant breeder or his authorized agent. Every plant used to establish breeder ponds or breeder containers shall be proven to be genetically identical through genetic fingerprinting.

2. Foundation material shall be the vegetative increase of breeder material. 10 percent of the material or 192 random plants, (whichever is smaller), used to establish foundation ponds or containers shall be genetically fingerprinted.

3. Registered material shall be the vegetative increase of either breeder or foundation material. Five percent of the material or 96 random plants, (whichever is smaller), used to establish registered ponds or containers shall be genetically fingerprinted.

4. Certified material shall be the vegetative increase of breeder, foundation, or registered material. Certified material is not required to be genetically fingerprinted.

#### C. Production Requirements

##### 1. Pond Requirements

a. Ponds shall be contained by levees.

b. Only one variety of California bulrush shall be grown per pond.

c. Ponds of different varieties must be separated by a minimum of 20 feet isolation, and must have individual water supplies and water drainage capabilities for each produced variety.

d. All seed heads must be removed annually from plants after flowering begins, but no later than May 1, to ensure viable seed are not produced.

##### 2. Container/Tank Requirements

a. Soil used for container or tank production shall:

i. come from an area that has not produced California bulrush for a minimum of one year; and



ii. be free of visible California bulrush rhizomes and stems prior to transplanting.

b. Only one variety of California bulrush shall be grown per flooded tank.

c. Different varieties shall be grown in separate flooded tanks and shall have individual water supplies and drainage capabilities.

d. All seed heads shall be removed annually from plants after flowering begins but no later than May 1, to ensure viable seed are not produced.

D. Land Requirements

1. Ponds and containers shall be left undisturbed for a minimum of four weeks prior to planting, and found to be free of California bulrush and noxious and objectionable weeds in order to be eligible for the production of all certified classes of *Schoenoplectus californicus*.

E. Inspections by Grower

1. Ponds and containers shall be inspected within four weeks prior to transplanting and prior to the department's inspection to ensure ponds and containers are free of California bulrush volunteers.

2. Ponds and containers shall be inspected a minimum of once a year to ensure that:

a. only a single variety is being grown per pond or flooded tank unit;

b. ponds of different varieties are separated by a minimum of 20 feet of non-flooded elevated land;

c. ponds and/or tanks of different varieties have individual water supplies and drainage capabilities; and

d. ponds and/or tanks grown in conjunction with seed producing cultivated or wild *Schoenoplectus californicus* have a minimum of 150 feet isolation at all points.

3. Ponds and containers shall be inspected at least once a year between May 1 and June 15 to ensure all seed heads have been removed.

F. Inspections by the Department

1. First Year (Year of Transplant)

a. Ponds and containers shall be inspected by department inspectors within four weeks prior to transplanting to ensure ponds and containers are free of California bulrush volunteers. Field shall be accessible and non-flooded at the time of the department's inspection.

b. Ponds and containers shall be inspected between 60 and 120 days from date of plant establishment for the purpose of collecting genetic fingerprinting samples.

c. Ponds and containers shall be inspected by department inspectors a minimum of once a year between May 1 and June 15 to ensure that:

i. only a single variety is being grown per pond or flooded tank unit;

ii. ponds of different varieties are separated by a minimum of 20 feet of non-flooded elevated land; and

iii. ponds and/or tanks of different varieties have individual water supplies and drainage capabilities;

iv. that ponds and/or tanks grown in conjunction with seed producing *Schoenoplectus californicus* (cultivated or wild) have a minimum of 150 feet isolation at all points; and

v. that all seed heads have been removed no later than May 1.

d. The department shall have the right to reinspect, resample and retest ponds and containers that are out-of-tolerance for genetic fingerprinting prior to final certification.

e. Additional inspections may be performed at the discretion of the department at any time without prior notice.

2. Subsequent Years

a. Ponds and containers shall be inspected by department inspectors a minimum of once a year between May 1 and June 15 to ensure that:

i. only a single variety is being grown per pond or flooded tank unit;

ii. ponds of different varieties are separated by a minimum of 20 feet of non-flooded elevated land;

iii. ponds and/or tanks of different varieties have individual water supplies and drainage capabilities;

iv. ponds and/or tanks grown in conjunction with seed producing *Schoenoplectus californicus* (cultivated or wild) have a minimum of 150 feet isolation at all points; and

v. all seed heads have been removed no later than June 1.

b. Additional inspections may be performed at the discretion of the department at any time without prior notice.

G. Field Standards

Production Fields/Tanks

Factor	Breeder	Foundation	Registered	Certified
Maximum Age: Production Unit Life From Transplant Date	3 years	3 years	4 years	4 years
Isolation: Minimum Clonal/Seed Separation Between Production Units				
Pond Production	Clonal- 20 ft.: Seed- 150 ft.	Clonal-20 ft.: Seed- 150 ft.	Clonal-20 ft.: Seed- 150 ft.	Clonal-20 ft.: Seed- 150 ft.
Tank Production	Clonal-1 variety per tank: Seed- 150 ft.	Clonal- 1 variety per tank: Seed- 150 ft.	Clonal- 1 variety per tank: Seed- 150 ft.	Clonal- 1 variety per tank: Seed- 150 ft.
Plant Variants				
Fingerprints (between 60 and 120 days from date of establishment)	None	2 plants/sample	2 plants/sample	Not Applicable
Visual Inspections	None	3 plants per 5,400 ft <sup>2</sup>	5 plants per 5,400 ft <sup>2</sup>	10 plants per 5,400ft <sup>2</sup>
Harmful Diseases <sup>1</sup>	None	None	None	None
Noxious or Objectionable Weeds <sup>2</sup> (Refer to List Below)	None	None	None	≤ 5 plants per 5,400 ft <sup>2</sup>

Factor	Breeder	Foundation	Registered	Certified
Land Requirements	1 year	1 year	1 year	1 year
Other Crops <sup>3</sup> (Refer to List Below)	None	None	None	None

<sup>1</sup> Diseases seriously affecting quality of seed and transmissible by planting stock

<sup>2</sup> *Cyperus spp.* (Sedge), *Eleocharis spp.* (Spikerush), *Phragmites australis* (Roseau cane), *Typha spp.* (Cattail)

<sup>3</sup> *Spartina alterniflora* (Smooth cordgrass), *Spartina patens* (Marshhay cordgrass), *Spartina cynosuroides* (Big cordgrass), *Spartina spartinae* (Gulf cordgrass), *Distichlis spicata* (Saltgrass), *Paspalum vaginatum* (Seashore paspalum)

H. This Section shall become effective on July 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 37:2980 (October 2011).

**§183. Sea Oats (*Uniola Paniculata*) Clonally Propagated Plant Certification Standards**

A. The department shall issue numbered certification tags when requested to do so by a grower who has met the requirement and standards set forth in this Part. The numbered certification tags shall be attached by the grower to each container of certified material prior to shipment.

B. Definition of Classes. For the purpose of this Section, the word “material” refers to clonally propagated plants with identical genotypes.

1. Breeder material shall be maintained by the plant breeder or his authorized agent. Every plant used to establish breeder ponds or breeder containers shall be proven to be genetically identical through genetic fingerprinting.

2. Foundation material shall be the vegetative increase of breeder material. Ten percent of the material or 192 random plants, (whichever is smaller), used to establish foundation ponds or containers shall be genetically fingerprinted.

3. Registered material shall be the vegetative increase of either breeder or foundation material. Five percent of the material or 96 random plants, (whichever is smaller), used to establish registered ponds or containers shall be genetically fingerprinted.

4. Certified material shall be the vegetative increase of breeder, foundation, or registered material. Certified material is not required to be genetically fingerprinted.

C. Production Requirements

1. Plot Requirements

a. Plots shall be free of volunteer sea oats plants for a minimum of four weeks prior to transplanting.

b. Only one variety of sea oats shall be grown per plot.

c. Plots of different varieties must be separated by a minimum of 30 feet isolation at all points.

d. All seed heads shall be removed annually from plants after flowering begins, but not later than July 1, to ensure viable seed are not produced.

2. Container/Tank Requirements

a. Soil used for container or tank production shall:

i. come from an area that has not produced sea oats for a minimum of three years; and

ii. be free of visible sea oats rhizomes and stems prior to transplanting.

b. Only one variety of sea oats shall be grown per production tank.

c. Different varieties may be grown in the same tank unit if individual varieties are separated by solid sided partition that will not allow rhizome or stem material to spread between or within tank units.

d. All seed heads shall be removed annually from plants after flowering begins, but not later than July 1, to ensure viable seed are not produced.

D. Land Requirements

1. Plots and containers to be eligible for the production of all certified classes of *Uniola paniculata* shall be left undisturbed for a minimum of four weeks prior to planting, and found to be free of sea oats and noxious and objectionable weeds.

E. Inspections by Growers

1. Plots and containers shall be inspected within four weeks prior to transplanting and prior to the department’s inspection to ensure they are free of sea oats volunteers.

2. Plots and containers shall be inspected a minimum of once a year to ensure that:

a. only a single variety is being grown per plot or tank;

b. plots of different varieties are separated by a minimum of 30 feet of land that does not contain sea oats plants; and

c. plots or production tanks grown in conjunction with seed producing *Uniola paniculata* (cultivated or wild) have a minimum of 150 feet isolation at all points.

3. Plots and containers shall be inspected once per year between July 1 and August 15 to ensure all seed heads have been removed.

F. Inspections by the Department

1. First Year (Year of Transplant)

a. Plots and containers shall be inspected within four weeks prior to transplanting to ensure they are free of sea oats volunteers. Plots and containers shall be accessible and non-flooded at the time of the department’s inspection.

b. Plots and containers shall be inspected between 60 and 120 days from date of plant establishment for the purpose of collecting genetic fingerprinting samples.

c. Plots and containers shall be inspected a minimum of once a year between July 1 and August 15 to ensure that:

i. only a single variety is being grown per plot or tank;

ii. plots of different varieties are separated by a minimum of 30 feet of land that does not contain sea oats plants;

iii. plots or production tanks grown in conjunction with seed producing *Uniola paniculata* (cultivated or wild) have a minimum of 150 feet isolation at all points; and

iv. all seed heads have been removed no later than July 1.

d. The department shall have the right to re-inspect, re-sample and re-test plots and containers that are out-of-tolerance for genetic fingerprinting prior to certification.

e. Additional inspections may be performed at the discretion of the department at any time without prior notice.

2. Subsequent Years

a. Plots and containers shall be inspected a minimum of once a year between July 1 and August 15 to ensure that:

- i. a single variety is being grown per plot or tank;

- ii. plots of different varieties are separated by a minimum of 30 feet of land that does not contain sea oats plants;

- iii. plots or production tanks grown in conjunction with seed producing *Uniola paniculata* (cultivated or wild) have a minimum of 150 feet isolation at all points; and

- iv. all seed heads have been removed no later than July 1.

b. Additional inspections may be performed at the discretion of the department any time without prior notice.

G. Field Standards

Production Fields/Tanks

Factor	Breeder	Foundation	Registered	Certified
Maximum Age: Production Unit Life From Transplant Date	4 years	4 years	5 years	5 years
Isolation: Minimum Clonal/Seed Separation Between Production Units				
Plot Production	Clonal- 30 ft.: Seed- 150 ft.	Clonal- 30 ft.: Seed- 150 ft.	Clonal- 30 ft.: Seed- 150 ft.	Clonal- 30 ft.: Seed- 150 ft.
Tank Production	Clonal -1 variety per tank: Seed- 150 ft.	Clonal - 1 variety per tank: Seed- 150 ft.	Clonal - 1 variety per tank: Seed- 150 ft.	Clonal - 1 variety per tank: Seed- 150 ft.
Plant Variants				
Fingerprints (between 60 and 120 day from date of establishment)	None	2 plant per sample	2 plant per sample	Not Applicable
Visual Inspections	None	3 plants per 5,400ft <sup>2</sup>	5 plants per 5,400 ft <sup>2</sup>	10 plants per 5,400 ft <sup>2</sup>
Harmful Diseases <sup>1</sup>	None	None	None	None
Noxious or Objectionable Weeds <sup>2</sup> (Refer to List Below)	None	None	None	≤ 5 plants per 5,400 ft <sup>2</sup>
Land Requirements	1 year	1 year	1 year	1 year
Other Crops <sup>3</sup> (Refer to List Below)	None	None	None	None

<sup>1</sup> Diseases seriously affecting quality of seed and transmissible by planting stock

<sup>2</sup> *Cyperus spp.* (Sedges), *Panicum repens* (Torpedograss), *Phragmites australis* (Roseau cane), *Fimbristylis spp.* (Fimbristylis), *Tamarix spp.* (Salt cedar), *Cenchrus spp.* (Sandbur), *Suaeda linearis* (Sea-blite), *Acacia farnesiana* (Sweet acacia)

<sup>3</sup> *Spartina patens* (Marshhay cordgrass), *Spartina spartinae* (Gulf cordgrass), *Sporobolus virginicus* (Dropseed), *Distichlis spicata* (Saltgrass), *Schizachyrium maritimum* (Seacoast bluestem), *Paspalum vaginatum* (Seashore paspalum), *Panicum amarum* (Beach panicgrass)

H. This Section shall become effective on July 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 37:2982 (October 2011).

**§193. Smooth Cordgrass (*Spartina Alterniflora*) Clonally Propagated Plant Certification Standards**

A. The department shall issue numbered certification tags when requested to do so by a grower who has met the requirement and standards set forth in this Part. The numbered certification tags shall be attached by the grower to each container of certified material prior to shipment.

B. Definition of classes. For the purpose of this Section, the word “material” refers to clonally propagated plants with identical genotypes.

1. Breeder material shall be maintained by the plant breeder or his authorized agent. Every plant used to establish

breeder ponds or breeder containers shall be proven to be genetically identical through genetic fingerprinting.

2. Foundation material shall be the vegetative increase of breeder material. Ten percent of the material or 192 random plants (whichever is smaller) used to establish foundation ponds or containers shall be genetically fingerprinted.

3. Registered material shall be the vegetative increase of either breeder or foundation material. Five percent of the material or 96 random plants (whichever is smaller) used to establish registered ponds or containers shall be genetically fingerprinted.

4. Certified material shall be the vegetative increase of breeder, foundation, or registered material. Certified material is not required to be genetically fingerprinted.

C. Production Requirements

1. Pond Requirements

- a. Ponds shall be contained by levees.

b. Only one variety of smooth cordgrass shall be grown per pond.

c. Ponds of different varieties shall be separated by a minimum of 20 feet isolation land and must have individual water supplies and water drainage capabilities for each produced variety.

d. All seed heads shall be removed annually from plants after flowering begins, but not later than September 1, to ensure viable seed are not produced.

2. Container/Tank Requirements

a. Soil used for container or tank production shall:

i. come from an area that has not produced smooth cordgrass for a minimum of one year; and

ii. be free of visible smooth cordgrass rhizomes and stems prior to transplanting.

b. Only one variety of smooth cordgrass shall be grown per flooded tank.

c. Different varieties shall be grown in separate flooded tanks and shall have individual water supplies and drainage capabilities.

d. All seed heads shall be removed annually from plants after flowering begins, but not later than September 1, to ensure viable seed are not produced.

D. Land Requirements

1. Ponds and containers to be eligible for the production of all certified classes of *Spartina alterniflora* shall be left undisturbed for a minimum of 4 weeks prior to planting, and found to be free of smooth cordgrass and noxious and objectionable weeds.

E. Inspections by Grower

1. Ponds and containers shall be inspected within four weeks prior to transplanting and prior to the department's inspection to ensure ponds are free of smooth cordgrass volunteers.

2. Ponds and containers shall be inspected a minimum of once a year to ensure that:

a. only a single variety is being grown per pond or flooded tank unit;

b. ponds of different varieties are separated by a minimum of 20 feet of non-flooded elevated land;

c. ponds and/or tanks of different varieties have individual water supplies and drainage capabilities; and

d. ponds and/or tanks grown in conjunction with seed producing *Spartina alterniflora* (cultivated or wild) have a minimum of 150 feet isolation at all points;

3. Ponds and containers shall be inspected once per year between September 1 and October 15 to ensure all seed heads have been removed.

F. Inspections by the Department

1. First Year (Year of Transplant)

a. Ponds and containers shall be inspected by department inspectors within four weeks prior to transplanting to ensure ponds and containers are free of smooth cordgrass volunteers. Ponds and containers shall be accessible and non-flooded at the time of the department's inspection.

b. Ponds and containers shall be inspected between 60 and 120 days from date of establishment for the purpose of collecting genetic fingerprinting samples.

c. Ponds and containers shall be inspected by department inspectors a minimum of once a year between September 1 and October 15 to ensure that:

i. only a single variety is being grown per pond or flooded tank unit;

ii. ponds of different varieties are separated by a minimum of 20 feet of non-flooded elevated land;

iii. ponds and/or tanks of different varieties have individual water supplies and drainage capabilities;

iv. ponds and/or tanks grown in conjunction with seed producing *Spartina alterniflora* (cultivated or wild) have a minimum of 150 feet isolation at all points; and

v. all seed heads have been removed no later than September 1.

d. The department shall have the right to re-inspect, re-sample and re-test ponds and containers that are out-of-tolerance for genetic fingerprinting prior to final certification.

e. Additional inspections may be performed at the discretion of the department at any time without prior notice.

2. Subsequent Years

a. Ponds and containers shall be inspected by department inspectors a minimum of once a year between September 1 and October 15 to ensure that:

i. a single variety is being grown per pond or flooded tank unit;

ii. ponds of different varieties are separated by a minimum of 20 feet isolation at all points;

iii. ponds and/or tanks of different varieties have individual water supplies and drainage capabilities;

iv. ponds and/or tanks grown in conjunction with seed producing *Spartina alterniflora* (cultivated or wild) have a minimum of 150 feet isolation at all points; and

v. all seed heads have been removed no later than September 1.

b. Additional inspections may be performed at the discretion of the department at any time without prior notice.

G. Field Standards

Production Fields/Tanks

Factor	Breeder	Foundation	Registered	Certified
Maximum Age: Production Unit Life From Transplant Date	3 years	3 years	4 years	4 years
Isolation: Minimum Clonal/Seed Separation Between Production Units				
Pond Production	Clonal- 20 ft.: Seed- 150 ft.	Clonal-20 ft.: Seed- 150 ft.	Clonal-20 ft.: Seed- 150 ft.	Clonal-20 ft.: Seed- 150 ft.
Tank Production	Clonal-1 variety per tank: Seed- 150 ft.	Clonal- 1 variety per tank: Seed- 150 ft.	Clonal- 1 variety per tank: Seed- 150 ft.	Clonal- 1 variety per tank: Seed- 150 ft.
Plant Variants				
Fingerprints (between 60 and 120)		2 plants/sample	2 plants/sample	Not Applicable

Factor	Breeder	Foundation	Registered	Certified
days from date of establishment)	None			
Visual Inspections	None	3 plants per 5,400 ft <sup>2</sup>	5 plants per 5,400 ft <sup>2</sup>	10 plants per 5,400 ft <sup>2</sup>
Harmful Diseases <sup>1</sup>	None	None	None	None
Noxious or Objectionable Weeds <sup>2</sup> (Refer to List Below)	None	None	None	≤ 5 plants per 5,400 ft <sup>2</sup>
Land Requirements	1 year	1 year	1 year	1 year

<sup>1</sup> Diseases seriously affecting quality of seed and transmissible by planting stock

<sup>2</sup> *Salvinia spp.* (Salvinia), *Cyperus spp.* (Sedge), *Eleocharis spp.* (Spikerush), *Phragmites australis* (Roseau cane), *Typha spp.* (Cattail)

<sup>3</sup> *Spartina patens* (Marshhay cordgrass), *Spartina cynosuroides* (Big cordgrass), *Spartina spartinae* (Gulf cordgrass), *Distichlis spicata* (Saltgrass), *Schoenoplectus californicus* (California bulrush), *Paspalum vaginatum* (Seashore paspalum)

H. This Section shall become effective on July 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 37:2983 (October 2011).

Mike Strain, DVM  
Commissioner

1110#041

#### RULE

### Department of Agriculture and Forestry Office of Forestry Forestry Commission

Timber Harvesting Records  
(LAC 7:XXXIX.1501 and 1503)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:4278.3, the Department of Agriculture and Forestry amends these rules and regulations to change from four years to six years the period of time that timber harvesting and receiving records must be kept. R.S. 14:67.12 provides that the theft of timber is a felony that is necessarily subject to imprisonment at hard labor. Louisiana Code of Criminal Procedure Art. 572 provides that a felony necessarily punishable by imprisonment at hard labor is subject to a six year limitation for the institution of prosecution. Without timber harvesting and receiving records it is highly improbable that a prosecution for timber theft will be successful. By increasing from four to six years the length of time that timber harvesting records must be kept the ability to initiate and successfully prosecute a timber theft that is older than four years is substantially increased.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXIX. Forestry

### Chapter 15. Timber Harvesting and Receiving Records

#### §1501. Loaders Log: Required Information; Distribution; Maintenance of Records

A. A loaders log must be kept on all timber harvesting sites. On any per-unit sale, upon completion of the harvest, the purchaser must provide the timber owner a copy of the loaders log. Loaders log must be maintained for a period not less than six years.

B. - B.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4278.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, Forestry Commission, LR 27:31 (January 2001), amended LR 27:1005 (July 2001), LR 37:2985 (October 2011).

#### §1503. Scale/Load Tickets: Required Information; Distribution; Maintenance of Records

A. Scale tickets must be maintained for a period of not less than six years. Information required by the scale ticket regulations may be kept on a load ticket provided that the scale ticket can be cross-referenced to the load ticket. When both are used the load ticket and scale ticket must be maintained for a period of not less than six years.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4278.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, Forestry Commission, LR 27:31 (January 2001), amended LR 27:1005 (July 2001), LR 37:2985 (October 2011).

Mike Strain, DVM  
Commissioner

1110#040

#### RULE

### Department of Agriculture and Forestry Office of Forestry Forestry Commission

Tree Seedling Prices (LAC 7:XXXIX.301)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:4303, the Department of Agriculture and Forestry, Office of Forestry, Forestry Commission amends these rules and regulations regarding tree seedling prices. Forestry seedling nursery operations are an ancillary budget operation and all production and operating costs must be covered entirely by revenue generated from seedling sales. Fuel, fertilizer, and chemical costs have risen substantially. Seedling prices are set to reflect, as closely as possible, a break-even pricing structure and to be conducive to the promotion and development of sound reforestation practices in this state. The changes to the seedling prices are designed to bring sales revenue in line with production costs and to establish

an efficient and organized pricing structure that is consistent with tree seedling marketing in the state and the region.

**Title 7  
AGRICULTURE AND ANIMALS**

**Part XXXIX. Forestry**

**Chapter 3. Tree Seedlings**

**§301. Seedling Prices**

A. The Louisiana Forestry Commission adopts the following prices for forest tree seedlings.

Seedling Prices Per Packet:				
Category	1000 and Over	500	100	50
Superior Loblolly Pine	\$43	\$32	N/A	N/A
Advanced Generation Pine - Lob and Slash	\$50	\$37	N/A	N/A
Specialty Pine - Spruce and Superior Virginia	\$87	\$52	N/A	N/A
Improved Longleaf Pine	\$102	\$57	N/A	N/A
Containerized Adv/Gen Pine	\$127		\$32	N/A
Containerized Sup. Virginia Pine	\$152		\$37	N/A
Containerized Imp.Longleaf Pine	\$202		\$42	N/A
Specialty Hardwoods	\$305	\$255	\$55	\$45
Hardwood Species	\$220	\$205	\$45	\$35

B. The following price discounts will be offered if applicable to any category of seedling.

1. A discount of \$3 per thousand for each order of Superior Loblolly Pine or Advanced Generation Pine-loblolly/slash that exceeds 500,000 seedlings.

2. A discount equal to the difference between the cost of production and seedling price if the cost of production is less than the seedling price.

3. A discount equal to the Office of Forestry seed costs if the seedlings are produced from seed supplied by the customer.

4. A discount to be determined by the state forester with the approval of the commissioner of agriculture and forestry if there is a surplus of seedlings above planned or expected sales or if the rate of actual sales indicates that there will be a surplus of seedlings at the end of the selling season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4303.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, Forestry Commission, LR 8:285 (June 1982), amended LR 10:468 (June 1984), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission LR 13:432 (August 1987), LR 19:610 (May 1993), LR 21:671 (July 1995), LR 22:1210 ((December 1996), LR 26:2437 November 2000), amended by the Department of Agriculture and Forestry, Office of Forestry, LR 30:200 (February 2004), amended by the Department of Agriculture and Forestry, Office of Forestry, Forestry Commission, LR 37:2986 (October 2011).

Mike Strain, DVM  
Commissioner

1110#039

**RULE**

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

LASFAC Committees (LAC 28:V.107 and 109)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended the Rules and Regulations of the Louisiana Student Financial Assistance Commission (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). (SFAC11130R)

**Title 28  
EDUCATION**

**Part V. Student Financial Assistance—Higher  
Education Loan Program**

**Chapter 1. Student Financial Assistance Commission  
Bylaws**

**§107. Order of Business**

A. ...

B. Order of Business. The order of business of regular meetings of the commission shall be as follows, unless the rules are suspended by a simple majority vote of the quorum present:

1. call to order;
2. roll call;
3. introductions and announcements;
4. corrections and approval of minutes of preceding regular meetings and of all special meetings held subsequent thereto;
5. public comment;
6. program updates and special reports;
7. old business, including reports and recommendations of standing and special committees;
8. new business; and
9. adjournment.

C. Reference to Committees

1. In cases where the commission determines that it is feasible and desirable, it may refer any subject or measure to the executive committee or to a special committee.

2. The committee to which a matter is referred should submit to the commission its recommendations in writing, together with any resolutions necessary to facilitate such recommendations.

D. Meetings

1. Meetings shall be conducted in accordance with state law governing public bodies.

2. It is the policy of the commission for all meetings to be open to all who wish to attend and that the public shall be granted an opportunity to comment.

3. The commission may enter into an executive session only upon two-thirds majority vote of the quorum present and only for one of the reasons specified in the Louisiana Open Meetings Law.

4. Prior to each regular meeting of the commission, the executive director, with approval of the chairman, shall prepare and forward to each member of the commission a tentative agenda for the meeting at least five working days prior to such regular meeting.

5. Upon request of three members of the commission made prior to the fifth day before the next commission meeting that a particular item be included, the chairman shall place the subject or subjects upon the agenda.

6. The commission may add any item to its agenda during a meeting upon a simple majority vote of the quorum present.

7. Each resolution shall be reduced to writing and presented to the commission before it is acted upon.

8. All official actions of the commission shall require a simple majority vote of the quorum present at the meeting.

E. - F. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:1264 (July 1998), amended LR 37:2986 (October 2011).

**§109. Committees**

A. In addition to the executive committee established in these bylaws, the commission may establish standing committees by the vote of a simple majority of the membership of the commission.

B - E. ...

F. Executive Committee

1. The executive committee shall consist of seven members. The chairman and vice chairman of the commission shall serve in those capacities on the executive committee. The remaining persons, for a total of seven members, shall be appointed by the chairman of the commission from the other members of the commission.

2. The executive committee shall:

a. meet for and conduct the business of the commission in all instances that the public has been given notice of a meeting of the commission and the commission does not have a quorum at that meeting. In such cases, the actions of the committee shall have the same force and effect as if a quorum of the commission had taken the action;

b. consider such matters as shall be referred to it by the commission and shall execute such orders and resolutions as shall be assigned to it at any meeting of the commission;

c. in the event that an emergency requiring immediate commission action shall arise between commission meetings, meet in emergency session to take such action as may be necessary and appropriate. The executive committee shall report the actions it takes in emergency session to the commission for ratification at the commission's next meeting.

3. All official actions of the executive committee shall require a majority vote of the quorum present at the meeting.

4. The executive committee may enter into an executive session only upon two-thirds majority vote of the quorum present and only for one of the reasons specified in the Louisiana Open Meetings Law.

G. Special Committees

1. As the necessity therefor arises, the chairman may, with the concurrence of the commission, create special (ad hoc) committees with such functions, powers and authority as may be delegated.

2. The chairman may appoint special committees for special assignments for limited periods of existence not to exceed the completion of the assigned task.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:811 (September 1996), repromulgated LR 24:1264 (July 1998), amended LR 26:484 (March 2000), LR 27:35 (January 2001), LR 32:391 (March 2006), LR 37:2987 (October 2011).

George Badge Eldredge  
General Counsel

1110#027

**RULE**

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

**TOPS Equivalent Courses (LAC 28:IV.703)**

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). (SG11132RI).

**Title 28**

**EDUCATION**

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

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

**§703. Establishing Eligibility**

A. - A.5.a.ii.(b). ....

(c). For students graduating in academic year (high school) 2009-2010, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

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

(d). For students graduating in academic year (high school) 2010-2011 and after, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I, Applied Algebra I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III, Applied Geometry
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Math – Pre-Calculus**, Advanced Math – Functions and Statistics***
Chemistry	Chemistry Com
Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit;	Anatomy and Physiology
Fine Arts Survey	Speech III and Speech IV (both units)
Western Civilization	European History
Civics	AP American Government
*Applied Mathematics III was formerly referred to as Applied Geometry	
**Advanced Math—Pre-Calculus was formerly referred to as Advanced Mathematics II	
***Advanced Math—Functions and Statistics was formerly referred to as Advanced Mathematics II	

A.5.a.iii - J.4.b.ii. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011).

George Badge Eldredge  
General Counsel

1110#029

## RULE

### Tuition Trust Authority Office of Student Financial Assistance

LATTA Committees (LAC 28:VII.107 and 109)

The Louisiana Tuition Trust Authority has amended its Bylaws (LSA-R.S. 17:3091 et seq.). (ST11131NI)

#### Title 28

#### EDUCATION

#### Part VII. Tuition Trust Authority

#### Chapter 1. Bylaws

#### §107. Order of Business

A. ...

B. Order of Business. The order of business of regular meetings of the authority shall be as follows, unless the rules are suspended by a simple majority of the quorum present:

1. call to order;
2. roll call;
3. introductions and announcements;
4. corrections and approval of minutes of preceding regular meetings and of all special meetings held subsequently thereto;
5. public comment;
6. program updates and special reports;
7. old business, including reports and recommendations of standing and special committees;
8. new business; and
9. adjournment.

C. Reference to Committees

1. In cases where the authority determines it is feasible and desirable, it may refer any subject or measure to the executive committee or to a special committee.

2. The committee to which a matter is referred should submit to the authority its recommendations in writing, together with any resolutions necessary to facilitate such recommendations.

D. Meetings

1. Meetings shall be conducted in accordance with state law governing public bodies.

2. It is the policy of the authority for all meetings to be open to all who wish to attend and that the public shall be granted an opportunity to comment.

3. The authority may enter into an executive session only upon two-thirds majority vote of the quorum present and only for one of the exceptions specified in the Louisiana Open Meetings Law.

4. Prior to each regular meeting of the authority, the executive director, with approval of the chairman, shall prepare and forward to each member of the authority a tentative agenda for the meeting at least five working days prior to such regular meeting.

5. Upon request of three members of the authority made prior to the fifth day before the authority's next meeting that a particular item be included, the chairman shall place the subject or subjects upon the agenda.

6. The authority may add any item to its agenda upon a simple majority vote of the quorum present.

7. Each proposal and/or resolution shall be reduced to writing and presented to the authority before it is acted upon.



8. All official actions of the authority shall require a simple majority vote of the quorum present at the meeting.

E. - F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3093 et seq.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1654 (December 1997), amended LR 37:2988 (October 2011).

#### **§109. Committees**

A. In addition to the executive committee established in these bylaws, the authority may establish standing committees by simple vote of a majority of the membership of the authority.

B. - E. ...

F. Executive Committee

1. The executive committee shall consist of seven members.

2. The chairman and vice-chairman of the authority shall serve in those capacities on the executive committee.

3. The remaining members, for a total of seven members, shall be appointed by the chairman of the authority from the other members of the authority.

4. The executive committee shall:

a. meet for and conduct the business of the authority in all instances that the public has been given notice of a meeting of the authority and the authority does not have a quorum at that meeting. In such cases, the actions of the authority shall have the same force and effect as if a quorum of the authority had taken the action;

b. consider such matters as shall be referred to it by the authority and shall execute such orders and resolutions as shall be assigned to it at any meeting of the authority;

c. in the event that an emergency requiring immediate authority action shall arise between authority meetings, meet in emergency session to take such action as may be necessary and appropriate. The executive committee shall report the actions it takes in emergency session to the authority for ratification at the authority's next meeting.

5. All official actions of the executive committee shall require a majority vote of the quorum present at the meeting.

6. The executive committee may enter into an executive session only upon two-thirds majority vote of the quorum present and only for one of the reasons specified in the Louisiana Open Meetings Law.

G. Special Committees

1. As the necessity therefor arises, the chairman may, with the concurrence of the authority, create special (ad hoc) committees with such functions, powers and authority as may be delegated.

2. The chairman may appoint special committees for special assignments for limited periods of existence not to exceed the completion of the assigned task.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091 et seq.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1655 (December 1997), amended LR 27:190 (February 2001), LR 27:1221 (August 2001), LR 30:785 (April 2004), LR 32:392 (March 2006), LR 37:2989 (October 2011).

George Badge Eldredge  
General Counsel

1110#028

## **RULE**

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

2010 Annual Incorporation by Reference of  
Certain Federal Air Quality Regulations  
(LAC 33:III.506, 507, 2160, 3003, 5116,  
5122, 5311, and 5901)(AQ319ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.507.B.2. 2160.A, 3003. 5116.A, 5311.A, and 5901.A (Log #AQ319ft).

This Rule is identical to federal regulations found in July 1, 2010, 40 CFR, Part 51, Appendix M, Part 60, 61, 63, 68, 70.6(a), and 96, 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 is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference (IBR) into the Air regulations, LAC 33:Part III, the following federal regulations in the July 1, 2010 edition of the Code of Federal Regulations (CFR); Part 51, Appendix M, Capture Efficiency Test Procedures; 40 CFR Part 60, New Source Performance Standards; 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP); 40 CFR Part 63, NESHAP for Source Categories; 40 CFR Part 68; Chemical Accident Prevention and Minimization of Consequences; 40 CFR Part 70.6(a), Standard permit requirements; and 40 CFR Part 96, NOx Budget Trading Program and CAIR Nox and SO2 Trading Programs for State Implementation Plans. Any exception to the IBR is explicitly listed in the Rule.

In order for Louisiana to maintain equivalency with federal regulations, certain regulations in the most current Code of Federal Regulations, July 1, 2010, must be adopted into the Louisiana Administrative Code (LAC). This rulemaking is also necessary to maintain delegation authority granted to Louisiana by the Environmental Protection Agency. The basis and rationale for this Rule are to mirror the federal regulations as they apply to Louisiana's affected sources. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### **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 SO<sub>2</sub> Model Rule, published in the *Code of Federal Regulation* at 40 CFR Part 96, July 1, 2010, is

hereby incorporated by reference, except for Subpart III-CAIR SO<sub>2</sub> 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), amended LR 37:2989 (October 2011).

### **§507. Part 70 Operating Permits Program**

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2010. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007), LR 33:2083 (October 2007), LR 33:2630 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), LR 37:2990 (October 2011).

### **Chapter 21. Control of Emission of Organic Compounds**

#### **Subchapter N. Capture Efficiency Test Procedures**

[Editor's Note: This Subchapter was moved and renumbered from Chapter 61 (December 1996).]

### **§2160. Procedures**

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2010, are hereby incorporated by reference.

B. - C.2.b.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), LR 37:2990 (October 2011).

### **Chapter 30. Standards of Performance for New Stationary Sources (NSPS)**

#### **Subchapter A. Incorporation by Reference**

#### **§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60**

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2010, are hereby incorporated by reference as they apply to the state of Louisiana.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:2092 (October 2007), LR 33:2626 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011).

#### **Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

#### **Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

#### **§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2010, and specifically listed in the

following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart/Appendix Heading
	***
[See Prior Text in Subpart A – Appendix C]	

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 33:2094 (October 2007), LR 34:1391 (July 2008), LR 35:1108 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011).

**Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2010, are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

B. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2095 (October 2007), LR 33:2627 (December 2007), LR 34:1392 (July 2008), LR 35:1108 (June 2009), LR 36:2273 (October 2010), LR 37:2991 (October 2011).

**Chapter 53. Area Sources of Toxic Air Pollutants**  
**Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources**

**§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2010, are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html), from the Department of Environmental Quality, Office of Environmental Assessment, or from a public library.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2096 (October 2007), LR 34:1392 (July 2008), LR 35:1108 (June 2009), LR 36:2274 (October 2010), LR 37:2991 (October 2011).

**Chapter 59. Chemical Accident Prevention and Minimization of Consequences**

**Subchapter A. General Provisions**

**§5901. Incorporation by Reference of Federal Regulations**

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2010.

B. - C.6. ...

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HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November

2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:810 (May 2006), LR 33:1621 (August 2007), LR 34:1392 (July 2008), LR 35:1109 (June 2009), LR 36:2274 (October 2010), LR 37:2991 (October 2011).

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## RULE

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

#### Use or Disposal of Sewage Sludge and Biosolids (LAC 33:IX.Chapter 73)(WQ083)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX, Subpart 3, Chapter 73 (WQ083).

This Rule will revise and clarify the requirements of Standards for the Use or Disposal of Sewage Sludge and Biosolids (LAC 33:IX, Subpart 3, Chapter 73). The Rule change will also incorporate requirements that currently exist as policy within LDEQ. The basis and rationale for this Rule are to provide clarification for the proper regulation of sewage sludge for the protection of human health and the environment. This Rule is based upon LDEQ's knowledge of the history of sewage sludge regulation in Louisiana and current policies of the Department with regard to sewage sludge transportation, treatment and disposal. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part IX. Water Quality

#### Subpart 3. Louisiana Sewage Sludge and Biosolids Program

#### Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids

#### Subchapter A. Program Requirements

#### §7301. General Provisions

A. - A.2.b.iii. ...

B. General Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context clearly indicates otherwise, or the term is specifically redefined in a particular Section.

\*\*\*

*Commercial Preparer of Sewage Sludge*—any person who prepares sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person. *Commercial preparer of sewage sludge* includes a pumper of sewage sludge that prepares sewage sludge received from other pumpers of sewage sludge and/or a pumper of sewage sludge that prepares sewage sludge received from his pumping/hauling operation.

*Commercial preparer of sewage sludge* does not include a *publicly owned treatment works* or a *privately owned sanitary wastewater treatment facility* which does not receive hauled sewage sludge.

\*\*\*

*Surface Disposal*—a use or disposal of sewage sludge on the land that does not meet the criteria of *land application*, as defined in this Subsection. *Surface disposal* does not include the disposal of sewage sludge in a landfill permitted to receive sewage sludge.

\*\*\*

#### C. Compliance Period

1. - 2. ...

#### 3. Compliance with Requirements

a. Unless otherwise specified in LAC 33:IX.7311, compliance with the requirements in LAC 33:IX.7311.B, LAC 33:IX.7311.D.3, 4, and 5, F.5, 6, 7, 8.d, and 10, G.1.a and c, G.3, and H.2.e shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.7311, compliance with the revised requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. - b.iii. ...

#### D. Permits and Permitting Requirements

1. - 1.b.iv. ...

v. All minor sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than January 1, 2013.

c. ...

d. A person who prepares sewage sludge or land-applies biosolids shall use the appropriate Sewage Sludge and Biosolids Use or Disposal Permit application form. The owner/operator of a sewage sludge incinerator shall apply for a permit in accordance with LAC 33:III.Chapter 5 and shall utilize both the Air Quality Permit Application and the Sewage Sludge and Biosolids Use or Disposal Permit application forms. The forms can be accessed through the department's website or by contacting the Office of Environmental Services.

1.e. - 3.b. ...

4. Closure of oxidation ponds, lagoons, and/or surface impoundments utilized for sewage sludge disposal, preparation of sewage sludge, or treatment of sanitary wastewater shall comply with the following:

a. - b.i.(c). ...

(d). sampling and analysis for the following parameters:

(i). toxicity characteristics leaching procedure (TCLP) and the presence of PCBs;

(ii). paint filter liquids test; and

(iii). ...

(e). either a schematic drawing or an aerial photograph that indicates where the samples for the parameters in Subclause D.4.b.i.(d) of this Section were taken in the facility;

(f). the laboratory methods utilized for the sampling and analysis of the parameters in Subclause D.4.b.i.(d) of this Section;

(g). the name of the laboratory where the samples for the parameters in Subclause D.4.b.i.(d) of this Section were analyzed;

b.i.(h). - c. ...

5. Environmental Assessment Statement. In addition to the requirements of this Chapter, all Sewage Sludge and Biosolids Use or Disposal Permit application forms for a new permit for a commercial preparer of sewage sludge or a major modification to a permit for a commercial preparer of sewage sludge must include a response to each of the following:

a. - e. ...

E. Sewage Sludge Disposed in a Landfill

1. - 2. ...

3. The person who prepares sewage sludge that is disposed in a landfill shall provide the following to the Office of Environmental Services on a form specified by the administrative authority on or before February 19 of each year, or at a frequency designated in the permit:

a. ...

b. results of sampling and laboratory analyses of the sewage sludge for hazardous characteristics or the presence of PCBs, of the results of the Paint Filter Liquids Test (if required in the permit), and of any other analysis required by the owner/operator of the landfill.

F. Registration Requirements and Standards for Transporters of Sewage Sludge and Standards for Vehicles and/or Containers Used in the Transport of Sewage Sludge

1. Registration Requirements

a. A transporter of sewage sludge and/or grease mixed with sewage sludge shall not transport any sewage sludge and/or grease mixed with sewage sludge without first registering such activity with the Office of Environmental Services in writing and paying all associated fees.

b. ...

c. The registration period shall be for one state fiscal year period of July 1 to June 30. All registrations shall expire on June 30 of each year. If a person wishes to continue the operation of transporting sewage sludge, he or she shall apply for re-registration to the Office of Environmental Services on or before May 1 of each year.

d. - e.ii. ...

2. Standards for All Transporters of Sewage Sludge

a. - a.v. ...

b. Transporters of sewage sludge and/or grease mixed with sewage sludge shall provide a summary of the information required in Subparagraph F.2.a. of this Section to the Office of Environmental Services on or before February 19 of each year on a form specified by the administrative authority.

c. Standards Applicable to Vehicles and/or Containers Used to Transport Sewage Sludge

i. The bodies of vehicles and/or containers transporting sewage sludge must be covered at all times, except during loading and unloading, in a manner that prevents rain from reaching the sewage sludge, inhibits access by disease vectors, prevents the sewage sludge from falling or blowing from the vehicle and/or container, minimizes escape of odors, and does not create a nuisance.

ii. The bodies of vehicles and/or containers that are utilized to transport liquefied sewage sludge or a sewage sludge that is capable of producing a leachate shall be

constructed and/or enclosed with an appropriate material that will completely prevent the leakage or spillage of the liquid.

iii. The exterior and interior of the body of a vehicle and/or container that is transporting sewage sludge shall be washed, at a designated washdown area, as often as needed to ensure against accumulation of sewage sludge and/or biosolids, and for the prevention of odors and disease vector attraction.

iv. The vehicle and/or container washdown area shall be designed, constructed, and operated to prevent groundwater contamination and stormwater run-on and runoff.

v. All water and leachate generated at the designated washdown area shall be contained and discharged in accordance with all applicable state and federal regulations or hauled off-site for proper treatment and/or disposal.

d. Standards for Sewage Sludge Pipelines and Containment Areas

i. Transfer points, pumping stations, and other facilities with a potential for spillage shall be located above grade, or in watertight compartments, and shall be in containment areas constructed to hold the maximum potential spill.

ii. Containment areas shall consist of a base and dikes constructed of concrete, compacted clay, or other impervious materials. All joints must be sealed.

e. Other Standards. The administrative authority may provide appropriate standards for transporters of sewage sludge that utilize modes of transportation not covered by Subparagraphs F.2.c and d of this Section.

f. These regulations do not relieve the transporter from the responsibility of complying with other applicable regulations and licensing requirements, including, but not limited to, those of the Louisiana Department of Transportation and Development, and with applicable ordinances governing types, sizes, and weights of vehicles used to transport sewage sludge on roads and streets that must be traveled during the transporting of the sewage sludge and with any other applicable requirements.

G. Prohibitions, Restrictions, and Additional or More Stringent Requirements

1. - 3.c.ii. ...

iii. the location, by either street address (physical address) or latitude and longitude, where the sewage sludge or biosolids will be stored;

iv. an explanation of why the sewage sludge or biosolids need to be stored for longer than a six month period;

v. ...

vi. the approximate date and length of time the sewage sludge or biosolids will be stored; and

c.vii. - d. ...

i. If the information is deemed incomplete, the administrative authority shall issue a notice of deficiency. The preparer or land applier of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

G.3.d.ii. - I.2.k. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002),

repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2366 (November 2007), repromulgated LR 34:1028 (June 2008), amended LR 35:927 (May 2009), LR 37:2992 (October 2011).

**§7303. Land Application**

A. - K.2.b. ...

i. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per year, the reporting period and the report due date shall be as specified in Table 1 of LAC 33:IX.7303.K.

Table 1 of LAC 33:IX.7303.K Reporting—Land Application	
Monitoring Period (Once per Year)	Report Due Date
January - December	February 19

ii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per quarter (four times per year), the reporting period and the report due date shall be as specified in Table 2 of LAC 33:IX.7303.K.

Table 2 of LAC 33:IX.7303.K Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Quarter)	Report Due Date
January, February, March	August 19
April, May, June	
July, August, September	February 19
October, November, December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

iii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per 60 days (six times per year), the reporting period and the report due date shall be as specified in Table 3 of LAC 33:IX.7303.K.

Table 3 of LAC 33:IX.7303.K Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per 60 Days)	Report Due Date
January, February	June 19
March, April	
May, June	October 19
July, August	
September, October	February 19
November, December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

iv. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per month (12 times per year), the reporting period and the report due date shall be as specified in Table 4 of LAC 33:IX.7303.K.

Table 4 of LAC 33:IX.7303.K Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Month)	Report Due Date
January	May 19
February	
March	
April	August 19
May	
June	
July	November 19

Table 4 of LAC 33:IX.7303.K Reporting—Land Application	
Monitoring Period <sup>1</sup> (Once per Month)	Report Due Date
August	February 19
September	
October	
November	
December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

K.3. - L.10. ...

a. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.L of once per quarter (four times per year), the reporting periods and the report due dates shall be as specified in Table 2 of LAC 33:IX.7303.L.

Table 2 of LAC 33:IX.7303.L Reporting—Exceptional Quality Biosolids	
Monitoring Period <sup>1</sup> (Once per Quarter)	Report Due Date
January, February, March	August 19
April, May, June	
July, August, September	February 19
October, November, December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

b. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.L of once per month (12 times per year), the reporting periods and the report due dates shall be as specified in Table 3 of LAC 33:IX.7303.L.

Table 3 of LAC 33:IX.7303.L Reporting—Exceptional Quality Biosolids	
Monitoring Period <sup>1</sup> (Once per Month)	Report Due Date
January	May 19
February	
March	
April	August 19
May	
June	
July	November 19
August	
September	
October	February 19
November	
December	

<sup>1</sup>Separate reports must be submitted for each monitoring period.

M. - N. ...

1. If a person who possesses a Sewage Sludge and Biosolids Use or Disposal Permit wishes to add a land application site or sites to the permit, the person shall submit a request package to the administrative authority at least 180 days prior to the anticipated date by which authorization is needed containing the following information:

1.a. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2374 (November 2007), LR 35:929 (May 2009), LR 37:2994 (October 2011).

**§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge**

**A. Exemptions**

1. A *publicly owned treatment works (POTW)*, as defined in LAC 33:IX.7301.B, shall be exempted from the siting requirements in Subsection B of this Section and the facility closure requirements in Paragraph C.3 of this Section if the POTW prepares only sewage sludge generated at the POTW or sewage sludge generated at a facility that is owned or operated by the POTW and the POTW's sewage sludge treatment facility is located within the POTW's boundary or perimeter.

2. An existing facility that has been issued a Sewage Sludge and Biosolids Use or Disposal Permit shall be exempted from the siting requirements in Subsection B of this Section.

**B. - B.4.b. ...**

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs B.4.a and b of this Section shall be prepared under the supervision of a professional engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs B.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit applications or permit modifications for all facilities must be prepared under the supervision of, and certified by, a professional engineer, licensed in the state of Louisiana.

6. Notification of Completion. Within 10 days of completion of the facility or completion of a facility modification, the owner of the facility shall submit a notification of completion to the administrative authority. The notification of completion shall include a certification statement by a professional engineer, licensed in the state of Louisiana, that the facility meets the plans and specifications as described in the Sewage Sludge and Biosolids Use or Disposal Permit application.

**7. Initial Start-Up Inspection**

a. Upon issuance of a permit or modification to an existing facility, or construction of a newly permitted facility, a start-up inspection may be made after the permit holder submits the notification of completion and construction certification to the administrative authority.

b. Upon renewal of an existing permit where no physical changes are required, no certification of construction shall be required to be submitted, and no start-up inspection shall be initiated. The owner of the facility may continue use of the facility upon the effective date of the renewal permit.

c. If the administrative authority determines a start-up inspection is required pursuant to Subparagraph B.7.a of this Section, the start-up inspection shall be initiated within 15 working days of receipt of certification by the Office of Environmental Services unless a longer time period is set by mutual agreement.

d. Within 15 working days after a new, existing, or modified facility has undergone an initial start-up inspection, or within 30 days of receipt of the construction certification, the administrative authority shall either issue an approval of

the construction or a notice of deficiency to the permittee, unless a longer time period is set by mutual agreement.

**C. - C.3.e. ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2382 (November 2007), LR 35:930 (May 2009), LR 37:2995 (October 2011).

**§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids**

**A. - E.2.i.i.(d).(v). ...**

ii. Public Notice Component. The local government affected person must place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure requirements, the reported liability at the balance sheet date, and the estimated total closure cost remaining to be recognized. For closure costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.

**E.2.i.iii. - F.2. ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2386 (November 2007), LR 35:931 (May 2009), LR 37:2995 (October 2011).

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**RULE**

**Office of the Governor  
Motor Vehicle Commission**

Automotive Industry  
(LAC 46:V.Chapters 1, 13, 15 and 18)

In accordance with the provisions of the Administrative Procedures Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, the Louisiana Motor Vehicle Commission finds it necessary to adopt paragraph B of §107 to further implement the provisions of R.S. 32:1268.2. In the country's current economic condition, manufacturers of motor vehicles and recreational products are filing for bankruptcy, discontinuing lines, and ceasing to do business at an alarming rate making it unlawful under state law for dealers to sell their new inventory. R. S. 32: 1268.2 was enacted by the legislature to

allow previously franchised motor vehicle and recreational product dealers to continue to be licensed under circumstances where the manufacturer is in bankruptcy, is no longer in business, or has terminated a line. This Rule will allow the commission to license the terminated dealer to perform warranty work under an agreement with the manufacturer when a line has been terminated. This will assure the consuming public the availability of a dealer to perform warranty on a terminated vehicle.

The commission has adopted §1307 to place in its Rules its previously adopted policy regarding offsite displays by manufacturers, distributors, factory and distributor branches and new motor vehicle dealer licensees. This regulation has been in effect since 2004 and makes no change that will affect those persons covered by the Rule.

The commission has repealed provisions of its rules relating to recreational product shows and replace them with existing and new regulations and language to clarify the Rule.

Rules were adopted to implement the provisions of R.S. 32:1256 with regard to recreational product shows. Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulations will be repealed. Chapter 15. Recreational Product Shows is being adopted with language to clarify the rules and put into the rule customary procedures of the commission which will assist licensees in dealing with the regulatory scheme assigned the commission. This Rule will eliminate provisions for local and regional shows and provides for a recreational product show. The fee for the show, \$500, is the fee that has been charged for a regional show under repealed Chapter 18. The provisions for a non-resident exhibitor have not been included as the reference to non-resident exhibitors has been deleted from Title 32, Chapter 6. In addition only a licensee of the commission may offer for sale recreational products in this state. The provisions of former §1806 regarding offsite displays of marine products have been expanded to include all recreational products. A fee of \$200 is established to cover the cost to approve and inspect the offsite displays. The Rule clarifies the requirement for invitations and priority of those invitations to participate in the recreational product show. The amendment clarifies the requirements for a licensee to participate in closed or open rallies.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part V. Automotive Industry**

##### **Subpart 1. Motor Vehicle Commission**

##### **Chapter 1. General Requirements**

##### **§107. Manufacturer Termination of Franchise**

##### **Liquidation of New Vehicle Inventory; Warranty Work; Exception**

A. - A.5 ...

B. At the termination of the franchise the license issued by the commission may remain in effect or be renewed at the discretion of the executive director as a service center to perform warranty repairs on the vehicle under the following circumstances.

1. The dealer shall remain a dealer licensed by the commission.

2. The manufacturer, distributor or factory branch must enter into an agreement authorizing the dealer to perform warranty repairs on the terminated vehicle which agreement will comply with all provisions of R.S. 32:1251 et seq. and the rules and regulations adopted pursuant to this Chapter with regard to warranty work. The agreement must be approved upon execution and annually upon renewal of the dealer's license by the commission.

C. All applications for a license shall include evidence that the applicant has such liability protection covering its place of business and its operation that complies with the financial responsibility laws of the state of Louisiana and as determined by the applicant and its insurance agent that are necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state.

D. All applications for license as a distributor or wholesaler shall include a copy of its franchise with the person, licensed by the Commission, whose product it will offer for sale to the licensees of the Commission in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 36:1547 (July 2010), amended LR 37:2996 (October 2011).

##### **Chapter 13. New Motor Vehicle Auto Shows; Offsite Displays**

##### **§1307. Static Offsite Displays**

A. The executive director must approve all offsite displays of motor vehicles. A licensee's request to display vehicles at an offsite location must be received by the commission seven days prior to the commencement of the display.

B. The location of each display must be within the licensee's defined area of responsibility for the make and model to be displayed, if applicable.

C. Each offsite display will be limited to 30 days, unless the licensee submits a copy of the contract for the location of the offsite display and then the display will be limited to the length of the contract up to a six month period. There will not be a limit on the number of offsite displays allowed per year, per licensee.

D. The number of vehicles at any offsite display will be left to the discretion of the executive director, with a maximum of six vehicles per licensee, per display.

E. The presence of any sales personnel, business cards, brochures, pricing sheets, or any other point of sale device is strictly prohibited. The only pricing information allowed on any vehicle(s) displayed will be the Maroney label which is required by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2996.

##### **Chapter 15. Recreational Product Shows**

##### **§1501. Authorization for Recreational Product Show**

A. The commission may authorize or prohibit recreational product shows at offsite locations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2996.



### **§1503. Definitions**

*Promoter*—any person who alone or with others assumes the financial responsibility of a recreational product show in which recreational products are displayed by licensed dealers, manufacturers or distributors.

*Rally*—an event held and organized by recreational product clubs of specific product owners or manufacturers of specific products where owners of the specific products are members of the club and are invited to participate in the event.

*Recreational Product Show*—a controlled event in which a promoter charges or barter for booth space and/or charges spectator entrance in which 3 or more recreational product dealers exhibit vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997.

### **§1505. Promoter License Fee and Application**

A. A promoter shall obtain a license from the commission and its request for a license shall consist of the following:

1. the application for license shall be on forms prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of \$100;

3. a promoter's license shall expire on December 31.

B. All applications to the commission for display permits not received within 30 days of that start of the trade show or exposition shall be charged a \$50 late processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997.

### **§1507. License Application for Recreational Product Show**

A. The promoter of a recreational product show shall be required to obtain a license for the show from the commission and its request for a license shall consist of the following:

1. the application shall be on a form prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of \$500;

3. the license shall be for the recreational product show subject of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997.

### **§1509. Recreational Product Show Requirements**

A. The application must be submitted to the commission no less than 60 days prior to the opening date of the recreational product show.

B. Only licensed recreational product dealers whose area of responsibility includes the show site may display and conduct sales of recreational products at recreational product shows.

C. All licensed recreational product dealers within 30 miles of the recreational product show's location must be offered the opportunity to participate in the show.

D. Each respective manufacturer shall grant authority to the dealers participating in the recreational product show.

E. Not less than 30 days prior to the opening day of the recreational product show the commission must receive a list of all participating recreational product dealers together with the consent of each respective manufacturer.

F. Participation by a recreational product dealer shall include display of vehicles and presence of dealer personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997.

### **§1511. Invitations and Priority**

The promoter shall contact and invite potential participants to a recreational products show as follows.

1. The promoter shall first contact all recreational product dealers who sell the type of vehicle to be displayed at the recreational product show whose location is within a 30 mile radius of the show. Only dealers whose area of responsibility includes the show site may display the particular make of recreational products sold by them.

2. The promoter may invite, but shall accept any request from a recreational product dealer, not excluded by Paragraph 1 of this Section, above, whose business is conducted beyond the 30 mile radius whose area of responsibility includes the show site.

3. If a recreational products trade show is being held in a location where a recreational product does not have a dealer whose area of responsibility includes the show's location it shall be the manufacturer's responsibility to determine which licensee will represent that manufacturer at the show. If the manufacturer has not assigned a dealer to represent their product at a show, then the dealer that is the closest proximity to the show location shall determine which dealer has the first right of refusal to participate in a show based upon the shortest land based route.

4. The promoter shall maintain all records of invited, participating and declining dealers and shall furnish these records to the commission ten days prior to the opening of the recreational products show.

5. A recreational vehicle manufacturer or distributor may exhibit its recreational products at a show only through a recreational products dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997.

### **§1513. Off-Site Expositions of Recreational Products**

A. The executive director must approve all off-site expositions by licensed recreational products dealers. A request for an off-site exposition, accompanied by a fee of \$200, must be received and approved by the executive director ten days prior to the commencement of the exposition. Any application received after that date shall be charged a \$50 late fee.

B. The location of any off-site exposition must be within the dealer's area of responsibility.

C. An off-site exposition of recreational products is limited to a single dealer and shall not exceed nine days.

D. A recreational products dealer may have only four off-site expositions per calendar year and at the same location only once each six months.

E. The number of vehicles at any off-site exposition of recreational products will be left to the discretion of the executive director, with a maximum of 20 vehicles.

F. The presence of any sales personnel, business cards, brochures, pricing sheets and other points of sales devices will be allowed to answer consumer questions. However, recreational products cannot be delivered from the off-site exposition location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997.

#### **§1515. Licensee Participation in a Rally**

##### **A. Closed Rally**

1. A closed rally is conducted and limited to a single product line.

2. A closed rally shall be subject to the provisions of §1513 of this Chapter.

##### **B. Open Rally**

1. An open rally is conducted with multiple product lines invited to participate.

2. An open rally is subject to all provisions of this Chapter related to recreational product shows.

### **Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulation**

#### **§1801. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 783(F)(7).

HISTORICAL NOTE: Promulgated by the office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:435 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009), repealed LR 37:2998 (October 2011).

#### **§1802. License Fees and Applications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:2998 (October 2011).

#### **§1803. Order of Preference and Priority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 783 (F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:2998 (October 2011).

#### **§1804. Violations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:2998 (October 2011).

#### **§1805. Miscellaneous Provisions; Enforcement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009), repealed LR 37:2998 (October 2011).

#### **§1806. Off-Site Displays—Marine Products**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009), repealed LR 37:2998 (October 2011).

Lessie A. House  
Executive Director

1110#020

#### **RULE**

#### **Office of the Governor Real Estate Commission**

Real Estate (LAC 46:LXVII.Chapters 1-57)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has amended and repromulgated LAC 46:LXVII, Real Estate, Chapters 1-57.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LXVII. Real Estate**

#### **Subpart 1. Real Estate**

#### **Chapter 1. Authority**

#### **§101. Adoption**

A. The rules and regulations of the Louisiana Real Estate Commission contained herein have been adopted pursuant to and in compliance with R.S. 37:1430 et seq., and any violation of these rules or regulations, or of any real estate licensing law, shall be sufficient cause for any disciplinary action permitted by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:2998 (October 2011).

#### **Chapter 3. Initial License Applications**

#### **§301. Forms**

A. Initial license applications shall be in such form and detail as prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

B. Initial license applications shall be classed in the following categories:

1. salesperson;
2. broker—individual;

3. broker—corporation, partnership, limited liability company;

4. broker—branch office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006), LR 37:2999 (October 3011).

### **§303. Sponsorship**

A. Applicants for a salesperson license shall be sponsored by an active licensed broker and shall submit the Affidavit of Sponsorship Form (Part B) prescribed by the commission as proof of sponsorship.

B. The Affidavit of Sponsorship Form (Part B) may be submitted with the initial license application, but no later than 90 days after passing the license examination.

C. If the Affidavit of Sponsorship Form (Part B) is not received within the prescribed 90 days, an inactive license shall be issued to the salesperson applicant who shall then be subject to the Louisiana Real Estate License Law and the commission rules and regulations regarding inactive licensees. An active license shall not be issued until such time as the Transfer to Active Status Form prescribed by the commission is received.

D. Applicants for a broker license who elect to be sponsored by an active licensed broker shall be exclusively affiliated as an associate broker of the sponsoring broker.

E. Active licensed brokers who elect to sponsor an applicant for a real estate license shall be subject to the duties and penalties prescribed for sponsoring brokers in the Louisiana Real Estate License Law and commission rules and regulations and shall bear the responsibility for the license activity of any sponsored licensee, which shall also include ensuring timely license renewal prior to the practicing of real estate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006), LR 37:2999 (October 2011).

### **§305. Documentation**

A. All initial license applications for an individual real estate broker or salesperson license shall be submitted with the following documentation:

1. proof of completion of the real estate instruction hours prescribed by R.S. 37:1437;

a. real estate pre-license instruction hours obtained in other jurisdictions may be accepted for full or partial credit at the discretion of the commission and shall be based on the applicability of the subject matter to current pre-license education requirements;

b. real estate pre-license instruction hours obtained from nationally recognized institutes may be accepted for full or partial credit at the discretion of the commission and shall be based on the applicability of the subject matter to current pre-license education requirements;

c. every applicant for a Louisiana real estate license shall provide proof of at least 30 classroom hours of pre-license instruction that includes the Louisiana Real Estate

License Law, rules and regulations of the commission, Louisiana Civil Law, as it relates to real estate, and any other instruction hours the commission deems necessary and appropriate;

2. license history verification from each jurisdiction in which the applicant has held or currently holds a real estate license;

3. verification of passing an equivalent real estate license examination, if the applicant is currently or was previously a resident licensee in another jurisdiction;

4. copy of any trade name or trademark registration issued by the Secretary of State for use by the individual broker or salesperson applicant in real estate license activities.

B. Every application for a corporation, partnership or limited liability company broker license shall be submitted by the designated qualifying broker with the following documentation:

1. copy of the resolution or other document executed by a principal of the corporation, partnership or limited liability company designating an individual real estate broker as the qualifying broker;

2. copy of the registration certificate issued by the Secretary of State;

3. copy of any trade name or trademark registration issued by the Secretary of State for use by the corporation, partnership or limited liability company in real estate license activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006), repromulgated LR 37:2999 (October 2011).

### **§307. Names on Licenses, Registrations and Certificates; Trade Names**

A. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors shall be issued in the legal name of the individual person.

B. Licenses, registrations and certificates issued to a corporation, partnership or limited liability company for any purpose shall be issued in the identical name as registered with the Secretary of State. A license, registration or certificate shall not be issued to any corporation, partnership, or limited liability company not registered and in good standing with the Secretary of State.

C. Names on licenses, registrations and certificates issued by the commission shall not include a trade name unless the trade name is registered with the Secretary of State and a copy of the registration is on file at the commission.

D. The name of a licensee whose real estate license has been revoked by the commission shall not appear on any license in a manner that represents, suggests, or implies that the former licensee is licensed by the commission.

E. Any name or trade name used by a licensee, registrant or certificate holder in any manner shall be a clearly identifiable entity that can be distinguished from that of another licensee, registrant or certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:2999 (October 2011).

## **Chapter 5. Examinations**

### **§501. Authorization**

A. The commission shall issue an examination authorization to each eligible applicant. The examination authorization shall be valid for one examination and shall expire 90 days after the date it is issued.

B. It shall be the responsibility of each applicant that has received an examination authorization from the commission to contact the designated national testing service for an appointment to take the examination.

C. An applicant whose examination authorization expires prior to the applicant taking the examination shall receive a new examination authorization upon submission of a written request and the processing fee prescribed in R.S. 37:1443.

D. The commission shall provide each applicant with a license information bulletin that contains the examination procedures established by the commission and the designated testing service. Failure to comply with the procedures contained in the license information bulletin may result in disqualification from the examination and the forfeiture of all fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006), repromulgated, LR 37:3000 (October 2011).

### **§503. Disqualification of Applicants**

A. Any applicant who copies or communicates or attempts to copy or communicate examination content shall be considered in violation of examination security, which shall be grounds for denial of a license and the forfeiture of all fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006), LR 37:3000 (October 2011).

### **§505. Prohibited Activities**

A. Licensees, certificate holders, registrants, school owners or school directors, and persons employed by or associated with a licensee, certificate holder, registrant, school owner or school director, shall not obtain or attempt to obtain by deceptive or fraudulent means any copyrighted test questions and/or confidential test material used by or belonging to any national testing service currently or previously contracted with the commission. Violations of this Section shall be cause for censure, suspension, or revocation of a license, certificate, or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006), repromulgated LR 37:3000 (October 2011).

### **§507. Failure of Examination**

A. Any applicant who fails an examination may apply to retake the examination by submitting a copy of the fail notice and a new examination processing fee to the

commission. After one year the applicant shall be required to submit a new application and remit all prescribed fees to be eligible for the licensing examination.

B. An applicant who does not pass both portions of the examination shall be required to retake the failed portion only; however, the score on the passed portion shall remain valid for a period of one year, after which time the applicant shall be required to retake it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006), LR 37:3000 (October 2011).

## **Chapter 7. Fees**

### **§701. Duration of Fees**

A. Fees for licenses, certificates, and registrations shall cover a period of one calendar year and shall not be prorated.

B. Except as otherwise provided in these rules and regulations all fees submitted to the commission are non-refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006), repromulgated LR 37:3000 (October 2011).

### **§705. Returned Checks**

A. Payment of any fee with a check that is returned by a financial institution, wherein the reason for not paying the check is not a fault of the financial institution, shall be grounds for cancellation of the transaction for which the fee was submitted and/or the censure, suspension, or revocation of a license, registration or certificate.

B. Persons issuing checks that are returned to the commission by a financial institution for any reason shall be notified by certified mail at the most current address of record. Within 10 days from the date of the notification, the person issuing the check shall remit a certified check, cashier's check, or money order, to the commission in the amount of the returned check, plus the processing fee prescribed in R.S. 37:1443.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006), LR 37:3000 (October 2011).

## **Chapter 9. Renewal of Licenses, Registrations and Certificates**

### **§901. Timely Submission of License, Registration, or Certificate Renewal**

A. It shall be the responsibility of the individual licensee, registrant, or certificate holder to ensure that the renewal of an individual license, registration, or certificate has been fully completed and timely submitted to the commission with the required fees.

B. The renewal license of a salesperson or associate broker shall not be issued before the license of the sponsoring broker is renewed.

C. A licensee, registrant, or certificate holder who fails to renew by December 31 is prohibited beginning January 1 from engaging in any activities requiring a license, registration, or certificate until such time as the license, registration, or certificate is renewed.

D. A licensee whose sponsoring broker fails to renew by December 31 is prohibited beginning January 1 from engaging in any activities requiring a license until such time as the sponsoring broker has renewed or the licensee transfers to a new sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006), LR 37:3001 (October 2011).

### **§907. Education Hours Required for Renewal**

A. Each licensee shall complete 12 hours of approved course work prior to license renewal. Four of the 12 hours shall be completed in the annual mandatory topic designated by the commission.

B. All initial licensees shall complete 45 post-license hours within 180 days of the initial license date. The hours shall satisfy eight of the 12 continuing education hours required for annual renewal. The remaining four hours shall be in the annual mandatory topic designated by the commission.

C. Licensees shall not receive duplicate credit for attending the same continuing education course from the same vendor in the same year.

D. Education that is not obtained through an approved real estate continuing education vendor shall be submitted to the commission prior to renewal for review and approval towards the annual continuing education requirement prescribed in R.S. 37:1437.C.6(a)(i).

E. Course work completed by licensees through non-approved providers will be considered for credit by the commission on an individual basis.

F. Licensees seeking approval for course work obtained through non-approved providers must apply directly to the Education Division for credit toward the license renewal requirement. Each submission shall include a cover letter that contains the licensee's complete name, mailing address, and telephone number, with the following documentation:

1. certificate of completions;
2. hours completed;
3. date of completion;
4. detailed course content information;
5. verification of successful completion of an examination on course content, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006), LR 37:3001 (October 2011).

## **Chapter 15. Transfers and Terminations**

### **§1501. Forms**

A. A request to terminate sponsorship of a licensee or to transfer a licensee to a new broker shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006), repromulgated LR 37:3001 (October 2011).

### **§1503. Fee Exemptions**

A. A request for license transfer that is submitted within 60 days of any of the following circumstances shall be exempt from the transfer fee or delinquent renewal fee prescribed in R.S. 37:1443:

1. the sponsoring broker has died;
2. the sponsoring broker has failed to renew his license;
3. the license of the sponsoring broker has been suspended or revoked;
4. the license of the sponsoring broker has been transferred to the inactive status;
5. the sponsoring broker elects to discontinue the sponsorship of a licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006), repromulgated LR 37:3001 (October 2011).

### **§1505. Purchase or Acquisition of Agencies**

A. When a licensed agency purchases or otherwise acquires another licensed agency, the sponsoring or qualifying broker of the acquiring agency shall notify the commission in writing no later than the fifth working day following the date of acquisition.

B. The notice shall specify the date of acquisition and shall request a transfer to the acquiring agency for all licensees sponsored by the acquired agency.

1. The sponsoring broker for the acquired agency shall return the licenses of all sponsored licensees to the commission no later than the fifth working day following the date of acquisition.

2. The commission shall issue new licenses to the acquiring agency for each licensee sponsored by the acquired agency. The effective date of transfer to the acquiring agency shall be the date of acquisition specified in the notification.

C. The notification of acquisition shall certify continuous errors and omissions insurance coverage for all licensees that are transferred to the acquiring agency. If the transfer of licensees necessitates payment to the commission for coverage under the commission group errors and omission insurance policy, a listing of all licensees for which coverage is requested and all applicable fees shall accompany the notification.

D. The sponsoring broker of the acquiring agency shall give written notice to all licensees transferred to the acquiring agency within five working days following the date of acquisition.

E. Any licensee of the acquired agency who elects to transfer from the acquiring agency shall do so in accordance with the provisions of R.S. 37:1441.A and §1501.A of this Chapter.

F. Any licensee of the acquired agency who is terminated by the acquiring agency shall be transferred in

accordance with the provisions of R.S. 37:1441.A and §§1501.A and 1503.A.5 of this Chapter.

G. The acquiring agency shall provide a written report to the commission on the status of all former licensees of the acquired agency within 15 days following the acquisition.

1. The notification shall include a listing by category that identifies:

- a. each licensee that requested the return of their license to the commission;
- b. each licensee that is being terminated by the acquiring agency;
- c. each licensee that will remain with the acquiring agency.

2. The notification shall include the following documentation and fees:

- a. the license of each licensee that will not remain with the acquiring agency;
- b. copies of the written notification to and/or from each licensee as required by §1505.D of this Chapter;
- c. payment of the transfer fee prescribed in R.S. 37:1443 for each licensee who was sponsored by the acquired agency and who will remain with the acquiring agency;
- d. payment of the errors and omissions insurance fee prescribed in §1505.C of this Chapter, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006), LR 37:3001 (October 2011).

### **§1507. Change of Licensing Status**

A. A request to transfer a license from active to inactive status or from inactive to active status shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443, unless exempt as prescribed in §1503 of this Chapter.

B. Corporate, partnership and limited liability company broker licenses shall remain in the active license status.

C. An individual broker that elects to become exclusively affiliated with a sponsoring broker shall submit a request to transfer on forms prescribed by the commission, which shall be accompanied by the fees prescribed in R.S. 37:1443. Prior to submitting the request to transfer, the individual broker shall notify any sponsored licensees of the intended transfer by certified mail and send the associate broker's license or salesperson's license, by hand delivery or by certified or registered mail, to the commission within five days of such notification.

D. A licensee may transfer to inactive status without completing the applicable education requirement; however, the commission shall not transfer the licensee to active status until such time that the education requirement is complete.

E. The post-license education hours may be used to satisfy the continuing education hours, or a portion of the continuing education hours required for active status as follows:

1. one to five years of inactive status—45 hours of post-license education in lieu of the required continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real

Estate License Law and/or commission rules and regulations within one year prior to the date of the transfer to active status;

2. more than five years of inactive status—45 hours of post-license education and at least 35 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and/or commission rules and regulations within one year prior to the date of the transfer to active status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), amended LR 32:1449 (August 2006), LR 37:3002 (October 2011).

### **Chapter 17. Termination Responsibilities** **§1701. Relinquishment of Business Related Property and Data**

A. A licensee whose business relationship with a sponsoring broker has been terminated for any reason shall immediately relinquish all business related property to the sponsoring broker, including:

1. the keys to any and all properties listed with the broker;
2. any documents that in any way pertain to real estate transactions wherein a broker or licensees sponsored by the broker has appeared in a licensing capacity. This does not preclude the licensee from retaining copies of such documents.

B. A sponsoring broker who alleges the failure of a former sponsored licensee to comply with §1701.A of this Chapter shall submit a signed written report of such failure to the commission. The signed report shall constitute a written complaint filed with the commission and shall list the specific business related data and property that was not relinquished to the sponsoring broker. The sponsoring broker shall provide a copy of the report to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1449 (August 2006), repromulgated LR 37:3002 (October 2011).

### **§1703. Financial Obligations; Commissions and Dues; Disputes**

A. The commission shall not intervene or become otherwise involved in employment disputes or disputes pertaining to financial obligations that are the result of a business relationship between a broker and a sponsored licensee or a timeshare developer and timeshare sales registrant, including the payment of commissions and dues to professional organizations. Such disputes shall be settled by the respective parties or by a court of competent jurisdiction.

B. Employment disputes or disputes over financial obligations, commissions, or dues shall not be cause for the failure of a sponsoring broker to return a license or registration to the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1449 (August 2006), repromulgated LR 37:3002 (October 2011).

## **Chapter 19. Names on Licenses, Registrations, and Certificates; Trade Names**

### **§1901. Names on Licenses, Registrations and Certificates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1450 (August 2006), repealed LR 37:3003 (October 2011).

### **§1903. Trade Names**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002), amended LR 32:1450 (August 2006), repealed LR 37:3003 (October 2011).

## **Chapter 21. Concurrent Licenses and Registrations**

### **§2101. Broker or Salesperson License; Timeshare Interest Salesperson Registration**

A. A broker may be concurrently licensed as an individual and as the designated qualifying broker of one or more corporations, limited liability companies, and/or partnerships.

B. Associate brokers and salespersons shall not be sponsored by more than one sponsoring broker.

C. A real estate license and a timeshare interest salesperson registration shall not be issued concurrently to any person. A broker shall not concurrently conduct real estate activities as an individual real estate broker and as an associate broker exclusively affiliated with another real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1450 (August 2006), repromulgated LR 37:3003 (October 2011).

## **Chapter 23. Branch Offices**

### **§2301. Branch Office License**

A. An office established by a broker or sponsored licensee for conducting any real estate license activity at a separate address from the registered address of the broker, wherein the name and telephone number of the broker or agency is advertised in any way, shall be considered a branch office and shall be licensed as such.

B. An application for a branch office license shall be submitted on the forms prescribed by the commission and accompanied by the fees prescribed in R.S. 37:1443.

C. Every branch office shall be under the direct supervision of a licensed individual broker who shall be designated in writing as the branch office manager. A copy of the designation shall be submitted to the commission within five days following the date of the original designation or any changes thereto. Nothing shall preclude a

sponsoring broker from acting as the branch office manager for one or more branch offices.

D. A broker designated as a branch office manager shall be subject to the duties and penalties prescribed for sponsoring brokers in R.S. 37:1430 et seq.; however, this shall not relieve the sponsoring broker of the ultimate responsibility for the branch office operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002), LR 32:1450 (August 2006), LR 37:3003 (October 2011).

## **Chapter 25. Advertising; Disclosures; Representations**

### **§2501. Disclosures and Representations**

A. Agreements between brokers to allow property data to be shared and disseminated to clients, customers, or prospective clients, including but not limited to web-based or email multiple listing service property data, IDX or VOW property data does not constitute advertising or advertisement as to the property data shared.

B. All advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership, and any advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership by sponsored licensees or employees, shall be under the direct supervision of and approved by the licensed individual real estate broker or designated qualifying broker of the licensed corporation, limited liability company, or partnership.

C. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.

D. All advertising by a licensed salesperson, associate broker, individual real estate broker, or licensed corporation, limited liability company, or partnership shall include their business name, which for the purpose of these rules shall mean the name in which that salesperson, associate broker, individual real estate broker, or licensed corporation, limited liability company, or partnership is on record with the commission as doing business as a licensee of the commission or, in the case of a trade name, that which is registered with the Secretary of State and on record with the commission.

E. A group or team name may be used in an advertisement only with the approval of the sponsoring broker. Any person listed as a group or team member in the advertisement must be a licensee sponsored by the sponsoring broker.

F. In all advertising, the salesperson or associate broker must include the name and telephone number of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible and easily identifiable by the public.

G. If allowed by the sponsoring broker, the salesperson or associate broker may include in the advertisement:

1. The salesperson's or associate broker's personal logo or insignia, which cannot be construed as that of a

company name, and which must include the name and telephone number of the sponsoring broker;

2. The salesperson's or associate broker's contact information;

3. A group or team name, as long as the name(s) of the salesperson(s) and/or associate broker(s) are included near the team reference and cannot be construed as that of a company name; and

4. A slogan that may not be construed as that of a company name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1450 (August 2006), LR 37:3003 (October 2011).

### **§2503. Owner Authorization**

A. No broker or licensee sponsored by said broker shall in any way advertise property belonging to other persons as being for sale or rent or place a sign on any such property offering the property for sale or rent without first obtaining the written authorization to do so by all owners of the property or their authorized attorney in fact.

B. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3004 (October 2011).

### **§2505. Accuracy in Advertising**

A. All advertising shall be an accurate representation of the property advertised. No broker or licensee sponsored by said broker shall use advertising which is misleading or inaccurate or in any way misrepresents any property, terms, value, policies, or services of the business conducted. The advertising shall not include any name or trade name of any franchiser or real estate organization or association of which the licensee is not a member or franchisee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3004 (October 2011).

### **§2507. Advertisements of Residential Property**

A. All printed advertisements for the sale or lease of residential real estate shall indicate the month and year the advertisement is printed, published, or distributed. Advertisements printed or published in newspapers, real estate trade publications and commercial magazines and brochures bearing an issue or publication date will be considered in compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3004 (October 2011).

### **§2509. Advertisements by Franchise Organizations**

A. Any licensed broker or salesperson affiliated with a franchise organization must disclose to the public that the

real estate brokerage firm is independently owned and operated in all advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3004 (October 2011).

### **§2511. Agent Owner-Licensed Agent**

A. A licensed broker or salesperson who offers property in which he or she owns any interest as being for sale or rent shall state in any advertising, and on any sign placed on the property, that he or she is a licensed real estate agent.

B. Any licensed broker or salesperson that advertises, or offers to purchase or rent property for his or her own full or partial interest shall state in any advertisement that he or she is a licensed real estate agent.

C. Including the term "licensed real estate agent" in any advertisement or on any sign shall be sufficient to satisfy this requirement.

D. This Section is not applicable to the sale, rental, or acquisition of property by licensees under a contractual agreement with a licensed Louisiana real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3004 (October 2011).

### **§2515. Internet Advertising**

A. A real estate broker advertising or marketing on a site on the Internet must include the following data on each page of the site on which the advertisement appears:

1. the broker's name or trade name as registered with the commission;

2. the city and state in which the broker's main office or branch office is located.

B. A real estate broker using any Internet electronic communication for advertising or marketing, including but not limited to, e-mail, email discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:

1. the broker's name or trade name as registered with the commission;

2. the city and state in which the broker's main office or branch office is located.

C. An associate broker or salesperson advertising or marketing on a site on the Internet must include the following data on each page of the site on which the licensee's advertisement or information appears:

1. the associate broker's or salesperson's name;

2. the name or trade name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city and state in which the broker's main office or branch office is located.

D. An associate broker or salesperson using any Internet electronic communication for advertising or marketing, included but not limited to, e-mail, email discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:

1. the associate broker's or salesperson's name;



2. the name or trade name of the licensed broker or agency listed on the license of the salesperson or associate broker;

3. the city and state in which the broker's main office or branch office is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002), LR 37:3004 (October 2011).

## **Chapter 27. Escrow and Trust Accounts**

### **§2701. Resident Broker Requirements**

A. A resident broker, including corporations, partnerships and limited liability companies, who accepts any funds on behalf of clients in a real estate sales transaction shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds received by a broker in connection with the sale of real estate shall be deposited in this account when there is a written contract to buy and sell real estate that has been fully executed and accepted by both buyer and seller.

B. A resident broker, including corporations, partnerships and limited liability companies, engaged in the management of property owned by other persons shall open and maintain a rental trust checking account in a financial institution in the state of Louisiana. All rental trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Rental Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental payments from or on behalf of clients in connection with the management of properties owned by other persons shall be deposited into this account.

C. A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental security or damage deposits in connection with property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security or damage deposits from or on behalf of clients shall be deposited into this account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006), LR 37:3005 (October 2011).

### **§2703. Non-Resident Broker Requirements**

A. Non-resident brokers shall open and maintain sales escrow checking accounts, rental trust checking accounts,

and security deposit checking accounts, as provided in §2701 of this Chapter; however, these accounts shall be opened and maintained in a Louisiana financial institution or a financial institution located in the resident state of the broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006), LR 37:3005 (October 2011).

### **§2705. Change in License Status; Associate Broker and Inactive Broker Requirements**

A. Associate brokers are prohibited from opening and maintaining a sales escrow checking account, rental trust checking account, or security deposit trust checking account. All funds received by an associate broker in any real estate transaction shall be placed in the custody of the sponsoring broker.

B. An associate broker previously licensed as an individual broker or an active broker transferring to inactive status:

1. shall maintain all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts for the limited and specific purpose of completing pending transactions and disbursing all deposits contained therein;

2. shall not deposit additional funds in sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts as of the effective date of affiliation with a sponsoring broker or transfer to inactive status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006), LR 37:3005 (October 2011).

### **§2707. Branch Office Accounts**

A. A broker may open additional sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts to accommodate business transacted out of a branch office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Louisiana Real Estate Commission, LR 32:1452 (August 2006), repromulgated, LR 37:3005 (October 2011).

### **§2708. Signatory Rights on Checking Accounts**

A. An individual real estate broker shall be an authorized signatory on each sales escrow checking account, rental trust checking account, or security deposit trust checking account and shall be responsible for the proper maintenance and disbursement of any funds contained therein. The addition of sponsored licensees and/or employees of the broker as signatories on the accounts shall not relieve the individual real estate broker of this responsibility.

B. The qualifying broker of a licensed corporation, partnership or limited liability company shall be an authorized signatory on sales escrow checking accounts,

rental trust checking accounts and security deposit trust checking accounts maintained by the licensed entity and shall be responsible for the proper maintenance and disbursal of any funds contained therein. The addition of sponsored licensees, principals and/or employees of the licensed entity as signatories on the accounts shall not relieve the qualifying broker of this responsibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006), repromulgated LR 37:3005 (October 2011).

#### **§2709. Additional Accounts**

A. Where the interest of the principal parties to a transaction or series of transactions would be served thereby, and with the prior written consent of the principal parties, a broker or non-resident broker may open an additional sales escrow checking account, rental trust checking account or security deposit trust checking account, as prescribed in §§2701 and 2703 of this Chapter, and shall deposit therein all funds received in trust on behalf of the parties to the transaction or series of transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006), repromulgated LR 37:3006 (October 2011).

#### **§2711. Non-Interest Bearing Checking Accounts**

A. Every sales escrow checking account, rental trust checking account or security deposit trust checking account shall be opened as a non-interest bearing checking account unless all parties having an interest in the funds to be deposited therein have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006), repromulgated LR 37:3006 (October 2011).

#### **§2713. Personal Funds in Escrow and Trust Checking Accounts**

A. A sum not to exceed \$2,500 may be kept in each sales escrow checking account, rental trust checking account, and security deposit trust checking account, which sum shall be specifically identified and deposited to cover bank service charges relating to the accounts, and shall not be used for any other purpose.

B. A broker engaged in property management activities may keep funds in excess of \$2,500 in a rental trust checking account for the temporary, limited, and specific purpose of enabling the broker to satisfy financial obligations for or on behalf of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006), LR 37:3006 (October 2011).

#### **§2715. Withdrawal**

A. Funds deposited into a sales escrow checking account, rental trust checking account, or security deposit trust

checking account shall not be withdrawn for any purposes except:

1. upon the mutual written consent of all parties having an interest in the funds;

2. upon court order;

3. to deposit funds into the registry of the court in a concursus proceeding;

4. to disburse funds upon a reasonable interpretation of the contract that authorizes the broker to hold such funds, provided that the disbursement is not made until 10 days after the broker has notified all parties and licensees in writing;

6. to return the funds to a buyer at the time of closing;

7. to cover the payment of service charges on sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts;

8. upon approval by the commission in connection with the sale or acquisition of a licensed entity;

9. to comply with the provisions of R.S. 9:3251 or any other state or federal statute governing the transfer of rents, security deposits or other escrow funds.

B. Deposits shall be disbursed within 30 days of an agreement between the principles in a real estate transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006), LR 37:3006 (October 2011).

#### **§2717. Deposits**

A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006), repromulgated, LR 37:3006 (October 2011).

#### **§2719. Account Closing**

A. No sales escrow checking account, rental trust checking account, or security deposit trust checking account may be closed until such time as all deposits therein have been properly disbursed.

B. Bankruptcy and/or the revocation, suspension, or lapse of a broker license for any reason shall not be cause to close or discontinue maintenance of any sales escrow checking account, rental trust checking account, or security deposit trust checking account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006), repromulgated, LR 37:3006 (October 2011).

**§2721. Transfer of Trust Funds on Sale or Acquisition of Agency**

A. When a licensed agency is sold or otherwise acquired by another licensed agency the sponsoring broker of the acquiring agency shall notify the commission in writing of the acquisition and the anticipated date of the transfer of trust funds. The notice shall specify the name of the acquired agency and account numbers of the sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which the funds will be transferred and the account numbers of the accounts into which the funds will be deposited.

B. A letter requesting approval to transfer the funds shall be jointly signed by the sponsoring brokers of the acquired agency and the acquiring agency and shall accompany the notification to the commission.

C. The transfer of funds shall not occur without written approval from the commission, as prescribed in §2715.A.9 of this Chapter.

D. Within five working days following the transfer of funds a letter jointly signed by the sponsoring brokers of the acquired agency and the acquiring agency shall be forwarded to the commission certifying that all trust funds have been transferred. The letter shall include the following:

1. certification that all sales escrow checking account, rental trust checking account, and security deposit trust checking account funds have been transferred to and received by the acquiring agency;
2. certification that supporting documents for all trust funds have been delivered to and received by the acquiring agency;
3. a listing of all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which a transfer was made and the amount of funds transferred from each account;
4. a listing of all sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts into which funds were deposited and the amount of funds deposited into each account.

E. Within 10 days following the transfer of funds, the sponsoring broker of the acquired agency shall close the escrow accounts and trust accounts from which the funds were transferred and shall advise the commission in writing when such action has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006), repromulgated, LR 37:3007 (October 2011).

**Chapter 29. Disbursement of Escrow Deposits**

**§2901. Escrow Disputes**

A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;

2. disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees;

3. place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding;

4. disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 34:2422 (November 2007), LR 37:3007 (October 2011).

**§2903. Escrow Disbursement Order**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), repealed LR 37:3007 (October 2011).

**Chapter 31. Change of Address and/or Telephone Number**

**§3101. Reporting Change of Address and/or Telephone Number**

A. The commission shall be notified in writing within 10 days of any change in the mailing address, physical address, and/or telephone number of a licensee's, certificate holder's, or registrant's business or residence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 37:3007 (October 2011).

**§3103. Changes in Data Provided by Corporations, Partnerships and Limited Liability Companies**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), repealed by the Office of the Governor, Real Estate Commission, repealed LR 37:3007 (October 2011).

**Chapter 35. Disclosure by Licensee**

**§3501. Licensee as Principal in a Real Estate Transaction**

A. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into negotiations concerning the execution of a real estate contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 37:3007 (October 2011).

## **Chapter 36. Residential Property Disclosure**

### **§3601. Property Disclosure Document for Residential Real Estate**

A. In accordance with R.S. 9:3196 through 9:3200, unless exempted therein, the seller of residential real property shall complete a property disclosure document in a form prescribed by the Louisiana Real Estate commission or a form that contains at least the minimum language prescribed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3195 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 30:1192 (June 2004); amended LR 37:3008 (October 2011).

## **Chapter 37. Agency Disclosure**

### **§3701. Agency Relationships in Real Estate Transactions**

A. Effective March 1, 1998, agency relations in real estate transactions will be governed by Chapter 4 of Code XV of Title 9 of the Louisiana Revised Statutes of 1950 comprised of R.S. 9:3891-3899.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3008 (October 2011).

### **§3703. Agency Disclosure**

A. Licensees shall provide the agency disclosure informational pamphlet or the agency disclosure form to all parties to a real estate transaction involving the sale or lease of real property.

B. Licensees shall ensure that the pamphlets and forms are the most current versions prescribed by the commission and that reproductions of the pamphlet and form contain the identical language prescribed by the commission.

C. Licensees shall provide the agency disclosure informational pamphlet or the agency disclosure form to prospective sellers/lessors and buyers/lessees at the time when substantive contact is made between the licensee and customer, i.e. any specific financial qualifications of the customer or the motives or objectives in which the customer may divulge any confidential, personal or financial information, which, if disclosed to the other party to the transaction, could harm the party's bargaining position, when performing any real estate related activity involving the sale or lease of real property, other than a ministerial act as defined in R.S. 9:3891(12).

D. Licensees providing agency disclosure informational pamphlets or agency disclosure forms to prospective sellers/lessors and buyers/lessees at the time when substantive contact is made shall ensure that the recipient signs and dates the pamphlet or form. The licensee providing the pamphlet or form shall sign as a witness to the signature of the recipient, and the licensee shall retain the signed pamphlet or a copy of the form for a period of five years.

E. Licensees providing agency disclosure informational pamphlets or agency disclosure forms to prospective sellers/lessors and buyers/lessees by email or other form of electronic transmission shall ensure that the recipient acknowledges receipt of the pamphlet or form by a document verifying the time and date of receipt. The licensee providing the pamphlet or form shall retain the

signed pamphlet or a copy of the form for a period of five years.

F. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the agency disclosure informational pamphlet receipt or the agency disclosure form, or refuses to provide a document verifying receipt of the pamphlet or form, the licensee shall prepare written documentation that includes the nature of the proposed real estate transaction, the time and date the pamphlet or form was provided to the seller/lessor or buyer/lessee, and the reasons given by the seller/lessor or buyer/lessee for not signing the pamphlet or form, or providing a document verifying receipt of the pamphlet or form. This documentation shall be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 37:3008 (October 2011).

### **§3705. Dual Agency Disclosure**

A. The dual agency disclosure form shall be used by licensees acting as a dual agent under R.S. 9:3897.

B. Licensees shall ensure that the form is the most current version prescribed by the commission and that reproductions of the form contain the identical language prescribed by the commission.

C. Licensees shall ensure that the dual agency disclosure form is signed by all clients at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent. A copy of this documentation shall be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003), amended by the Office of the Governor, Real Estate Commission, LR 32:1455 (August 2006), LR 37:3008 (October 2011).

## **Chapter 38. Mold Disclosure**

### **§3801. Mold Informational Pamphlets**

A. The United States Environmental Protection Agency (EPA) shall be the official source of any mold informational pamphlet approved by the Louisiana Real Estate Commission.

B. A licensee who chooses to deliver mold information to a buyer shall be deemed in compliance with R.S. 37:1470.A(1) if the licensee performs at least one of the following:

1. delivers "*A Brief Guide to Mold, Moisture, and Your Home*" (EPA 402-K-02-003), or any successor thereof, to a residential buyer; or

2. delivers "*Mold Remediation in Schools and Commercial Buildings*" (EPA 402-K-01-001, March 2001), or any successor thereof, to a commercial buyer; or

3. directs a buyer to the mold informational pamphlets maintained on the United States Environmental Protection Agency (EPA) website at <http://www.epa.gov/iaq/molds/index.html>, or any successor thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 30:1477 (July 2004), repromulgated LR 37:3008 (October 2011).

### **Chapter 39. Presentation of Offers and Counter Offers**

#### **§3900. Purchase Agreement Forms**

A. The purchase agreement form used by licensees representing the buyer or seller in a residential real estate transaction shall be the *Residential Agreement to Buy or Sell*, or any successor thereof, prescribed by the Louisiana Real Estate Commission.

B. The *Residential Agreement to Buy or Sell*, or any successor thereof, shall be used in accordance with the provisions of R.S. 37:1449.1.

C. The official source of the prescribed purchase agreement form shall be the Louisiana Real Estate Commission website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 33:2423 (November 2007), effective January 1, 2008, amended LR 37:3009 (October 2011).

#### **§3901. Timely Presentation of Offers and Counter Offers**

A. All written offers and counter offers for the purchase of real estate shall be presented to all buyers and/or sellers for their consideration and decision immediately, without delay.

B. The licensee who prepares an offer or counter offer in a real estate transaction shall ensure that the time of day and date the offer or counter offer was signed by the offering party are included in the document.

C. The licensee who presents an offer or counter offer in a real estate transaction shall ensure that the time of day and date the offer or counter offer was accepted, rejected or countered are included in the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000), repromulgated LR 37:3009 (October 2011).

#### **§3903. Negotiations in Exclusive Agency Contracts**

A. Negotiations concerning property listed exclusively with a broker shall be carried on with the listing broker or agent designated by the listing broker, not the owner, except with the expressed consent of the listing broker.

B. Negotiations with a buyer who has entered into an exclusive buyer agent contract with a licensed broker shall be carried on with the licensed broker, or agent designated by the licensed broker, not the buyer, except with the express consent of the licensed broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3009 (October 2011).

#### **§3905. Transactions**

A. Designated agents receiving written offers or counter offers in transactions shall annotate the offers or counter offers to indicate the time of day and date the offers or counter offers were received.

B. It shall be the responsibility of each of the designated agents to make reasonable efforts to contact and notify the

designated agent of the other party of the existence of an offer or counter offer.

1. It shall be the responsibility of the designated agent who transmits or delivers the written offer or counter offer to document the date, time of day, place, and method of delivery.

2. Such documentation as to the date, time of day, place and method of transmission or delivery of the written offer or counter offer may include, but will not be limited to, annotation by the delivering designated agent, a dated and timed facsimile transmission receipt or a dated and timed electronic mail receipt.

3. Such documentation shall be retained pursuant to R.S. 37:1449.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 29:1087 (July 2003); LR 30:41 (January 2004), amended by the Office of the Governor, Real Estate Commission, LR 37:3009 (October 2011).

#### **§3907. Rejection of Offers and Counter Offers**

A. All written offers and counter offers presented to a seller and/or buyer and not accepted shall be clearly marked as rejected and signed by the seller and/or buyer. In any circumstance in which a seller and/or buyer refuses to sign a rejected offer or counter offer, the licensee making the presentation of the offer or counter offer shall annotate this fact indicating the time of day and date of the rejection of the offer or counter offer by the seller and/or buyer. A copy of the rejected offer or counter offer signed by the seller and/or buyer, or a copy of the rejected offer or counter offer bearing the annotation of the licensee, shall be provided to the buyer and/or seller, and the rejected offer or counter offer shall be returned to the prospective buyer and/or seller within five days after the signature or annotation is affixed to the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3009 (October 2011).

#### **§3909. Broker's Authority to Reject Offers or Counter Offers**

A. In the event the owner (seller) is not available and grants authority to the listing broker to reject an offer or counter offer, the listing broker or a licensee designated by the listing broker shall mark the offer or counter offer as rejected and sign the offer or counter offer as such in lieu of the owner (seller), but the listing broker or licensee designated by the listing broker shall nevertheless forward a copy of the rejected written offer or counter offer to the owner (seller) for his signature acknowledging the rejection of the offer or counter offer. The copy of the rejected offer or counter offer signed by the owner (seller) shall be retained in the files of the listing broker. In the case of a cooperative transaction, the cooperating listing broker shall provide a copy of the rejected offer or counter offer bearing the signature of the owner to the cooperating selling broker within five days after the signed rejection is received from the owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000) ), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3009 (October 2011).

## **Chapter 41. Investigations and Hearings**

### **§4101. Complaints**

A. Complaints alleging violations of the Louisiana Real Estate License Law and/or Rules and Regulations of the commission shall bear the signature of the complainant or that of his or her legal representative before any action will be taken thereon by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000) ), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3010 (October 2011).

### **§4103. Addition of Respondents to Investigations**

A. If during the conduct of an investigation documented probable cause is established indicating that violations of the Louisiana Real Estate License Law and/or Rules and Regulations of the commission have been committed by licensees, timeshare registrants, or certificate holders other than the licensee, timeshare registrant, or certificate holder against whom the original complaint was made, the additional licensees or timeshare registrants may be added as respondents to the investigation in the absence of any written complaint alleging such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:48 (January 2000) ), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3010 (October 2011).

### **§4105. Executive Director May Authorize Investigations and Cease and Desist Orders**

A. Upon documented probable cause, the executive director of the Louisiana Real Estate Commission may issue written authorization to investigate apparent violations of the Louisiana Real Estate License Law and/or the Rules and Regulations of the commission.

B. Upon documented probable cause that any or state law or commission regulation has been violated, the executive director of the Louisiana Real Estate Commission may issue a cease and desist order to any unlicensed entity, licensee, registrant, or certificate holder.

C. Upon documented probable cause that any or state law or commission regulation has been violated, the executive director of the Louisiana Real Estate Commission may issue a cease and desist order to any licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:49 (January 2000), amended LR 37:3010 (October 2011).

### **§4107. Adjudicatory Proceedings**

A. When, as a result of an investigation, it appears that violations of the Louisiana Real Estate License Law may have been committed by a licensee, registrant or certificate holder, the violations may be adjudicated through informal or formal adjudicatory proceedings.

#### **1. Informal Adjudicatory Proceedings**

a. The complaint may be concluded informally without a hearing by the commission on the recommendation of the hearing examiner and the concurrence of the executive director.

b. A preliminary notice of adjudication will be issued to advise the respondent of the violation or violations alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act or acts specified and submits a written request that the matter be resolved informally.

c. A hearing officer will be appointed by the executive director to conduct an informal hearing with the respondent.

d. At the informal hearing, no evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

e. Following an admission by the respondent at the informal hearing that violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Real Estate License Law. In the written document the respondent must stipulate to having committed an act or acts in violation of the Louisiana Real Estate License Law or the Rules and Regulations of the commission, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the commission, and the right to judicial appeal of the consent order.

f. If at the informal hearing the respondent does not admit to having committed the act or acts specified, does not accept the sanctions recommended by the hearing officer, or does not waive the specified appellate rights, the alleged violations shall be referred to a formal adjudicatory hearing.

g. The executive director of the Louisiana Real Estate Commission may authorize a respondent to execute a Stipulations and Consent Order before a duly commissioned and qualified notary in lieu of participating in an informal hearing with a Hearing Officer in cases where the sanction for the alleged violation has been previously approved by the commission.

h. If a respondent does execute a stipulations and consent order, the executive director shall submit the document to the commission at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the commission.

i. The actions of the commission relative to all consent orders shall be noted in the minutes of the meeting at which the consent order is considered and at which authorization is granted to the executive director to execute the order in the name of the commission.

j. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the commission.

#### **2. Formal Adjudicatory Proceedings**

a. All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes.

b. The order issued by the commission pursuant to any formal public adjudicatory proceeding shall become effective on the eleventh day following the date the order is issued by the commission and entered into the record at the proceedings.

c. The date of entry is the date the order is issued by the commission and entered into the record at the formal adjudicatory proceedings.

d. If a request for rehearing, reopening, or reconsideration of the order of the commission is timely filed and denied by the commission, the order of the commission shall become final on mailing of the notice of the commission's final decision on the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:49 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3010 (October 2011).

#### **§4109. Appellate Proceedings**

##### **A. Rehearings**

1. An order of the commission shall be subject to rehearing, reopening or reconsideration by the commission on receipt of a written request from a respondent. An application for rehearing, reopening or reconsideration must be postmarked or received at the office of the commission within 10 days from the date of entry of the order rendered by the commission.

2. The request shall be reviewed by the commission attorney for compliance with the Administrative Procedure Act. A finding by the commission attorney that the request does not establish grounds for rehearing, reopening or reconsideration shall result in a denial of the request.

##### **B. Judicial Review**

1. Proceedings for judicial review of an order issued by the commission may be instituted by filing a petition for judicial review in the Nineteenth Judicial District Court in the parish of East Baton Rouge.

2. In the event a request for rehearing, reopening or reconsideration has been filed with the commission, the party making the request shall have 30 days from the final decision on the request within which to file a petition for judicial review.

3. If a request for rehearing, reopening or reconsideration is not filed with the commission, the Petition for Judicial Review must be filed in the Nineteenth Judicial District Court within 30 days after the mailing of the order of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development Real Estate Commission, LR 26:49 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3011 (October 2011).

#### **§4111. Stay of Enforcement**

A. The filing of a petition for judicial review by a respondent licensee does not itself stay enforcement of an order issued by the commission. A stay of enforcement will be granted only when directed by the court conducting a judicial review of adjudication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50

(January 2000) ), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3010 (October 2011).

#### **§4113. Costs of Adjudicatory Proceedings**

A. On a finding that a respondent has committed the violations as alleged in any formal or informal adjudicatory proceedings, the commission may assess the respondent the administrative costs of the proceeding, as determined by the commission. Payment of these costs shall be a condition of satisfying any order issued by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3011 (October 2011).

#### **Chapter 43. Licensee, Registrant, and Certificate Holder Responsibilities**

##### **§4301. Knowledge of the Law**

A. It shall be the duty of all licensees, certificate holders, and registrants to have knowledge and be aware of all laws regulating the real estate industry in Louisiana including, but not limited to, these rules and regulations and the Louisiana Real Estate License Law as set forth in Chapter 17, Title 37 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3011 (October 2011).

#### **Chapter 45. Franchise Operations**

##### **§4501. Registration of Franchise Name**

A. Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership, limited liability company, or corporation shall offer for sale, lease, rent, or use in any way, any franchise name to be publicly utilized or used by a licensed Louisiana real estate broker.

B. Any name or trade name used by a franchisor or franchisee shall be a name or trade name that is a clearly identifiable entity that will distinguish it from other franchisors or franchisees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002), LR 37:3011 (October 2011).

##### **§4503. Registration of Franchise Operation**

A. Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership, limited liability company, or corporation engaged in a franchise operation of real estate brokerage firms shall operate in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000) ), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3011 (October 2011).

##### **§4505. Application for Registration**

A. Any person, partnership, limited liability company, or corporation which intends to operate or do business as a franchiser of real estate brokerage firms in Louisiana shall

make application to the Louisiana Real Estate Commission for registration. Applications for registration shall contain the following information and supporting documents:

1. name, address, and whether the applicant is a person, partnership, limited liability company, or corporation;

2. partnership and limited liability company—the names and addresses of all partners or principals;

3. corporation—names and addresses of officers and members of the board of directors and the place of incorporation;

4. partnership, limited liability company, or corporation—a certified copy of the articles of incorporation or the document establishing the partnership or limited liability company;

5. a certified, audited financial statement disclosing the current financial condition of the applicant;

6. a statement of the business activities of the applicant, including a description of the franchise agreement to be used in connection with the Louisiana real estate brokers, and a list of the states in which the franchiser is qualified to do and/or is doing business.

B. Upon receipt of the application for registration, the commission may require such additional information as it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3011 (October 2011).

#### **§4507. Agent for Service of Process**

A. If the applicant is not a resident of Louisiana, it shall appoint a licensed active Louisiana individual real estate broker to act as the applicant's agent for the service of all judicial process or legal notices directed to such applicant. Service upon the agent so designated shall be equivalent to personal service upon the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

#### **§4509. Annual Registration**

A. If the requirements set forth herein are met the commission shall register the franchiser for a period of one year. The franchiser shall then renew each year by furnishing the commission with all information as would modify or change the information previously submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:50 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

#### **§4511. Renewal Requirements**

A. Each application for renewal by a franchiser shall be submitted on or before January 15 of each year and shall reflect the information required by the commission for the preceding year.

B. Any application for renewal by the franchiser shall also include the name and address of any licensed Louisiana

broker that is operating under a franchise agreement with the franchiser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

#### **§4513. Penalty**

A. Any person, partnership, limited liability company, or corporation which operates in Louisiana as a franchiser of real estate brokerage firms, without the specific authority to do so as granted by the Louisiana Real Estate Commission, shall be subject to a penalty of the refusal by the commission to allow said person, partnership, limited liability company, or corporation to operate or do business in Louisiana for a period of at least one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

#### **§4515. Violations of Law**

A. The commission shall have the power to withdraw any registration and/or issue a cease and desist order, after a hearing, to any franchiser that is subject to these rules and regulations, upon determination that any federal or state law or commission regulation has been or will be violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

### **Chapter 47. Waiver of Renewal Requirements**

#### **§4701. Veteran Waiver**

A. Licensees who are inducted into military service or those licensees in the military who are transferred out of state shall, upon furnishing appropriate evidence of their honorable service, be entitled to renewal of their licenses, without penalty, provided application is filed within six months following discharge. The provisions of this Section shall extend to spouses of persons described hereinabove who were licensed at the time of such induction or transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

### **Chapter 49. Reciprocity**

#### **§4901. Licensing**

A. The commission may enter into a reciprocal agreement with the appropriate authority of any other state to permit any resident of that other state who is licensed there as a real estate broker or salesperson to obtain an equivalent Louisiana non-resident license and engage in the real estate business in Louisiana if that other state agrees to similarly grant a non-resident license to any Louisiana resident broker or salesperson and permit the licensee to engage in the real estate business in that other state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.



HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3012 (October 2011).

#### **§4903. Requirements for License**

A. Any person residing in and licensed as a real estate broker or salesperson in a state whose appropriate authority has entered into a reciprocal agreement with the commission shall be granted an equivalent non-resident license by the commission upon applying and complying with the following requirements:

1. providing the commission with sufficient proof of his licensing by his resident state;

2. paying all fees prescribed for an equivalent Louisiana resident license;

3. filing an irrevocable appointment of agent for service of process with the commission appointing the executive director as the licensee's agent for service of process in all matters arising out of or in conjunction with any real estate activities conducted by the licensee in Louisiana;

4. corporation—procuring a certificate of authority to do business in Louisiana from the Louisiana Secretary of State and providing the commission with a copy; and

5. partnership or limited liability company—procuring a certificate of registry as a foreign partnership from the Louisiana Secretary of State and providing the commission with a copy.

B. A license applicant who has been a resident of Louisiana for not more than 90 days may be considered by the commission as a non-resident for purposes of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3013 (October 2011).

#### **§4905. Non-resident Licensee**

A. The non-resident licensee is bound, in all respects, by the provisions of the Louisiana Real Estate License Law (R.S. 37:1431 et seq.) and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3013 (October 2011).

### **Chapter 51. Out-of-State Broker Cooperation**

#### **§5101. Broker Cooperation**

A. A Louisiana broker may cooperate with a licensed broker of another state in the sale, exchange, purchase, rental, leasing, or management of real property located in Louisiana within the limits provided in the Louisiana Real Estate License Law and rules and regulations of the commission under the following conditions.

1. The sale, exchange, purchase, rental, leasing, or management of Louisiana real property shall be handled under the direct supervision and control of the Louisiana broker who shall take full responsibility for all actions of the out-of-state broker. All advertising of any kind must contain the names of both the Louisiana licensed broker and the out-of-state broker. The out-of-state broker may place a sign on

real property located in Louisiana with the written consent of the Louisiana licensed broker.

2. Any funds collected on behalf of others shall be maintained in the Louisiana broker's sales escrow checking account, rental trust checking account or security deposit trust checking account unless all parties having an interest in the funds to be deposited therein have agreed otherwise in writing.

3. In each instance herein where a Louisiana broker enters into a cooperating agreement with an out-of-state broker for the sale, exchange, purchase, rental, leasing, or management of Louisiana real property, the Louisiana broker must file one copy of a cooperating agreement with the Louisiana Real Estate Commission prior to the property being advertised, shown, or any contract taken. A written cooperating agreement must be filed for each separate transaction. This agreement must contain verbiage wherein both the Louisiana broker and the out-of-state broker agree to sign all written reports and contracts and comply with the Louisiana Real Estate License Law and rules and regulations of the commission in all respects.

4. Any fee or commission received as a result of a cooperative transaction shall be paid to the Louisiana broker who will, in turn, compensate the out-of-state broker. The percentage of fees or commission to be received by the Louisiana broker and the out-of-state broker shall be negotiable between the two parties and shall be agreed upon, in writing, by the parties in their cooperative agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:51 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3013 (October 2011).

#### **§5103. Referral Fees**

A. A licensed broker in this jurisdiction may divide or share a real estate commission with a licensed broker in another jurisdiction whenever the licensed broker in the other jurisdiction acts only as a referral agent who is not involved in the actual negotiations, execution of documents, collections of rent, management of property, or other real estate brokerage activity in a real estate transaction which involves more than the mere referral of a client or customer to the licensed broker of this jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3013 (October 2011).

#### **§5105. Jurisdiction over Out-of-State Activities**

A. The commission shall have the power to impose any sanction permitted by R.S. 37:1430 et seq., on any licensee of this jurisdiction who performs or attempts to perform any of the acts of a licensee on property located in another jurisdiction without first having been properly licensed in that jurisdiction or otherwise having fully complied with that jurisdiction's laws regarding real estate brokerage.

B. It shall be the duty of every licensee, registrant, and certificate holder to notify the commission within 10 days by registered or certified mail or hand delivery of any sanction imposed on the licensee, registrant, or certificate holder by another jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3013 (October 2011).

## **Chapter 53. Real estate schools**

### **§5301. Approval of schools**

A. This Chapter shall apply to real estate schools seeking approval to conduct a course of education in real estate pre-license subjects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1455 (August 2006), LR 37:3014 (October 2011).

### **§5303. Certifications; Applications and Procedures**

A. Any individual or entity desiring to conduct business in this state as a real estate school shall file an application for certification with the commission.

B. The application shall be in such form and detail as prescribed by the commission and shall be accompanied by all documentation requested therein and the certification fee(s) prescribed in R.S. 37:1443.

C. The commission shall approve or deny an application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

D. The commission may deny an application for certification as a real estate school for any of the following reasons.

1. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction.

2. An application contains a false statement of material fact.

3. A professional license or certification held by an applicant has been revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1455 (August 2006), LR 37:3014 (October 2011).

### **§5305. Surety Bonds**

A. Applicants for certification as a real estate school shall submit proof of a 10 thousand dollar (\$10,000) surety bond issued by an insurance company that is authorized to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the protection of the contractual rights of students who attend real estate courses offered by the real estate school.

C. Bonds shall remain effective and in force throughout the certification period of the real estate school.

D. Proof of bond renewal shall be provided to the commission annually.

E. Failure to maintain a bond shall be cause for revocation or suspension of a certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:486 (March 2002), LR 29:2073 (October 2003), LR 32:1456 (August 2006), LR 37:3014 (October 2011).

### **§5307. Certificates of Authority; initial and renewal certifications**

A. The certification to operate as a real estate school shall be issued in the form of a certificate of authority and shall include an assigned certification number that shall be included in all advertisements of approved courses and on all forms, documents, and reports filed with the commission.

B. A certificate of authority shall not be issued or renewed for any real estate school applicant that holds a real estate broker license and whose school is designed, intended, and/or primarily used for instruction of the broker's future salesperson or broker affiliates.

C. A certificate of authority for an initial application that is submitted and approved after October 31 may be issued effective January 1 of the following year.

D. A certificate of authority shall be issued for a maximum period of one calendar year and shall expire annually on December 31 unless an application for renewal is submitted.

E. Failure to renew a certificate of authority by December 31 shall result in the automatic suspension of all course approvals issued under the certificate of authority. The commission shall not accept any pre-license education courses for credit, if the courses were offered after the expiration of the certificate of authority.

F. Applications for delinquent renewal of a certificate of authority shall not be accepted by the commission after January 31. Failure to renew an expired Certificate of Authority during the prescribed delinquent period of January 1 through January 31 shall result in the forfeiture of renewal rights. Any real estate school that becomes ineligible to renew a Certificate of Authority shall apply as an initial applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006), LR 37:3014 (October 2011).

### **§5309. Colleges and Universities, Vocational-Technical Schools, and School Boards**

A. All Louisiana state and private colleges and universities that offer a real estate course as part of a regular curriculum are exempt from obtaining a certificate of authority; however, if courses are offered through a continuing education division, the college or university shall be required to comply with the provisions of this Chapter. State vocational-technical schools and parish schools boards that provide courses in real estate shall be required to apply for a certificate of authority and shall meet the requirements of a real estate school.

B. The designation of "college" or "university" shall not be used in any manner by a real estate school, unless the

school has met the standards and qualifications of such, and is approved by the state agency having such jurisdiction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1431 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:53 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006), LR 37:3014 (October 2011).

#### **§5311. Designated School Director; Duties**

A. All real estate schools shall designate a director, whose duty it shall be to ensure that the operations of the school, and all training locations, adhere to the requirements of the Louisiana Real Estate License Law and the rules and regulations of the commission, and who shall be held responsible to the commission for any violations thereof. The commission shall be notified in writing within 10 days if the designated director for a real estate school is changed.

B. Directors shall coordinate and disseminate information pertaining to amendments in the license law, rules and regulations, or policies and procedures of the commission to all staff, instructors, and employees.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1431 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:53 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006), LR 37:3015 (October 2011).

#### **§5313. Facilities and Inspections**

A. Real estate schools shall provide adequate space, seating, equipment, and instructional material to accommodate the number of enrolled students.

B. The commission may inspect any facility used by a real estate school at any time during regular business hours.

C. Real estate schools shall be subject to periodic audits and review, as determined by the commission, to ensure that courses are conducted in accordance with the provisions set forth in this Chapter and R.S. 37:1460. This may include the observation and evaluation of classroom activities, course content, instructor proficiency, and/or the audit of reporting/attendance records.

D. If the real estate school is found deficient in any part of this Section, the commission shall prepare a report specifying the areas of deficiency.

E. Any real estate school that receives a report of deficiencies shall correct the deficiencies by the date designated by the commission and shall submit a report to the commission that outlines the corrective action.

F. Failure to respond to a report of deficiencies, in accordance with the deadline designated by the commission, may result in payment of a fine or the suspension or revocation of the certificate of authority for any school found to be in violation of this requirement

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1431 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006), LR 37:3015 (October 2011).

#### **§5315. Record Keeping**

A. Real estate schools shall maintain accurate and properly indexed records on all students for at least five

years after course completion and shall produce those records for inspection upon request of the commission. Electronic records shall be maintained in a readily available format that does not prohibit, delay, or otherwise impede inspection.

B. Real estate schools shall maintain the following records on each student:

1. complete name and address;
2. total classroom hours taken and course title;
3. dates of attendance;
4. test scores or pass/fail indications;
5. method of completion;
6. copy of student contract.

C. Real estate schools shall provide any student who requests it with a duplicate copy of his/her course completion records. The real estate school shall determine any fee associated with providing the records.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1431 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006), LR 37:3015 (October 2011).

#### **§5317. Tuition, Fees, and Contracts**

A. Each real estate school shall enter into a written contract with each student that shall clearly set forth the tuition and fees charged by the school for a specific course of instruction and the school refund policy.

B. A copy of the contract, signed by an authorized representative of the school, shall be provided to the student immediately after both parties sign the contract.

C. Any additional fees charged for supplies, materials, or required books shall be clearly itemized in the school contract, and such supplies, materials, or books shall become the property of the student upon payment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1431 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006), LR 37:3015 (October 2011).

#### **§ 5319. Pre-license Instructors; Initial and Renewal Applications; \Guest Lecturers**

A. No person shall act as pre-license instructor at any real estate school, and no real estate school shall hire or otherwise permit any person to act as a pre-license instructor for the school, unless that person has been certified as such by the commission. Certification as a pre-license instructor shall automatically qualify an instructor as a post-license and continuing education instructor.

B. The application to become certified as a pre-license instructor shall be in such form and detail as prescribed by the commission and shall be accompanied by all documentation requested therein and the certification fee(s) prescribed in R.S. 37:1443.

C. Applicants for a pre-license instructor certification shall provide proof of instructor experience and shall have satisfied at least one of the following qualifications:

1. bachelor's degree with a major in real estate from an accredited college or university;

2. bachelor's degree from an accredited college or university and at least two years experience in real estate brokerage;

3. real estate broker license and a minimum of five years experience in the area of proposed instruction;

4. juris Doctorate degree or the equivalent from an accredited law school and a minimum of three years experience in the area of proposed instruction;

5. two years experience as a qualified instructor or professor in the business, finance or economics department of an accredited college or university;

6. any qualifications determined by the commission to be the equivalent of at least one of the qualifications prescribed in Paragraphs 1-5 of this Section, or any combination thereof.

D. Upon a determination by the commission that a pre-license real estate instructor applicant has met the minimum requirements, as prescribed in §5319.C.1-6, the applicant shall be required to pass the real estate pre-license instructor assessment examination specified by the commission. The application shall not be considered complete, and a certification number shall not be issued, until such time that the applicant submits the examination results to the commission.

E. The commission shall approve or deny a pre-license instructor application within 45 calendar days after it is received. Incomplete applications, or a request for additional information, may be a cause for delay beyond 45 calendar days.

F. The commission may deny an application for certification as a pre-license instructor if:

1. the applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction;

2. an application contains a false statement of material fact;

3. a professional license or certification held by an applicant has been revoked;

4. the applicant fails to meet the minimum requirements prescribed in Section 5319.C.1-6;

5. the applicant fails to meet the qualifying score on the pre-license instructor assessment examination.

G. A pre-license instructor certificate shall be issued for a maximum period of one calendar year and shall expire annually on December 31, unless an application for renewal is submitted.

1. Renewal of a pre-license instructor certificate shall require annual completion of 12 hours of approved continuing education during the current certification period.

The 12 hours shall include four hours in the mandatory topic prescribed by the commission.

2. Completed continuing education hours shall not include actual instruction hours.

H. Failure to renew a pre-license instructor certificate by December 31 shall result in the following action:

1. Approval to provide real estate instruction shall be automatically suspended;

2. The commission shall not accept any education courses for credit if the courses were instructed after the expiration of the pre-license instructor certificate;

3. Delinquent applications for renewal of a pre-license instructor certificate shall not be accepted by the commission after January 31. Failure to renew during the prescribed delinquent period of January 1 through January 31 shall result in the forfeiture of renewal rights. Any pre-license instructor that becomes ineligible to renew shall be required to apply as an initial applicant.

I. A guest lecturer shall meet at least one of the following qualifications:

1. a college or university professor in real estate, finance, economics, or a related field;

2. a specialist with a degree or professional designation with expertise in the specific topic of instruction;

3. a real estate licensee with at least five years experience in the area of proposed instruction.

J. Guest lecturers shall not instruct any pre-license course pertaining to the Louisiana Real Estate License Law or the commission rules and regulations.

K. Guest lecturers shall not provide more than two presentations of pre-license education for a certified real estate school in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006), LR 34:1614 (August 2008), LR 37:3015 (October 2011).

#### **§5321. Prohibitions**

A. It shall be prohibited for any real estate brokerage firm to operate a real estate school under the same legal entity as the real estate brokerage firm.

B. Any activity that is designed to influence or solicit a pre-license education student to work under the sponsorship of any real estate broker shall be considered recruiting and is prohibited while on the premises of a real estate school.

C. A real estate school shall not provide the name(s) of any licensee or student, whether potential or enrolled, to anyone other than the Louisiana Real Estate Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457(August 2006), LR 37:3016 (October 2011).

#### **§5323. Change of Address**

A. The commission shall be notified within 10 calendar days after any change in the business address or telephone number of any real estate school and the residence or business address or telephone number of any owner, director or instructor thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 28:487 (2002), LR 32:1457 (August 2006), LR 37:3016 (October 2011).

#### **§5325. School Advertising**

A. Advertising by real estate schools shall not be false or misleading.

B. Advertisements shall state that the school is certified by the Louisiana Real Estate Commission and shall include the school certificate of authority number.

C. The commission may require a real estate school to furnish proof of any advertising claims. The commission may order the retraction of advertising that violates the provisions of this Section. Such retractions shall be published in the same manner as the original claim and shall be paid for by the real estate school.

D. Certified real estate schools shall not guarantee the passing of the state real estate licensing examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3016 (October 2011).

### **§5327. Investigations and Hearings**

A. The commission shall have the authority on its own motion, or following receipt of a complaint, to investigate any real estate school to determine compliance with the Louisiana Real Estate License Law and the rules and regulations of the commission.

B. If an investigation by the commission determines that a violation has occurred, the commission shall follow the provisions of R.S. 37:1456 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3017 (October 2011).

### **§5329. Suspension or Revocation of a School Certificate of Authority or Pre-license Instructor Certification**

A. The commission shall have the authority to impose fines, suspend, or revoke a school certificate of authority or pre-license instructor certification for the following acts committed by a school owner, director, or pre-license instructor:

1. violating any rule or regulation promulgated by the commission;
2. obtaining or attempting to obtain by deceptive or fraudulent means any copyrighted test questions and/or confidential test material used by or belonging to any national testing service currently or previously contracted with the commission;
3. having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge;
4. refusal to appear or testify under oath at any hearing held by the commission;
5. falsely certifying hours of attendance for any student;
6. having a salesperson, broker, or timeshare interest salesperson license suspended or revoked by the commission;
7. recruiting students or knowingly allowing others to use classroom facilities to discuss sponsorship or potential licensees for any real estate brokerage firm;
8. failure of a real estate school to enter into a written/electronic contract with any student;
9. failure of a real estate school director to inform pre-license instructors on changes to the Louisiana Real Estate License Law or commission rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by Office of the Governor, Real Estate Commission, LR 37:3017 (October 2011).

### **§5331. Pre-license Education Courses Offered by Real Estate Schools**

A. Salesperson pre-license education courses offered by real estate schools shall be structured in the following manner:

1. Real Estate 101—salesperson 90-hour course that shall include:
  - a. real estate principles and practices;
  - b. Louisiana real estate license law;
  - c. commission rules and regulations;
  - d. law of agency, as contained in Title 9 of the Louisiana Revised Statutes;
  - e. civil law, as it pertains to real estate transactions.

B. Broker pre-license education courses offered by real estate schools shall be structured in the following manner:

1. Real Estate 201—90-hour course on basic real estate fundamentals;
2. Real Estate 202—30-hour course that shall include, and be limited to, the following topics:
  - a. Louisiana real estate license law;
  - b. commission rules and regulations;
  - c. law of agency, as contained in Title 9 of the Louisiana Revised Statutes;
  - d. civil law, as it pertains to real estate transactions;
  - e. ethics and professionalism;

3. Real Estate 203—mandatory 30-hour course on broker responsibilities.

C. It shall be the responsibility of the real estate school to amend each course as necessary to provide for any applicable law or rule change that is enacted during the course approval period. A fee shall not be required when a real estate course is amended to accommodate law or rule changes.

D. In addition to pre-licensing courses, any state certified real estate school may offer post-license and continuing education courses provided that the school applies for and receives approved continuing education vendor status. No additional initial or renewal fees will be required of the school; however, filing fees for each additional course approval request will be required as provided in R.S. 37:1443. A separate Louisiana Real Estate Commission vendor number will be assigned to the school upon compliance with post-license and/or continuing education vendor requirements.

E. Real estate schools shall not issue pre-license education credit for attendance at post license education courses or continuing education courses.

F. Real estate schools shall not incorporate post-license education with pre-license education instruction.

G. Real estate schools shall not incorporate continuing education with pre-license education instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3017 (October 2011).

### **§5333. Methods of Instruction; Classroom Training, Distance Education**

A. Classroom training that is led by an instructor and held in a physical location, or delivered via a network, may be used to present pre-license courses and shall be in such format and detail as prescribed by the commission.

B. Distance education, for the purpose of this Chapter, shall mean any of the following methods of instruction:

1. interactive Internet-based instruction;
2. combination courses.

C. Combination courses, for the purpose of this Chapter, shall mean any distance education course that includes supplemental classroom instruction or assistance. Combination courses shall be registered with the commission as distance education and shall follow all guidelines established in this Chapter for the approval of distance education. Combination courses shall be clearly advertised as distance education. Classroom time for all instruction or assistance portions of a combination course shall be reported to the commission in accordance with §5337 of this Chapter.

D. Real estate schools that offer distance education courses shall apply for course approval as follows.

1. Distance education courses shall be submitted to the commission for content approval prior to any course offering.

2. Distance education courses that have been approved by the commission for course content shall be submitted to the Association of Real Estate License Law Officials (ARELLO) for certification of the delivery method prior to any course offering. Loss of ARELLO certification for courses approved under this Section shall automatically suspend commission approval of the course content.

3. Colleges and university academic credit courses for distance learning shall not be required to be Association of Real Estate License Law Officials (ARELLO) approved if part of a college or university curriculum. Any other distance learning courses offered to the general public outside of a curriculum program shall be ARELLO approved.

E. Final examinations for distance education courses shall consist of multiple choice questions with four possible answers (a, b, c and d) as follows:

1. a minimum of 20 questions for each two hours of continuing education credit; or
2. a minimum of 150 questions for each post licensing final exam;
3. the examination that a student submits for grading shall include a signed and dated statement that the student has personally completed the course and examination.

F. Real estate schools shall certify students as successfully completing a course only if the student completes any written assignments and passes the required examination on course content.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3017 (October 2011).

### **§5335. Certificates of Completion**

A. Real estate schools shall issue certificates to students immediately upon completion of the course. Certificates shall contain the following information:

1. complete name of the real estate school and the certificate of authority number;
2. name of the student;
3. course title and level completed;
4. number of credit hours completed;
5. date of course completion;
6. signature of authorized school representative;

7. acknowledgment of student's successful completion of examination;

8. indication of delivery method.

B. Certificates of completion will not be accepted from any real estate school that is not in good standing with the commission on the date that the certificate is issued.

C. In lieu of the required certificate of completion, the commission may accept college or university transcripts that reflect the completion of real estate related courses approved by the commission. Such transcripts shall be issued by the college or university registrar and shall include the course title and number, the date of completion, and the final grade.

D. Colleges or universities that do not issue transcripts for courses completed through a division of continuing education shall provide a certificate of completion to students who successfully complete a course of study.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3018 (October 2011).

### **§5337. Course Reporting Schedules and Attendance**

A. Classroom course reporting schedule reports shall be submitted in such form and detail as prescribed by the commission no less than 10 days prior to the course.

B. Attendance verification reports shall be submitted in such form and detail as prescribed by the commission within 30 days after completion of the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3018 (October 2011).

## **Chapter 55. Real Estate Vendors; Post-licensing and Continuing Education**

### **§5501. Real estate Vendor Approval; Applications and Procedures**

A. This Chapter shall apply to real estate education vendors seeking approval to conduct a course of education in real estate post-license and/or continuing education subjects.

B. Any individual or entity desiring to conduct business in this state as a real estate education vendor shall file an application for certification with the commission.

C. The application shall be in such form and detail as prescribed by the commission and shall be accompanied by all documentation requested therein and the certification fee(s) prescribed in R.S. 37:1443.

D. The commission shall approve or deny a real estate education vendor application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

E. The commission may deny an application for certification as a real estate education vendor for any of the following reasons.

1. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction.

2. An application contains a false statement of material fact.

3. A professional license or certification held by an applicant has been revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006), LR 37:3018 (October 2011).

#### **§5503. Surety Bonds**

A. Applicants for certification as a real estate education vendor shall submit proof of a five thousand dollar (\$5,000) surety bond issued by an insurance company that is authorized to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the protection of the contractual rights of students who attend real estate courses offered by the real estate education vendor.

C. Bonds shall remain effective and in force throughout the certification period of the real estate education vendor.

D. Proof of bond renewal shall be provided to the commission annually.

E. Failure to maintain a bond shall be cause for revocation or suspension of a certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1458 (August 2006), LR 37:3019 (October 2011).

#### **§5505. Real Estate Vendor Certifications; Initial and Renewal Certificates**

A. The commission shall issue a real estate education vendor certificate to all applicants approved under this Chapter.

B. The commission shall assign a certificate number that shall be included in all advertisements of approved courses and on all forms, documents, and reports filed with the commission.

C. A vendor certification for an application that is submitted and approved after October 31 may be issued effective January 1 of the following year.

D. A vendor certification shall be issued for a maximum period of one calendar year and shall expire annually on December 31 unless an application for renewal is submitted.

E. Failure to renew a vendor certification by December 31 shall result in the automatic suspension of all course approvals issued under the certification, and the commission shall not accept any post-license education or continuing education courses for credit, if the courses were offered after the expiration of the certification.

F. Applications for delinquent renewal of a vendor certification shall not be accepted by the commission after January 31. Failure to renew an expired vendor certification during the prescribed delinquent period of January 1 through January 31 shall result in the forfeiture of renewal rights. Any real estate vendor that becomes ineligible to renew a vendor certification shall apply as an initial applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real

Estate Commission, LR 32:1458 (August 2006), LR 37:3019 (October 2011).

#### **§5507. Designated Contact Person; Duties**

A. All real estate education vendors shall designate a contact person, whose duty it shall be to ensure that the operations of the vendor, and all training locations, adhere to the requirements of the Louisiana Real Estate License Law and the rules and regulations of the commission, and who shall be held responsible to the commission for any violations thereof.

B. The commission shall be notified in writing within 10 days if the designated contact person for a real estate education vendor is changed.

C. The designated contact person shall coordinate and disseminate information pertaining to amendments in the license law, rules and regulations, or policies and procedures of the commission to all staff, instructors, and employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1458 (August 2006), LR 37:3019 (October 2011).

#### **§5509. Inspections and Monitoring of Approved Vendors and Courses**

A. Real estate education vendors shall provide adequate space, seating, equipment, and instructional material to accommodate the number of enrolled students.

B. The commission may inspect any facility used by a real estate education vendor at any time during regular business hours.

C. Real estate education vendors shall be subject to periodic audits and reviews, as determined by the commission, to ensure that courses are conducted in accordance with the provisions set forth in R.S. 37:1460 and this Chapter. This may include the observation and evaluation of classroom activities, course content, instructor proficiency, and/or the audit of reporting/attendance records.

D. If the real estate education vendor is found deficient in any part of this Section, the commission shall prepare a report specifying the areas of deficiency.

E. Any real estate education vendor that receives a report of deficiencies shall correct the deficiencies by the date designated by the commission and shall submit a signed, written report to the commission that outlines the corrective action.

F. Failure to respond to a report of deficiencies, in accordance with the deadline designated by the commission, may result in payment of a fine, or the suspension or revocation of any certificate for a vendor found to be in violation of this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006), LR 37:3019 (October 2011).

#### **§5511. Record Keeping**

A. Real estate education vendors shall maintain accurate and properly indexed records on all students for at least five years after course completion and shall produce those records for inspection upon request of the commission.

Electronic records shall be maintained in a readily available format that does not prohibit, delay, or otherwise impede inspection.

B. Real estate education vendors shall maintain the following records on each student:

1. complete name, as licensed with the commission, and address;
2. course title, as approved by the commission;
3. credit hours received;
4. dates of attendance;
5. test scores or pass/fail indications.

C. Real estate education vendors shall provide any student who requests it with a duplicate copy of his/her course completion records. The real estate education vendor shall determine any fee associated with providing the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006), LR 37:3019 (October 2011).

**§5513. Post-license and Continuing Education  
Instructors; Initial and Renewal Applications;  
Guest Lecturers**

A. The application to become certified as a real estate post- license/continuing education instructor shall be in such form and detail as prescribed by the commission and shall be accompanied by any documentation requested therein and the certification fee(s) prescribed in R.S. 37:1443.

B. Applicants for a post- license/continuing education instructor certification shall provide proof of instructor experience and shall have first satisfied at least one of the following qualifications:

1. college or university professor with a minimum of two years experience in real estate, finance, business, economics, or related field;
2. specialist with a degree or designation and experience teaching the subject(s) of proposed instruction;
3. licensed real estate professional with a minimum of five years experience in the area of proposed instruction;
4. any qualifications determined by the commission to be the equivalent of at least one of the qualifications prescribed in Paragraphs 1-4 of this Subsection, or any combination thereof.

C. Upon a determination by the commission that a real estate instructor applicant has met the minimum requirements, as prescribed in Subsection B of this section, the applicant shall be required to pass the real estate continuing education instructor assessment examination specified by the commission. The application shall not be considered complete until such time that the applicant submits the examination results to the commission.

D. The commission shall approve or deny a post—license/continuing education instructor application within 45 calendar days after it is received. Incomplete applications, or a request from the commission for additional information, may be cause for delay beyond 45 calendar days.

E. The commission may deny an application for certification as a post- license/continuing education instructor for any of the following reasons.

1. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction.

2. An application contains a false statement of material fact.

3. A professional license or certification held by an applicant has been revoked.

4. The applicant fails to meet the minimum requirements prescribed in Paragraphs B.1-4 of this Section.

5. The applicant fails to meet the qualifying score on the continuing education instructor assessment examination.

F. A post-license/continuing education instructor certificate shall be issued for a maximum period of one calendar year and shall expire annually on December 31, unless an application for renewal is submitted.

1. Renewal of a post-license/continuing education instructor certificate shall require completion of 12 hours of approved continuing education during the current certification period. The 12 hours shall include four hours in the current mandatory topic prescribed by the commission.

2. Completed continuing education hours shall not include actual instruction hours.

G. Failure to renew a post- license/continuing education instructor certificate by December 31 shall result in the following action.

1. Approval to provide real estate instruction shall be automatically suspended.

2. The commission shall not accept any education courses for credit if the courses were instructed after the expiration of the post-license/continuing education instructor certificate.

3. Delinquent applications for renewal shall not be accepted by the commission after January 31. Failure to renew during the prescribed delinquent period of January 1 through January 31 shall result in the forfeiture of renewal rights. Any post-license/continuing education instructor that becomes ineligible to renew shall be required to apply as an initial applicant.

H. A post-license/continuing education guest lecturer shall meet at least one of the following qualifications:

1. a college or university professor in real estate, finance, economics, or a related field;
2. a specialist with a degree or professional designation with expertise in the specific topic of instruction;
3. a real estate licensee with at least five years of experience in the area of proposed instruction.

- I. Guest lecturers shall not instruct any courses pertaining to the Louisiana Real Estate License Law, the commission rules and regulations, or the mandatory continuing education topic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3020 (October 2011).

**§5517. Change of Address**

A. The commission shall be notified within 10 calendar days of any change in the business address or telephone number of any real estate education vendor and the residence or business address or telephone number of any owner, designated contact person, or instructor thereof.



AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3020 (October 2011).

#### **§5519. Vendor Advertising**

A. Advertising by estate education vendors shall not be false or misleading.

B. Advertisements shall state that the vendor is certified by the Louisiana Real Estate Commission and shall include the vendor certification number.

C. The commission may require a real estate education vendor to furnish proof of any advertising claims. The commission may order the retraction of advertising that violates the provisions of this Section. Such retractions shall be published in the same manner as the original claim and shall be paid for by the real estate education vendor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011).

#### **§5521. Investigations and Hearings**

A. The commission shall have the authority on its own motion, or following receipt of a complaint, to investigate any real estate education vendor to determine compliance with the Louisiana Real Estate License Law and the rules and regulations of the commission.

B. If an investigation by the commission determines that a violation has occurred, the commission shall follow the provisions of R.S. 37:1456 and the Louisiana Administrative Procedure Act, R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011).

#### **§5523. Suspension or Revocation of a Vendor or Instructor Certification**

A. The commission may impose fines, suspend or revoke a vendor or post-license/continuing education instructor certification for the following acts committed by a vendor, employee, guest lecturer, or certified post-license/continuing education instructor:

1. violating any rule or regulation promulgated by the commission;

2. having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge;

3. refusal to appear or testify under oath at any hearing held by the commission;

4. falsely certifying hours of attendance for any student;

5. having a salesperson, broker, or timeshare interest salesperson license suspended or revoked by the commission;

6. failure of a real estate vendor contact person to inform post-license/continuing education instructors on changes to the Louisiana Real Estate License Law or commission rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011).

#### **§ 5525. Course Approval; Applications and Procedures**

A. Courses approved by the commission for instruction by real estate education vendors shall be classed in the following categories:

1. post-license education;
2. continuing education.

B. Real estate education vendors shall file a course approval application with the commission for each course that will be offered for credit toward renewal of a real estate license. Real estate vendors shall not advertise as approved by the commission, or otherwise schedule or offer a course, prior to receiving course approval from the commission.

C. The course approval application shall be in such form and detail as prescribed by the commission and shall be accompanied by the processing fee prescribed in R.S. 37:1443.

D. The commission shall approve or deny a course approval application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

E. Each course approved by the commission shall remain active for three years and shall expire on December 31 of the third year unless a renewal application for course approval is filed with the commission. The commission shall not accept credit for a non-renewed course that is presented after the date of expiration.

F. The commission shall assign a tracking number to each approved course that shall be used with the approved course title on all forms, documents, reports, and/or correspondence filed with the commission.

G. Real estate education vendors shall not amend the title or outline of any approved course without first obtaining the written approval of the commission.

1. All requests to amend a course shall be accompanied by the new course outline and the processing fee prescribed in R.S. 37:1443.

2. It shall be the responsibility of the real estate education vendor to amend each course as necessary so as to provide for any applicable law or rule change that is enacted during the course approval period. A fee shall not be required when a real estate course is amended to accommodate law or rule changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011).

#### **§5527. Post License Education Courses**

A. Post-license education courses offered by real estate education vendors shall be developed in accordance with the content outline prescribed by the commission.

B. No person shall act as a post-license education instructor for any real estate education vendor, and no real estate education vendor shall hire, or otherwise permit, any person to act as a post-license instructor, unless that person has been certified as a real estate post-license education instructor by the commission, or is an approved guest lecturer.

C. Real estate education vendors shall not issue credit for any post-license education course unless the student has passed an examination on the course content. Post-license hours shall be secured through and reported by one approved vendor.

D. Post-license education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011).

#### **§5529. Continuing Education Courses**

A. No person shall act as a continuing education instructor for any real estate education vendor, and no real estate education vendor shall hire, or otherwise permit, any person to act as a continuing education instructor, unless that person has been certified as a real estate continuing education instructor by the commission, or is an approved guest lecturer.

B. Real estate education vendors may offer continuing education course topics that include, but are not limited to, appraisal, finance, taxes, zoning, Louisiana Real Estate License Law/commission rules and regulations, environmental quality, property management, and federal laws affecting real estate such as HUD and fair housing regulations.

C. Continuing education courses offered by real estate education vendors shall be a minimum of two hours. A classroom hour is defined as sixty minutes, of which fifty minutes are instruction. The prescribed number of classroom hours may include time devoted to examinations if a required part of the course. Time devoted to breakfasts, luncheons, dinners, or other refreshments shall not be counted as instruction time.

D. Licensees shall not receive duplicate credit for attending the same continuing education course from the same vendor in the same year. It shall be the responsibility of the real estate education vendor to advise licensees that credit shall not be awarded for completing duplicate courses within the same license period.

E. Course work completed by licensees through non-approved providers will be considered for credit by the commission on an individual basis. Licensees seeking approval for course work obtained through non-approved providers shall apply for such approval by submitting documentation of attendance, hours completed, date of attendance, and detailed course content information.

F. Continuing education courses shall be open to all licensees regardless of broker affiliation

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011).

#### **§5531. Mandatory Courses**

A. The commission shall mandate an annual four-hour continuing education course topic and curriculum that licensees shall complete during each license period as a requirement for license renewal.

B. Real estate education vendors shall not offer the mandatory course for credit unless a course approval application has been approved by the commission.

C. There shall be no substitute curriculum for the mandatory course, including any previously approved course that is similar in name and/or content, without prior commission approval.

D. Any instructor used in the presentation of the mandatory course shall hold a current instructor certification by the commission and shall have first completed the annual *Train the Trainer* instructor workshop developed specifically for each mandatory course topic. Completion of a prior year

*Train the Trainer* instructor workshop shall not be substituted for completion of the current year workshop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011).

#### **§5533. Methods of Instruction**

A. Live classroom training that is led by an instructor and held in a physical location, or delivered via a network, may be used to present post-license and continuing education courses and shall be in such format and detail as prescribed by the commission.

B. Distance education, for the purpose of this Chapter, shall mean any of the following methods of instruction:

1. interactive Internet-based instruction;
2. correspondence courses.

C. Correspondence courses, for the purpose of this Chapter shall be in such format and detail as prescribed by the commission for post- license or continuing education distance learning credit hours only. Passage of an examination on course content is a requirement for all correspondence courses.

D. Real estate education vendors that offer distance education courses shall apply for course approval as follows.

1. Distance education courses shall be submitted to the commission for content approval prior to any course offering.

2. Distance education courses that have been approved by the commission for course content shall be submitted to the Association of Real Estate License Law Officials (ARELLO) for certification of the delivery method prior to any course offering. Loss of ARELLO certification for courses approved under this Section shall automatically suspend commission approval of the course content.

E.1 Final examinations for distance education courses shall consist of multiple choice questions with four possible answers (a, b, c and d) as follows:

- a. a minimum of 20 questions for each two hours of continuing education credit; or
- b. a minimum of 150 questions for each post-license final exam.

2. The examination that a student submits for grading shall include a signed and dated statement that the student has personally completed the course and examination.

F. All courses submitted for approval shall be in the exact format in which they will be sold to licensees for post-license or continuing education credit.

G. Real estate education vendors shall not grade any written assignment or examination if it is presented for grading before the time frame for course completion has been reached.

H. Real estate education vendors shall not grade any examination that does not contain the signed certification required in Paragraph E.2 of this Section.

I. Real estate education vendors shall certify students as successfully completing a course only if the student completes any written assignments and passes the required examination on course content.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011).

### **§5535. Certificates of Completion**

A. Real estate education vendors shall issue certificates containing the following information to students:

1. complete name of the real estate education vendor and the vendor certification number;
2. name of the student as licensed with the commission;
3. real estate license number;
4. number of credit hours completed;
5. course title as approved by the commission
6. date of course completion;
7. signature of authorized representative;
8. indication of delivery method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

### **§5537. Course Reporting; Schedules and Attendance**

A. Real estate education vendors shall submit continuing education and post-license education course schedules and attendance verification reports to the commission.

B. Course schedules shall be received by the commission at least 10 calendar days prior to the beginning of each month.

C. Course schedules and attendance verification reports shall be submitted in such form and detail as prescribed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

### **§5539. Non-certified Real Estate Education Vendors**

A. Non-certified real estate education vendors may request commission approval to offer continuing education courses under the following conditions.

1. Non-certified real estate education vendors shall comply with the course approval and course reporting procedures specified in Section 5537.A-C of this Chapter.

2. No more than two course approvals may be granted to each non-certified real estate education vendor within a one-year period.

3. Each course approval issued to a non-certified real estate education vendor shall be limited to a maximum of three presentations in locations that shall be specified in the request for approval. The commission shall not grant credit for any course presentation that exceeds the maximum specified in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

## **Chapter 57. Timeshares**

### **§5701. Requirements for Processing**

A. Every applicant for initial registration as a timeshare developer or timeshare salesperson shall submit to the commission a fully completed application on a form provided by the commission accompanied by the prescribed fees.

B. Every application for an initial timeshare salesperson registration shall contain the name of the developer for whom the applicant will be working following registration and shall be signed by a designated representative of that developer.

C. Applicants for registration as timeshare developers shall submit the following to the commission at the time of filing for registration:

1. sample copies of the conveyance and financing forms and, when applicable, copies of the public offering statement and a certified copy of the timeshare declaration;

2. when applicable, an affidavit, signed by the chief executive officer or managing partner of the developer and by any natural person having an ownership interest exceeding 10 percent in either the developer or entities which control it, that states under penalty of perjury that the affiant has read the timeshare declaration and all attached documents, and that they are true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

### **§5703. Receipt of Application**

A. Every application shall be received and approved by the commission prior to the date the applicant engages in the business of selling timeshare interests within this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

### **§5705. Bonds**

A. At the time of initial application, each applicant for registration as a timeshare interest salesperson shall provide evidence of one bond issued in favor of the state by a surety company authorized to do business in this state in the amount of \$10,000 in accordance with R.S. 37:1437.1(E).

B. A new bond or a renewal or continuation of the original bond shall be required for each registration period. If a continuous bond is filed, a new or renewal bond is not required as long as the continuous bond remains in force and effect.

C. In the event a bond is revoked or canceled by the surety company, the timeshare registration of the named bondholder shall automatically be suspended until such time as a new bond is filed with the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (2000), amended by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

### **§5707. Fees**

A. Registration fees shall cover a period of one calendar year and shall not be prorated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

### **§5709. Automatic Suspension for Non-Renewal**

A. If a developer's timeshare registration is suspended or revoked, no sales of timeshare interests in that project may be conducted by that developer, by any timeshare sales registrant working for that developer, or by any licensed real estate broker or salesperson working with that developer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3023 (October 2011).

#### **§5711. Terminations**

A. A developer who wishes to terminate an association with a sales registrant shall return the registrant's sales registration certificate to the commission along with a properly executed transfer form as provided by the commission.

B. A sales registrant who wishes to terminate an association with a developer shall request, in writing, that the developer return that registrant's sales registration certificate to the commission, and shall sign the appropriate transfer form as proof of the request.

C. A sales registrant may transfer to another developer upon submission of a property executed transfer form signed by both the registrant and a designated representative of the developer. This transfer request shall be accompanied by a new bond and appropriate transfer fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5713. Advertising**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61, repealed by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5715. Establishment of Escrow Account**

A. Where applicable, the developer of each timeshare plan that has timeshare property located in Louisiana, or who maintains a sales office in Louisiana for the sale of timeshare interests, shall establish interest bearing escrow accounts in the developer's name at a financial institution in the parish where the timeshare property or sales office is located, in accordance with R.S. 9:1131.16 and 17.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5717. Affidavit of Authority**

A. Every developer of a timeshare plan shall submit to the commission notarized affidavits attesting to the existence, location and account number of the developer's escrow accounts. The affidavits shall authorize and empower the commission or its representatives to examine, inspect, and/or copy the developer's escrow accounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5719. Escrow Account Closing**

A. Every developer shall notify the commission of his intention to close an escrow account at least 10 days prior to the intended closing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5721. Maintaining an Escrow Account**

A. Upon revocation, suspension or lapse of registration, a developer shall nevertheless continue to maintain all escrow accounts until such time as all monies have been disbursed according to law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5723. Change of Address**

A. Every registrant shall report in writing any change in business or residence address or telephone number to the commission within 10 days of the change. Such notification shall be by hand delivery or certified mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5725. Payment to Non-Registrants**

A. Timeshare registrants, in accordance with the provisions of R.S. 37:1446(A), shall not offer or pay a fee or any other compensation of any kind to any unregistered person for the purpose of obtaining any timeshare solicitations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

#### **§5727. Developer Records**

A. Every developer shall retain, for at least five years, readily available and properly indexed copies of all documents which in any way pertain to the sale or solicitation of timeshare interests in which he has acted as a developer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:61 (January 2000), repromulgated by the Office of the Governor, Real Estate Commission, LR 37:3024 (October 2011).

Bruce Unangst  
Executive Director

1110#024

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Alternative to Disciplinary Proceedings  
(LAC 46:XLVII.3419)**

The Louisiana State Board of Nursing amends LAC 46:XLVII. §3419. Disciplinary Proceedings: Alternative to Disciplinary Proceedings” in accordance with 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

In April 2010, The National Council of State Boards of Nursing (NCSBN) Substance Use Disorder Guidelines Forum presented findings from the committee review and began to provide recommendations for alternative and disciplinary programs. The model guidelines established by the NCSBN committee were presented in the April 2011 Journal of Nursing Regulation. The Louisiana State Board of Nursing (LSBN) Recovering Nurse Program (RNP) is very congruent with the guidelines established by NCSBN except there was not an exclusion criterion for substituting a patient’s medication in order to divert the narcotic. This is extremely serious and can result in untreated pain and significant patient harm. Although rarely reported to the RNP staff, participants should be ineligible for alternative to disciplinary entry when engaging in behavior which has such a high potential to cause patient harm and therefore an addendum to the LSBN rules is necessary to align with the NCSBN recommendations.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered  
Nurses**

**Subpart 2. Registered Nurses**

**Chapter 34. Disciplinary Proceedings; Alternative to  
Disciplinary Proceedings**

**§3419. Alternative to Disciplinary Proceedings**

A. - D.3.h. ...

i. no related nursing problems involving death or significant harm to patient. No substitution of narcotic medications destined for patients for the purpose of diversion;

j. agrees to comply with all RNP specifications and signs program agreement including statement of admission of chemical dependency or other impairment.

E. - F.1. ...

a. sign RNP agreement for 3-5 years for substance use disorders. Agreements to rule out substance dependence or medical, mental or physical agreements may be of shorter duration depending on treatment team recommendations;

b. refrain from the practice of nursing until approved by RNP;

c. complete and submit to the board a comprehensive inpatient evaluation and treatment as

recommended from a board recognized treatment facility. Admission shall be within 10 days unless approved by RNP or board’s professional staff;

d. submit to the board a "Fitness for Employment" release form completed by a board approved addictionologist prior to approval by RNP to return to work;

e. be granted confidentiality and no disciplinary action will be taken against the license.

2. At first relapse/non-compliance for nurses in the program confidentially, the following steps will be taken.

a. Refrain from the practice of nursing until approved by RNP.

b. Complete a relapse evaluation as directed by RNP staff. Must follow all treatment recommendations. Admission shall be within 10 days unless approved by RNP.

c. Sign RNP agreement for length of time to be determined by treatment team.

d. Submit to the board a Fitness for Employment release form completed by a board approved addictionologist prior to approval by RNP to return to work.

F.3. - H. ...

I. Costs of Alternative to Disciplinary Proceedings. The participant agrees to submit payment of \$250 per year as an administrative fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), amended LR 27:728 (May 2001), LR 31:1586 (July 2005), LR 35:1535 (August 2009), LR 36:1244 (June 2010), LR 37:3025 (October 2011).

Barbara L. Morvant, MN, RN  
Executive Director

1110#030

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Paperless Licensing Revisions  
(LAC 46:XLVII.3323, 3329, 3333, 3339, and 4507)**

The Louisiana State Board of Nursing has amended Chapter 33, Subchapter C., Sections 3323. Registration and Registered Nurse Licensure; 3329. Temporary Permits; 3333. Renewal of License; 3339. Verification of Licensure; 3341. Fees for Registration and Licensure; and 4507. Licensure as Advanced Practice Registered Nurse; in accordance with R.S. 37:918, 37:919 and 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

In September 2010, the Louisiana State Board of Nursing motioned for LSBN to move to paperless license. In order for paperless licensure to be accomplished, rulemaking revisions were made to provide consistency in all Sections pertaining to paperless licenses.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**Subchapter C. Registration and Registered Nurse Licensure**

**§3323. Registration and Licensure**

A. Registration in Louisiana is mandatory for practicing as a registered nurse.

B. Registration and licensure as a registered nurse shall be issued only to an applicant who qualifies by examination or endorsement in accordance with R.S. 37:920. All applicants shall meet the same standards.

C. The board shall issue a certificate of registration, carrying a permanent registration number, designating the date of issuance, the authorization to practice as a registered nurse in Louisiana, to all applicants who qualify for initial licensure.

D. The executive director, or a designee of the board, shall record the registration of the permanent records of the board and shall issue a license to practice, valid from the date of issuance until January 31. For individuals registered between January 1 and January 31, the board shall issue a license to practice, valid from the date of issuance until January 31 of the next year.

E. An individual may provide educational and/or consultative services in accordance with R.S. 37:929(9) for a period of not more than 30 days in a calendar year, without applying for a Louisiana registered nurse license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 7:77 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 23:962 (August 1997), LR 24:1293 (July 1998), LR 37:3026 (October 2011).

**§3329. Temporary Permits**

A. In accordance with R.S. 37:920, the Board of Nursing may issue the following temporary permits to practice as a registered nurse.

A.1. - A.3.c. ...

4. The working permit expires upon the R.N. applicant's receipt of the results of the first examination after graduation, or at the end of three months if the examination has not been taken.

B. - D.6. ...

E. Any individual who is issued a temporary permit pursuant to Subsection D of this Section shall:

E.1. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, 920 and 921.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 23:961 (August 1997), LR 24:1293 (July 1998), LR 28:2513 (December 2002), LR 33:460 (March 2007), LR 37:3026 (October 2011).

**§3333. Renewal of License**

A. Every person holding a license to practice as a registered nurse, and an advanced practice registered nurse, and intending to practice during the ensuing year, shall

renew his or her license annually prior to the expiration of his or her license. The board shall furnish an application for renewal of a license to every person who holds a current license. The licensee shall complete the renewal application before January 1. Upon completion of the application and submission of the renewal fee as required under §3341, the board shall verify the accuracy of the application and issue to the licensee a license of renewal for the current year beginning February 1 and expiring January 31. Incomplete applications will be returned. Applications submitted after December 31 will be considered late and subject to the fee as required under §3341 for late renewals. Failure to renew a license prior to expiration subjects the individual to forfeiture of the right to practice. An individual shall notify the board of:

1. change of address. Notify the office of the board in writing or electronically within 30 days if a change of address has occurred;

2. ...

B. Requirements for renewal of license include:

1. completion of application form, including statistical information;

2. payment of fee;

3. evidence of meeting the requirements of §3335, effective January 1, 1993;

4. provide any/all information, documents, records, reports, evidence and/or items as requested by the board/board staff within 60 days from the date of the letter of request/notification sent by board staff, or else the RN/APRN license shall be subject to immediate invalidation with change of status to inactive license and practice as a registered nurse and/or advanced practice registered nurse will no longer be legal.

C. An inactive or lapsed license may be reinstated by submitting a completed application, paying the required fee, and meeting all other relevant requirements, provided there is no evidence of violation of R.S. 37:911 et seq., §3331, or other administrative rules, or no allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 or §3405. Any person practicing as a registered nurse or advanced practice registered nurse during the time one's license is inactive or has lapsed is considered an illegal practitioner and is subject to the penalties provided for violation of this Part and will not be reinstated until the disciplinary action is resolved.

D.1.A retired status license may be issued to any individual who is no longer engaged in the practice of nursing, provided said individual:

a. completes an application provided by the board prior to the expiration of the active license; and

b. pays the required one-time fee as specified under §3341.

2. A licensee in retired status will continue to receive *The Examiner* and other official communications and continue to be listed in the official roster of registered nurses in Louisiana.

3. After placed in retired status, no further renewal notices will be sent.

4. Repealed

5. - 8. ...

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board

of Nursing, LR 16:1061 (December 1990), LR 23:962 (August 1997), LR 23:963 (August 1997), repromulgated LR 24:1293 (July 1998), amended LR 26:1443 (July 2000), LR 32:247 (February 2006), LR 35:1536 (August 2009), LR 37:3026 (October 2011).

**§3339. Verification of Licensure**

A. Verification of a registered nurse or advanced practice registered nurse license only requires the correct spelling of the name of the licensee.

B. Before employing a person as a registered nurse and/or advanced practice registered nurse, current licensure must be verified by primary source verification through the board. Failure to do so may result in aiding and abetting an unlicensed person to practice nursing in violation of the law.

C. Annually, on or before January 31, current licensure of registered nurses and advanced practice registered nurses should be verified by directors of nursing or supervisors. Documentation of on-line verification is necessary to ascertain that the year is current.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:918 and R.S. 37:920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 32:2255 (December 2006), LR 37:3027 (October 2011).

**§3341. Fees for Registration and Licensure**

A. Notwithstanding any provisions of this Chapter, the board shall collect in advance fees for licensure and administrative services as follows.

- 1. Licensure
  - a. - q. ...
  - r. - s.Repealed.

A.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 8:417 (August 1982), amended by the Department of Health and Hospitals, Board of Nursing, LR 14:533 (August 1988), LR 22:981 (October 1996), repromulgated LR 24:1293 (July 1998), amended LR 26:84 (January 2000), LR 30:2829 (December 2004), LR:31:2027 (August 2005), LR 36:1246 (June 2010), LR 37:3027 (October 2011).

**Chapter 45. Advanced Practice Registered Nurses**

**§4507. Licensure as Advanced Practice Registered Nurse**

- A. - B.3.c.i. ...
  - ii. notify the employer of the results.
- B.4. - F.2.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:281 (April 1996), amended LR 27:724 (May 2001), LR 29:580 (April 2003), LR 31:1340 (June 2005), LR 31:2015 (August 2005), LR 32:247 (February 2006), LR 37:3027 (October 2011).

Barbara L. Morvant, MN, RN  
Executive Director

1110#031

**RULE**

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

**Family Planning Waiver—Recipient Qualifications  
(LAC 50:XXII.2301)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXII.2301 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 XXII. 1115 Demonstration Waivers**

**Subpart 3. Family Planning Waiver**

**Chapter 23. Eligibility**

**§2301. Recipient Qualifications**

A. Family planning waiver services shall be provided to women who:

- 1. - 2. ...
- 3. are not eligible for inclusion in any other Medicaid program or State Children’s Health Insurance Program (SCHIP), with the exception of participants in the Greater New Orleans Community Health Connection Waiver; and
- 4. ...

AUTHORITY NOTE: Promulgated in 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 37:3027 (October 2011).

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

Bruce D. Greenstein  
Secretary

1110#055

**RULE**

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

**Hospital Licensing Standards  
Outpatient Off-Site Campuses  
(LAC 48:I.9303)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.9303 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2100-2115. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 93. Hospitals**

**Subchapter A. General Provisions**

**§9303. Definitions**

A. The following definitions of selected terminology are used in connection with Chapter 93.

*Accredited*—the approval by the Joint Commission on Accreditation of Healthcare Organizations, American Osteopathic Association, or Det Norske Veritas.

\* \* \*

*Off-Site Campus*—all premises on which hospital services (inpatient and/or outpatient) are provided and that are not adjoining to the main hospital buildings or grounds. Each off-site campus of a hospital shall be licensed as a part of the main hospital. An off-site campus shall be located within 50 miles of the main hospital campus.

a. Exception. If a state-owned or operated hospital ceases to do business and surrenders its license, the offsite campus(es) of that hospital which provided outpatient services may be licensed as an off-site campus(es) of another state-owned and/or operated hospital, provided that the off-site campus(es) is located within 100 miles of the main hospital campus of the state-owned and/or operated hospital.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2400 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:513 (March 2010), LR 37:3028 (October 2011).

Bruce D. Greenstein  
Secretary

1110#054

**RULE**

**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 has amended 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 Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part 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 (ICFs/DD) shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

1. Effective for dates of service on or after December 20, 2010, non-state ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be 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 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 37:3028 (October 2011).

Bruce D. Greenstein  
Secretary

1110#053

**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 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 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.



## NOTICE OF INTENT

### 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)

J. Effective for dates of service on or after January 1, 2011, the reimbursement rates for laboratory services shall be reduced by 2 percent of the fee amounts on file as of December 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 36:2563 (November 2010), LR 37:3028 (October 2011).

#### §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.

I. Effective for dates of service on or after January 1, 2011, the reimbursement rates for radiology services shall be reduced by 2 percent of the fee amounts on file as of December 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 36:2563 (November 2010), LR 37:3029 (October 2011).

#### §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.

G. Effective for dates of service on or after January 1, 2011, the reimbursement rates for portable radiology services shall be reduced by 2 percent of the fee amounts on file as of December 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 36:2563 (November 2010), LR 37:3029 (October 2011).

#### §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.

G. Effective for dates of service on or after January 1, 2011, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 2 percent of the fee amounts on file as of December 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 36:2563 (November 2010), LR 37:3029 (October 2011).

Bruce D. Greenstein  
Secretary

1110#052

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 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 3. Emergency Medical Transportation

#### Subchapter B. Ground Transportation

#### §325. Reimbursement

A. - G. ...

H. Effective for dates of service on or after January 1, 2011, the reimbursement rates for emergency ambulance transportation services shall be reduced by 2 percent of the rate on file as of December 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 34:878 (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), LR 37:3029 (October 2011).

#### Subchapter C. Aircraft Transportation

#### §353. Reimbursement

A. - E. ...

F. Effective for dates of service on or after January 1, 2011, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 2 percent of the rate on file as of December 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 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010), amended LR 37:3029 (October 2011).

Bruce D. Greenstein  
Secretary

1110#051

**RULE**

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

Medical Transportation Program  
Non-Emergency Ambulance Services  
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. 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. - D. ...

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for non-emergency ambulance transportation services shall be reduced by 2 percent of the rates in effect on December 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 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), LR 37:3030 (October 2011).

Bruce D. Greenstein  
Secretary

1110#050

**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. 49:953(B)(1) 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. - 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.

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 2 percent of the rates in effect on December 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 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), LR 37:3030 (October 2011).

Bruce D. Greenstein  
Secretary

1110#049

**RULE**

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

Outpatient Hospital Services  
Hospital Provider-Based Outpatient Clinics  
(LAC 50:V.5111)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.5111 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. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 51. General Provisions**

**§5111. Hospital Provider-Based Outpatient Services**

A. In order to receive Medicaid reimbursement as a hospital provider-based outpatient facility, an off-site campus of a hospital which provides outpatient services shall meet the provider-based requirements for Medicare as established in 42 CFR 413.65, except when the provisions in §5111.B are applicable.

B. Closure of a State-Owned and/or Operated Hospital. If a state-owned and/or operated hospital ceases to do

business and surrenders its license, the off-site campus of that closed hospital may be deemed to be “provider-based” for purposes of Medicaid reimbursement only when all of the following criteria are met.

1. The off-site campus shall comply with the provider-based requirements in 42 CFR 413.65 except that:

a. the off-site campus shall be deemed in compliance with 42 CFR 413.65(d)(2)(vi) if the off-site campus refers patients requiring inpatient hospital services to either its main hospital provider campus or to the nearest available inpatient services; and

b. the off-site campus shall be deemed in compliance with 42 CFR 413.65(e)(3)(i) if they are licensed as an off-site campus of another state-owned and/or operated hospital that is within 100 miles of the off-site campus.

2. The off-site campus provides outpatient 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, Bureau of Health Services Financing, LR 37:3030 (October 2011).

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

Bruce D. Greenstein  
Secretary

1110#048

## RULE

### Department of Health and Hospitals Physical Therapy Board

#### Physical Therapy (LAC 46:LIV.Chapters 1-5)

The Louisiana Physical Therapy Board has amended LAC 46:LIV, Chapters 1-5 as authorized by R.S. 36:254 and promulgated in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq. These rules will clarify the application of the Physical Therapy Practice Act and support the Board in the execution of its duty to regulate the industry for the protection of the public.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIV. Physical Therapy Board

##### Subpart 1. Licensing and Certification

#### Chapter 1. Physical Therapists & Physical Therapist Assistants

##### Subchapter A. Board Organization

#### §103. Board Domicile

A. The domicile of the board is Lafayette, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with 37:2403.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiner, LR 31:44 (February 2005), amended by the Physical Therapy Board, LR 37:3031 (October 2011).

#### §105. Meetings

A. Meetings. Meetings of the board shall be held at least six times a year to transact business. Regular meetings shall be scheduled by the board in advance and the date and time of such meetings posted on the board website. Special meetings may be called by the chairman of the board, or at the request of five members of the board.

B. Location. Unless otherwise noticed, board meetings shall be held at the board office in Lafayette. The board may meet at other locations as determined by the board with notice of such location posted at least five days prior to the meeting date. The location of the meeting shall not be changed after such notice is given without reasonable notice of such change provided to all board members and to others who have requested such notification.

C. Notice. Notice of all meetings of the board shall be posted at the board office, on the board website and in any other manner prescribed by the Administrative Procedure Act or Open Meetings Law.

D. Quorum. Any four members of the board shall constitute a quorum for any business before the board. A majority vote of those present in a meeting is required for passage of a motion before the board.

E. Open Meetings. All board meetings and hearings shall be open to the public. The board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public and may request the participation in such executive session of staff members or others as may be needed for consideration of the business to be discussed in executive session.

F. Attendance. Board members are expected to attend a minimum of 80 percent of the regularly scheduled meetings, special meetings, open forums and hearings which may be scheduled in conjunction with or separate from regularly scheduled meetings. Attendance constitutes active participation in at least 80 percent of the entire meeting. Exceptions may be granted by the board for good cause. Notification of an expected absence shall be submitted to the board office as early as possible prior to the commencement of the meeting.

G. Rules of Order. The most current edition of Robert's Rules of Order shall govern all proceedings of the board unless otherwise provided by board rules or policy.

H. Public Comments. A public comment period shall be held during each board meeting. Persons desiring to present comments shall notify the executive director of the board prior to the beginning of the meeting. However, to assure that an opportunity is afforded to all persons who desire to make comments, the chairman shall inquire at the beginning of the meeting if there are additional persons present who wish to comment. The chairman shall allot the time available for the public comments in an equitable manner among those persons desiring to comment. Each person making public comments shall identify himself and the group, organization, company, or entity he represents, if any.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2404.A, La R.S. 37:2404.B and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3031 (October 2011).

### **§107. Officers**

A. The officers of the board shall be a chairman and secretary-treasurer.

B. The chairman shall preside at all board meetings and shall, when available, represent the board at official functions.

C. The secretary-treasurer shall act in place of the chairman when the chairman is not present or available.

D. The secretary-treasurer shall oversee board finances and present financial reports to the board as requested and shall review and advise on board investments as directed by the board.

E. Officers of the board shall be elected annually at a meeting to be held during the month of January and shall serve a one-year term or until the election of their successors. An officer elected to a position vacated before the end of its term shall serve only for the remainder of that term.

AUTHORITY NOTE: Promulgated in accordance with 37:2404.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011).

### **§109. Committees**

A. Special Committees. Board committees are working bodies created and appointed by the board to assist in carrying out specific board functions. Such committees shall report to the board with recommendations on those issues which have been delegated to the committee for exploration.

B. Advisory Committee. The board may appoint an Advisory Committee not to exceed nine members to assist in the review of applicants qualifications for licensure; conduct applicant interviews; review continuing education activities and courses; and other duties deemed necessary by the board.

AUTHORITY NOTE: Promulgated in accordance with 37:2405.B. (13) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3032 (October 2011).

### **§111. Compensation**

A. Per diem, as authorized by R.S. 37:2404, shall be paid to board members and committee members for each day during which they are attending regular or called board meetings, attending to official business of the board, or attending a board related or board sanctioned conference or activity, including travel days to and from these meetings, conferences, and related board activities. Per diem does not negate reimbursement for meals, lodging, and other expenses incurred as a result of these meetings, conferences, and related activities.

AUTHORITY NOTE: Promulgated in accordance with 37:2404.C and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011).

### **§113. Finances**

A. Self Funding. The board shall be a self-sustaining body and shall generate sufficient revenues from fees and assessments to maintain effective and efficient operations.

B. Administrative Costs. Board orders in disciplinary proceeding may require the Respondent to reimburse the

board for travel, meals, per diem, the cost of investigators, stenographers, attorneys, and other reasonably associated costs in order to recoup expenses attributable to a specific disciplinary case.

C. Budget. The board shall adopt an annual operating budget at a meeting which will allow timely filing with Division of Administration schedules.

D. Special Funds. The board may receive and expend funds in addition to its annual or biennial receipts, from parties other than the state, when the following conditions are met.

1. Such funds are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this Chapter, or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise.

2. Such funds are expended for the pursuit of the objective for which they are awarded.

3. Activities connected with or occasioned by the expenditures of such funds do not interfere with the objective performance of the board's duties and responsibilities, and do not conflict with the exercise of the board's powers as specified by this Chapter.

4. Such funds are identified in the budget.

5. Periodic reports are made to the board concerning the receipt and expenditure of such funds.

E. Travel Expenses. Board members, committee members and employees shall be entitled to reimbursement of actual expenses reasonably necessary for attending board or committee meetings or for representing the board or participating in board-approved activities. The board shall adopt policies to provide guidance to the executive director in determining "reasonable" expenses.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2404.C; La R.S. 37:2424.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011).

### **§115. Applicable Laws**

A. Board procedures and operations shall adhere to the Administrative Procedures Act, R.S. 49:950 and following; the Open Meetings Law, R.S. 42:4.1 and following; the Public Records Act, R.S. 44:1 and following; and other state and federal laws to which board activities are subject.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (4) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011).

### **§117. Executive Director**

A. The Board shall appoint an Executive Director to carry out the administrative work of the board and shall designate the duties and responsibilities of the Executive Director in a job description for that position.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (5) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011).

### **§119. Affiliations**

A. The board may join and pay dues to such professional organizations and associations organized to promote the improvement of standards of practice in physical therapy or to advance and facilitate the operation of the board as an entity. In participating in such organizations or associations,

the board may accept reimbursement of conference fees and travel expenses as are available generally to organizational members of those organizations or associations.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011).

### §121. Declaratory Statements

A. The board may issue a declaratory statement in response to a request for clarification of the effect of the provisions contained in the Practice Act, R.S. 37:2401 and following, and/or the board's rules, Title 46:103 and following.

1. A request for a declaratory statement is made in the form of a petition to the board. The petition should include at least:

- a. the name and address of the petitioner;
- b. specific reference to the statute or rule and regulation to which the petition relates;
- c. a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or by its potential application to his concern.

2. The petition shall be considered by the board within a reasonable period of time taking into consideration the complexity of the issues raised and the board's meeting schedule.

3. The declaratory statement of the board in response to the petition shall be in writing and sent to the petitioner at the last address furnished to the board and shall be made available on the board website.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3033 (October 2011).

## Subchapter B. General Provisions

### §123. Definitions

A. As used in this Title, the following terms and phrases, defined in the Practice Act, R.S.37:2401–2424, shall have the meanings specified here.

**Active Status**—the current state of a license which classifies the licensee as holding a current and valid license and being in good standing.

**Administrative Complaint**—a sworn statement of allegations prepared by board counsel and filed with the board which includes a statement of the matters asserted and reference the particular Sections of the statutes and rules involved, the filing of which initiates a contested disciplinary proceeding.

**American Physical Therapy Association**—APTA

**Applicant**—a person who has applied to the board for a license to engage in the practice of physical therapy in the State of Louisiana.

**Application**—a written request directed to and received by the board, upon forms approved and supplied by the board, for a license to practice physical therapy in the State of Louisiana, together with all information, certificates, documents, and other materials required by the board to be submitted with such forms.

**Board**—the Louisiana Physical Therapy Board (formerly the Louisiana State Board of Physical Therapy Examiners) created by R.S. 37:2403 within the Louisiana Department of Health and Hospitals, acting through its members as a body or through its executive director and staff carrying out the rules, policies and precedents established by the board.

**Board Order**—a final decision of the board issued in a contested proceeding or in lieu of such proceeding, which may include findings of fact and conclusions of law, separately stated.

**CAPTE**—the Commission on Accreditation of Physical Therapy Education

**Client**—a person seeking or receiving information, education and/or recommendations for activities related to wellness and preventive services including conditioning, injury prevention, reduction of stress, or improvement in fitness.

**Clinical Instructor**—a PT or a PTA supervising a student pursuing a career in the physical therapy profession.

**Clinical Supervisor**—a PT selected with approval of the board with at least three years of clinical experience who directly supervises the licensee in the clinical environment.

**Confidentiality**—all records of a PT or PTA who has successfully completed or is actively participating in the non-disciplinary alternative program shall not be subject to public disclosure, and shall not be subject to discovery in legal proceedings except as required by federal and state confidentiality laws and regulations. The records of a PT or PTA who fails to comply with the program agreement or who leaves the program without enrolling in an alternative program in the state to which the practitioner moves, or who subsequently violates the Louisiana Physical Therapy Act or the board rules, shall not be deemed confidential except for those records protected by federal and state confidentiality laws and regulations.

**Consultative Services**—when a PT provides information, advice, or recommendations with respect to physical therapy, but does not undertake to provide or supervise physical therapy treatment. Consultative Services can be provided to the public or to other health care providers without referral or prescription.

**Contact Hour**—60 minutes of continuing education instruction.

**Contested Case**—a disciplinary proceeding in which the legal rights, duties, or privileges of a Respondent are to be determined by the board after an opportunity for an adjudicative hearing.

**Continuing Education**—education beyond the basic preparation required for entry into the profession and directly related to the performance and practice of physical therapy. Courses and activities shall meet the content criteria set forth in §195.

**Continuous Supervision**—where the Supervising PT of Record is physically present in the same treatment area to provide observation and supervision of the procedures, functions and practice rendered by a PT or PTA student or PT technician.

**CWT**—the Coursework Tools for Foreign Educated PTs (CWT) were developed by the FSBPT as a standardized method to evaluate the educational equivalence of foreign educated PTs. Each CWT reflects the minimum general and

professional educational requirements for substantial equivalence at the time of graduation with respect to a US first professional degree in physical therapy.

*Criminal History Record Information*—information collected by state and federal criminal justice agencies on applicants and licensees consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, criminal correctional supervision, and release, but does not include intelligence for investigatory purposes, nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

*Disciplinary Action*—the imposition of a sanction by the board which may include reprimand, probation, suspension, or revocation of a license, and other appropriate requirements.

*Discharge Summary*—the written documentation of the reasons for discontinuation of care, degree of goal achievement and a discharge plan which shall be written and signed by the Supervising PT of Record.

*Documented Conferences*—as used in R.S. 37:2418F(2)(e), see Patient Care Conference definition.

*Dry Needling*—a physical intervention which utilizes filiform needles to stimulate trigger points in a patient's body for the treatment of neuromuscular pain and functional movement deficits. Dry Needling is based upon Western medical concepts and does not rely upon the meridians utilized in acupuncture and other Eastern practices. A physical therapy evaluation will indicate the location, intensity and persistence of neuromuscular pain or functional deficiencies in a physical therapy patient and the propriety for utilization of dry needling as a treatment intervention. Dry needling does not include the stimulation of auricular points.

*Foreign Educated PT Applicant*—a person whose education as a PT was obtained in a program not accredited by CAPTE.

*FSBPT*—the Federation of State Boards of Physical Therapy

*Good Moral Character*—as applied to an applicant or licensee means the aggregate of qualities evidenced by past conduct, social relations, or life habits, which actually provide persons acquainted with the applicant or licensee a basis to form a favorable opinion regarding his ethics and responsibility to duty. In addition, to achieve and maintain Good Moral Character, an applicant or licensee shall provide accurate, complete and truthful information to the board and shall not, at any time, commit any act or omission which provides a basis for disciplinary actions or violations under R.S. 37:2420 or R.S. 37:2421.

*Graduated, Graduation or Graduate*—having completed all requirements, including clinical experience, at a CAPTE accredited program for physical therapists or physical therapist assistants. If an educational program certifies that the degree is assured and will be conferred at a later date, an applicant will be considered to have graduated and become a graduate.

*HIPDB*—Healthcare Integrity and Protection Data Bank, the Secretary of the U.S. Department of Health and Human Services, acting through the Office of Inspector General (OIG), was directed by the Health Insurance

Portability and Accountability Act of 1996 to create the Healthcare Integrity and Protection Data Bank (HIPDB) to combat fraud and abuse in health insurance and health care delivery. The HIPDB is primarily a flagging system that may serve to alert users that a comprehensive review of a practitioner's, provider's, or supplier's past actions may be prudent. The HIPDB is intended to augment, not replace, traditional forms of review and investigation, serving as an important supplement to a careful review of a practitioner's, provider's, or supplier's past actions.

*Impairment or Impaired*—impairment or impaired means a condition that causes an infringement on the ability of an individual to practice, or assist in the practice, of physical therapy with reasonable skill and safety to patients. Impairment may be caused by, but is not limited to, alcoholism, substance abuse, addiction, mental and/or physical conditions.

*Informal Conference*—a meeting held pursuant to R.S. 49:961.C with a Respondent and an Investigative Committee of the board to determine whether a disciplinary case should proceed.

*In Good Standing*—describes a person who holds a current, valid license from the board and who has no pending or active disciplinary actions or sanctions against that license. The board is the ultimate arbiter of whether a licensee is in good standing at a given time.

*Investigative Committee*—the panel designated by board policy to investigate complaints and to conduct Informal Conferences in disciplinary matters, typically composed of one or more board members, the executive director, investigator and legal counsel.

*Jurisprudence*—the body of law applicable to the practice of physical therapy in Louisiana including the Practice Act and the rules promulgated by the board.

*Jurisprudence Examination*—an open book examination made up of multiple choice and/or true/false questions covering information contained in the Practice Act and board rules.

*Legend Drug*—any drug intended for use by humans which carries on its label any of the following: "caution: Federal law prohibits dispensing without a prescription", "Rx," or "Rx only."

*Legend Device*—any device intended for use by humans which carries on its label "Rx," "Rx Only," or a statement that federal law restricts the device to sale by or on the order of a licensed healthcare practitioner.

*Letter of Concern*—a statement placed in the permanent record maintained by the board for a licensee who has been brought to the board for questionable conduct but whose actions have not been found to merit disciplinary action. A letter of concern shall not be reportable to HIPDB and shall not be published with board disciplinary actions.

*License*—the lawful authority of a PT or PTA to engage in the practice of physical therapy in the State of Louisiana, as evidenced by a certificate duly issued by and under the official seal of the board.

*Louisiana Physical Therapy Practice Act—Practice Act Minimal Standards of Acceptable and Prevailing Physical Therapy Practice*—include, but are not limited to, those set forth in the Code of Ethics and related documents of APTA.

*Moral Turpitude*—baseness, vileness, or dishonesty of a high degree and contrary to community standards of justice, honesty, or good morals.

*Notice*—a statement of the intended date, time, place, and nature of a meeting or hearing, and the legal authority and jurisdiction under which a hearing is to be held. Notice may include a formal complaint filed to initiate a contested disciplinary proceeding.

*NPTE*—the National Physical Therapy Examination administered by the FSBPT.

*On Premises*—the Supervising PT of Record is personally present in the treating facility and immediately available to the treatment area.

*Participate*—as used in R.S. 37:2418F(2)(b) means that a Supervising PT of Record assumes responsibility for the care which he and those under his supervision provide to patients, provides appropriate treatment and that, at a minimum, the PT will:

- a. perform the initial evaluation and document the patient's plan of care;
- b. treat and reassess the patient at least every sixth treatment day or every 30 days, whichever occurs first;
- c. treat the patient for the final treatment session unless the patient is physically unavailable; and
- d. write the discharge summary.

*Passive Manipulation*—manipulation or movement of muscular tissue or joints other than by the spontaneous function of the body or active effort on the part of a patient.

*Patient Care Conference*—a meeting between a PTA who is providing patient care and the PT supervising that care to discuss the status of patients. This conference shall be conducted where the PT and PTA are both physically present at the same time and place.

*Per Diem*—compensation to a board member or committee member for each day during which he is attending regular or called board meetings, attending to official business of the board, or attending a board related or board sanctioned conference or activity, including travel days to and from these meetings, conferences, and related board activities.

*Person*—includes a natural person, partnership, corporation, association, or other entity having legal existence, unless the context requires a more limited meaning.

*Physical Therapist*—a person licensed by the board who is a graduate of a CAPTE accredited program with a minimum of a bachelor's degree or a foreign-educated PT who has been granted a license pursuant to the Practice Act.

*Physical Therapist Assistant*—a person licensed by the board who is a graduate of an associate degree program in physical therapist assisting accredited by CAPTE or who was granted licensure pursuant to the Practice Act.

*Physical Therapy Evaluation*—the written documentation of physical and cognitive findings, objective tests and measurements, patient history, pertinent medical diagnosis, signs, symptoms, and the PT's interpretation of such findings, as well as goals and a treatment plan or program as defined in §123. The initial physical therapy evaluation shall be documented and signed by the PT performing the evaluation within seven days after performing the evaluation. An initial physical therapy

evaluation shall not be documented or signed by a PTA or any other personnel.

*Physical Therapy Technician*—a worker not licensed by the board who functions in a physical therapy clinic, department or business and assists with preparation of the patients for treatment and with limited patient care.

*Physiotherapy*—physical therapy.

*Practice Setting*—unless otherwise defined, the physical location where patient care is performed or client services provided. Practice setting may also refer to the type of organization which provides physical therapy services, such as an outpatient clinic, hospital, nursing home, rehab facility, school or the delivery of home healthcare.

*Prescription*—a request for diagnostic or therapeutic physical therapy procedures or regimen subscribed by an individual lawfully authorized to make or give such an order or directive.

*Preventive Services*—the use of physical therapy knowledge and skills by a PT or PTA to provide education or activities in a wellness setting for the purpose of injury prevention, reduction of stress and/or the promotion of fitness. Does not include the administrations of physical therapy treatment and, therefore, can be performed without referral or prescription.

*Progress Note*—written documentation of the patient's subjective status, changes in objective findings, and progression to or regression from established goals.

*Provisional License*—a temporary license issued to a PT or PTA graduate applicant pending results of a fixed-date examination, to a foreign-graduate PT applicant pending completion of the supervised clinical practice as required by §137, or to a PT licensed elsewhere and working temporarily in Louisiana as part of an education seminar or athletic event under the provisions of §147.

*PT*—physical therapist

*PTA*—physical therapist assistant

*Reassessment or Reevaluation*—written documentation which includes all elements of a progress note as well as the interpretation of objective findings compared to the previous evaluation with a revision of goals and treatment plans as indicated.

*Reciprocity*—the acknowledgment and licensure by the board of a PT or PTA licensed by another state pursuant to procedures established by the board.

*Referral*—a request for physical therapy evaluation or treatment made by an individual lawfully authorized to make such request.

*Reprimand*—a form of censure by the board of a licensee for violation of the Practice Act or Rules.

*Respondent*—a licensee who is the subject of an informal complaint or an administrative complaint alleging violation of the Practice Act or board rules.

*Revocation*—the withdrawal of a license issued by the board, terminating the right and privilege of practicing physical therapy in Louisiana.

*RPTP*—the Recovering Physical Therapy Program adopted by the board.

*RPTP Agreement*—a document approved by the board containing provisions which identify requirements for successful participation in the RPTP, including, but not limited to, evaluation, treatment, after care, testing,

monitoring, supervision reports, meeting attendance, and practice restrictions.

*RPTP Compliance*—conforming to the requirements of the Recovering Physical Therapist Program Agreement.

*State*—any state of the US, the District of Columbia and Puerto Rico.

*Student*—a person who is pursuing a course of study leading to a degree in physical therapy or physical therapist assisting from a professional education program certified by CAPTE and approved by the board, and who is pursuing supervised clinical education requirements related to his physical therapy education.

*Summary Suspension*—the suspension of a license by emergency board action which requires a licensee to immediately cease practice pending disciplinary proceedings provided by law.

*Supervising PT of Record*—the PT who performs the initial evaluation and establishes a plan of care for a patient or a PT who has most recently reevaluated or treated the patient.

*Suspended License*—restricting the licensee's privilege to practice physical therapy or physical therapist assisting for a specified period of time.

*Topical Agents/Aerosols*—medications used in physical therapy treatment which are applied to the skin and obtained over-the-counter, by prescription or order, or from a licensed distributor.

*Treatment Plan or Program*—documentation created by a PT specifying the measurable goals, specific treatments to be used and the proposed duration and frequency of treatment; is an integral component of a PT evaluation and must be completed by the PT prior to delegating appropriate treatment to a PTA or PT technician.

*Treatment Record*—the written documentation of each patient visit which includes specific treatment and/or any equipment provided which shall be signed or initialed by the Supervising PT of Record or PTA.

*When Feasible*—as used in R.S. 37:2418F (2)(g), means whenever the patient is still physically available to receive treatment and assessment.

*Wound Debridement*—patient care provided by a PT, provisionally licensed PT, or student PT, which removes non-living tissue from pressure ulcers, burns and other wounds as part of wound management, including but not limited to, sharps debridement, debridement with other implements or agents and application of topical agents including enzymes.

*Written Record of Physical Therapy*—documentation including the prescription or referral (if it exists), the initial evaluation, treatment notes, notes of patient care conferences, progress notes, reevaluations or reassessments, and patient status at discharge documenting the complete course of patient care.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2407.A and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 19:208 (February 1993), LR 15:389 (May 1989), LR 19:208 (February 1993), LR 26:1448 (July 2000), amended by the Physical Therapy Board, LR 37:3033 (October 2011).

## **§125. Additional Definitions**

A. As used in R.S. 37:2418 C. (1) (2) (3) (4) (5), the following words and phrases shall have the following meaning.

*Child or Children*—an individual or individuals under the age of 21 years.

*Patient*—An individual receiving treatment through physical therapy services for a diagnosed condition or conditions.

*Plan of Care*—a Treatment Plan or Program as defined in §123, and incorporating the documentation standards provided for in §341.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2418 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 31:441 (February 2005), amended by the Physical Therapy Board, LR 37:3036 (October 2011).

## **Subchapter C. Graduates of American Physical Therapy Schools and Colleges**

### **§127. Scope of Subchapter**

A. The rules of this Subchapter govern the licensing of PTs and PTAs who are graduates of physical therapy or physical therapist assistant schools located within any state or US territory.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2409 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3036 (October 2011).

### **§129. Qualifications for License, Provisional License**

- A. To be eligible for a license as a PT, an applicant shall:
1. be at least 21 years of age;
  2. be of good moral character as defined in these rules;
  3. have paid all fees required by the board;
  4. be a citizen of the US or possess valid and current legal authority to reside and work in the US duly issued by the US immigration authorities under and pursuant to the Immigration and Nationality Act (66 Stat.163) and duly promulgated regulations;
  5. possess a minimum of a bachelor's of science degree in Physical Therapy and have completed an academic education from a school duly accredited by CAPTE; as set forth in §175.
  6. have achieved a passing score on the NPTE as set forth in §169; and
  7. furnish the board with his social security number.
- B. To be eligible for a license as a PTA, an applicant shall:
1. be at least 19 years of age;
  2. be of good moral character as defined in these rules;
  3. have paid all fees required by the board;
  4. have graduated from a physical therapist assistant program accredited by CAPTE; as set forth in §175;
  5. have achieved a passing score on the NPTE as set forth in §169;
  6. be a citizen of the US; and
  7. furnish the board with his social security number.



C. The burden of satisfying the board as to the qualifications and eligibility of an applicant for licensure is 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.

D. To be eligible for a provisional license as a PT or PTA, a CAPTE graduate applicant shall possess all of the qualifications for license in this section except §129.A.6.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2409, La R.S. 37:2411 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 125:387 (May 1989), LR 17:662 (July 1991), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1443 (July 2000), amended by the Physical Therapy Board, LR 37:3036 (October 2011).

### **§131. Procedural Requirements**

A. In addition to the substantive qualifications specified in §129, to be eligible for a license, an applicant shall satisfy the procedures and requirements for application provided by §§149-153 of this Chapter and, if applicable, the procedures and requirements for examination approved by the board as set forth in §§155–161 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2409 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1444 (July 2000), amended by the Physical Therapy Board, LR 37:3037 (October 2011).

### **§133. Approved Schools of Physical Therapy or Physical Therapist Assisting**

A. Graduation from an approved school is among the qualifications requisite to physical therapy or physical therapist assistant licensure as provided by §129.A.5 for American graduates, and §129.B.4 and §145 for reciprocity applicants. This qualification is satisfied if the school from which the applicant graduated was approved by the board as of the date the applicant's degree was issued.

B. A school of physical therapy or physical therapist assisting located in any state which is currently accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, the US Department of Education, CAPTE, or their successors, shall be concurrently considered approved by the board.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2411 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3037 (October 2011).

### **Subchapter D. Graduates of Foreign Physical Therapy Schools**

#### **§135. Scope of Subchapter: Definition**

A. The rules of this Subchapter specify additional qualifications, requirements and procedures for the licensing of PTs who are graduates of foreign physical therapy schools.

B. As used in this Subchapter, the term foreign graduate means a person whose education in physical therapy was obtained outside the US in a program not accredited by CAPTE.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3037 (October 2011).

#### **§137. Qualification for License, Provisional License**

A. To be eligible for a provisional license as a PT, a foreign graduate shall:

1. possess all of the substantive qualifications for license specified by §129 of this Chapter, except for §129.A.5;

2. have successfully completed a physical therapy education curriculum that is substantially equivalent to eh requirements for PTs educated in U.S. physical therapy schools. Using a course work evaluation tool approved by the board, as required by §139.D, an approved credentials evaluation service shall determine the substantial equivalence of the applicant's education. Such education shall include no less than 150 total semester-hour credits including no less than 90 semester-hours credits of physical therapy education and no less than 60 semester-hour credits of general education;

3. have achieved passing scores on standardized English proficiency examinations as approved by the board if English is not the applicant's native language;

4. have acceptable documentation, with notarized English translation, that he has met the requirements to practice physical therapy in the country of education and is in good standing with, the physical therapy licensing or certifying agency in his country of education;

5. possess valid and current legal authority to reside and work in the US duly issued by US immigration authorities under the pursuant to the Immigration and Nationality Act (66 Stat.163) and duly promulgated regulations; and

6. furnish the board with his/her social security number. A provisional license to practice as a physical therapist in the State of Louisiana will not be issued until submission of a copy of the social security card.

B. The burden of satisfying the board's requirements and qualifications for licensure as a foreign graduate is upon the applicant. An applicant shall not be deemed to possess required qualifications unless the applicant demonstrates and evidences such qualifications in the manner satisfactory to the board.

C. To be eligible for a full license as a PT, a foreign graduate applicant shall possess all of the qualifications for license in this section and must have completed at least six months of approved supervised clinical practice as required in §331.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992),

LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3037 (October 2011).

### **§139. Licensing Procedures for Foreign Educated Applicants**

A. A foreign educated PT applicant must complete the license application process set forth in §137 if applying for licensure by examination or, as set forth in §145, if applying for licensure by reciprocity.

B. The board will issue a license only after the applicant is physically present in the US and has met all requirements for licensure.

1. To meet the requirements of §137.A.6 the applicant shall obtain a work visa to reside and seek employment in the US issued by the federal immigration authorities, produce the original, and provide a copy of the work visa to the board.

C. Designated Representative Letter

1. An applicant may designate a person as a representative by providing a written authorization to the board which includes the name, telephone number, and address of the person stating that the person will be the designated representative for the applicant.

2. This authorization must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy of the notarized authorization shall be sent to the designated representative by the applicant.

3. A designated representative may obtain confidential information regarding the application.

4. The authorization to represent an applicant will be valid until the applicant receives his provisional license or the board is notified in writing by the applicant that the designated representative has been terminated or replaced. An applicant may have only one designated representative at any time.

5. The designated representative is not required by the board to have power of attorney for the applicant. A designated representative or power of attorney for an applicant may not sign for the applicant any document requiring the notarized signature of the applicant. Documents submitted by a designated representative or power of attorney for the applicant must be submitted in accordance with the requirements set by the Practice Act and rules. Any falsification of, or misrepresentation in, documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

D. Credentials Evaluation. A foreign graduate PT applicant must submit to the board a credentials evaluation of professional education and training prepared by a board-approved credentialing entity using the Course Work Tool. The board will maintain a list of approved credentialing entities on its website. The credential report must have been prepared no more than eighteen months prior to the date of the application for licensure, and must be submitted to the board directly by the credential evaluation agency. The applicant is responsible for any expense associated with the credentials evaluation.

1. The credentials evaluation must provide documentation that the applicant's education from outside a state or territory of the US is substantially equivalent to the

education of a PT who has graduated from a physical therapy education program accredited by CAPTE. The evaluation must also establish that the institution at which the applicant received his physical therapy education is recognized by the Ministry of Education or an equivalent agency in that country.

2. To determine substantial equivalency, the credentialing evaluation entity shall use a Course Work Tool (CWT) adopted by the FSBPT and approved by the board.

3. To determine substantial equivalency, the entity shall use the version of the CWT in place at the time of entry by the applicant into the US.

4. To be considered substantially equivalent to the requirements established in this rule, the applicant's foreign education must contain evidence of the content and distribution of coursework identified in the appropriate coursework evaluation tool identified in Paragraph D.3 of this rule.

5. An evaluation prepared by a credentialing agency reflects only the findings and conclusion of that agency, and shall not bind the board. If the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing, identifying the deficiencies.

E. If a document required by this title is in a language other than English, the applicant shall arrange for its translation into English by a translation service acceptable to the board and shall submit a translation signed by the translator attesting to its accuracy.

F. The board-approved clinical supervisor for a foreign PT graduate applicant shall attend with the applicant the personal interview scheduled with a member of the board, or its designee, as a condition for the board's consideration of the license application.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:381 (May 1989), LR 19:208 (February 1993), LR 16:1444 (July 2000), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3038 (October 2011).

### **§141. Guidelines for Board-approved Education Credentialing Entities**

A. The credentialing entity will review all of an applicant's post-secondary education credentials earned outside of the US. The applicant must have completed, with a passing grade of A, B, C, Pass or Credit, 60 semester hours credit or the equivalent in general education courses from an accredited institution of higher learning. This general education requirement may be met by credits earned at U.S. colleges or universities, by College Level Examination Program (CLEP) credits, or Advanced Placement (AP) according to standards of the American Council on Education. The number of credits earned by CLEP or AP may not exceed 12 semester credits.

B. The credentialing entity must attest that the institution attended by the applicant was accredited by the Ministry of Education or the equivalent in that country.

C. All foreign PT applicants must demonstrate the ability to communicate in English by achieving no less than the

minimum score accepted by the board on board-approved English proficiency tests. For graduates of entry-level physical therapy programs in other foreign countries, the board may grant an exception to the English Proficiency test if the applicant holds a current license in physical therapy in another state and has been licensed in the U.S. for no less than 10 years prior to application.

D. The credentialing entity must attest that the applicant is, or was, licensed or authorized to practice in the country in which the entry-level degree in physical therapy was granted. If there is no licensure or official authorization in such country, the applicant must be eligible for unrestricted practice there. The board may waive this requirement for an applicant who is not licensed in the country of education due to a citizenship requirement of that country.

1. If the application is for licensure by examination, the license or authorization in such country must be current and in good standing at the time of application.

2. If the application is for licensure by reciprocity, and the applicant has passed the NPTE meeting Louisiana standards, the license or authorization to practice must have been in good standing at the time the license or authorization in such country expired.

E. The credentialing entity must attest that the applicant has successfully completed an educational program substantially equivalent to U.S. programs accredited by CAPTE and has earned the equivalent of no less than 90 semester hours of professional physical therapy education.

F. If the degree awarded is substantially equivalent to a degree in physical therapy as awarded by CAPTE-accredited programs in the US, the credentialing entity must use the Coursework Evaluation Tool for Foreign Educated PTs (CWT), as developed by the FSBPT when evaluating an applicant's credentials. The version of the tool used must correspond at minimum to the year the entry-level degree was awarded. Education deficiencies must be identified and must indicate the subjects and credit hours necessary to satisfy the requirements of the CWT. If the degree received by the applicant is from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the CWT.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Hospitals, Physical Therapy Board, LR 37:3038 (October 2011).

### **§143. Procedural Requirements**

A. In addition to the substantive qualifications specified in §137, to be eligible for licensure, a foreign PT applicant shall satisfy the procedures and requirements for application provided by §§149–153 of this Chapter and, the procedures and requirements for examination administered by the board provided in §§155–161.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 26:1444 (July 2000), amended by the Physical Therapy Board, LR 37:3039 (October 2011).

## **Subchapter E. Licensure by Reciprocity**

### **§145. Qualifications for Licensure by Reciprocity**

A. Application for licensure by reciprocity under Subchapter E may be made at any time.

B. An applicant who possesses and meets all of the qualifications and requirements specified by §§129–133 of this Chapter, but who has taken the board approved licensing exam in another state, shall nonetheless be eligible for licensing if such applicant possesses, as of the time the application is filed and at the time the board passes upon such application, a current, unrestricted license or its equivalent issued by another state.

C. A foreign PT graduate who meets the requirements of Subsections 137.A. and 145 and who has practiced as a licensed PT in another state for at least one year, may, with acceptable documentation of clinical experience, be eligible for licensure by reciprocity as a PT at the discretion of the board. Licensure under this Subsection waives the period of supervised clinical practice set forth in Paragraph §137.A.3 of these rules.

D. To be eligible for licensure under Subsections A and B, applicants shall have met the continuing education requirements contained in the Practice Act and/or board rules within the 24 months preceding their application.

E. An applicant who has not practiced physical therapy for a period of three or more years shall be subject to these additional requirements.

1. An applicant who has not practiced physical therapy for more than three years but less than ten years shall complete the following activities to bring the applicant to the current level of physical therapy practice:

a. various education activities, which includes a review and discussion with a mentor in the appropriate practice setting of 25 physical therapy journal articles;

b. a remedial educational program approved by the board; and

c. supervised clinical practice for a period designated by the board.

2. An applicant who has not practiced physical therapy for more than ten years shall be subject to these additional requirements:

a. supervised clinical practice for a period designated by the board of no less than three months under the direct, on-site supervision of a board approved PT who has practiced no less than three years with a Louisiana license in good standing;

b. completion of the General Practice Review Tool offered by the FSBPT and satisfactory completion of continuing education courses to bring the applicant's knowledge to current standards;

c. a supervision agreement must be approved by the executive director before a provisional license will be issued. The supervision agreement shall be in force for the entire supervised clinical practice. The provisional licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any changes in practice sites or supervisors must be submitted in a proposed revised supervision agreement and approved prior to the change taking place. At the end of the supervisory period, the Supervising PT of Record shall report to the board satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision

period is reported by the Supervising PT of Record, the Board, in its discretion, may require an additional three month supervisory period; and

d. complete remedial courses which may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2412 and (4) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 34:1906 (September 2008), amended by the Physical Therapy Board, LR 37:3039 (October 2011).

#### **§147. Temporary Reciprocal Provisional License**

A. The board may issue a provisional license for a limited time period to a PT licensed in another state, or a foreign educated PT credentialed in another country, to perform physical therapy services on a patient as part of an education seminar or athletic event recognized and approved by the board. A provisional license may not be issued to the same person for more than 60 days in a calendar year. Such provisional license holder shall be obligated to comply with the provisions of the Practice Act and the board's rules regarding his practice of physical therapy in Louisiana. The provisional license holder shall obtain the provisional license prior to providing physical therapy services in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3040 (October 2011).

### **Subchapter F. License Application**

#### **§149. Purpose and Scope**

A. The rules of this Subchapter govern the procedures and requirements for application to the board for licensing as a PT and PTA in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2413 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3040 (October 2011).

#### **§151. Requirements**

A. Application for licensure shall be made upon forms supplied by the board. Application forms and instructions may be obtained from the board's website. Upon written request, an application form shall be mailed to the applicant.

B. An application for licensure under this Chapter shall include:

1. a fully completed application using the form provided by the board;

2. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications set forth in this Chapter;

3. one recent passport size color photograph of the applicant taken within six months of the application date;

4. such other information and documentation as the board may require to evidence qualification for licensure and completion of the requirements for licensure; and

5. the application fees due from an applicant receiving a one year license shall be \$200; application fee due from an applicant receiving a two-year license shall be \$315.

C. An applicant for whom clinical supervision is required must forward to the board for approval, on the required form, the name of the PT who will supervise his clinical practice. The supervisor must consent to the supervision and be approved by the board prior to issuance of a provisional license.

D. After submission of a completed application, an applicant shall, by appointment, meet personally with a member of the board, or a designee of the board, as a prerequisite to completion of the application process.

E. In addition to any other requirements established by regulation, the board may require an applicant, as a condition for eligibility for initial licensure:

1. to submit a full set of fingerprints, in a form and manner prescribed by the board;

2. to authorize the board to obtain state and national criminal history record information on the applicant;

3. to collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board for state and national criminal history record information on the applicant.

F. In accordance with the provisions and procedures prescribed by this Section, the board may request and obtain state and national criminal history record information from the Louisiana State Police and the FBI relative to any applicant for licensure whose fingerprints the board has obtained pursuant to this Section for the purpose of determining the applicant's suitability and eligibility for licensure.

G. Upon request by the board and upon the board's submission of an applicant's fingerprints, and such other identifying information as may be required, the Louisiana State Police shall conduct a search of its criminal history record information relative to the applicant and report the results of its search to the board within 60 days from receipt of any such request. The board shall pay to the Louisiana State Police a processing fee pursuant to R.S. 15:587 for conducting and reporting on any such search.

H. If the criminal history record information reported by the Louisiana State Police to the board does not provide grounds for disqualification of the applicant for licensure under the applicable law administered by the board, the board shall have the authority to forward the applicant's fingerprints and such other identifying information as may be required to the FBI with a request for a search of national criminal history record information relative to the applicant.

I. Any and all state or national criminal history record information obtained by the board from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, investigators, agents, and attorneys in evaluating the applicant's eligibility or qualification for licensure. No such information or records shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or

otherwise disclosed by the board to any other person or agency.

J. The board may refuse to consider any application which is not complete in every detail, including submission of every document required by the application form and instructions. The board may, in its discretion, require a more detailed or complete response to any request for information set forth in the application form as a condition for consideration of an application.

K. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 5 of these rules.

L. To assure equal opportunity for all persons, and in accordance with the Americans with Disabilities Act, Public Law 101-336, the board shall make reasonable accommodations for an applicant for licensure by examination if the applicant has a qualified disability pursuant to applicable law and is approved by the board. The board requires notification of an applicant's disability no later than receipt of a completed application form and fee. The notification by the applicant should include the type of accommodation required. A copy of the tests performed and the diagnosis made by a physician qualified to administer such tests must be submitted with objective documentation of the disability. Accommodations to be made by the board should be reasonable in that they should not impose undue hardship on the board. Accommodations for persons with disabilities may include accommodations that are reasonably appropriate for the disability and are not limited to extended time for the examination, a map of the examination facility indicating wheelchair accessible entrances, elevators, restrooms, and examination rooms.

M. Every applicant shall personally complete, sign, and date his application for licensure and oath. The application must be notarized by a notary in the country in which the applicant resides and forwarded directly to the board.

N. An application which is incomplete will be closed after one year of inactivity. At the end of this period, any application which is not completed will be considered abandoned and closed by the board and fees paid to the board will not be refunded. Should the applicant re-apply after his incomplete application is closed, he shall be required to begin the process anew, including the payment of the application fee to the board.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2413 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 26:1444 (July 2000), amended by the Physical Therapy Board, LR 37:3040 (October 2011).

### **§153. Effect of Application**

A. Submission to the board of an application for licensure constitutes 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 physical therapy, each physician or other health care practitioner whom the applicant has

consulted or seen for diagnosis or treatment, and each professional organization 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 the application. With respect to such information or documentation, the submission of an application for licensure to the board constitutes consent by the applicant for 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 be entitled to.

B. By submission of an application to the board for licensure or renewal, an applicant agrees to submit to physical, mental, or substance abuse examinations or evaluations, if, when, and in the manner directed by the executive director, and waives all objections to the admissibility or disclosure of findings, reports or recommendations to the board on grounds of privacy or privileges provided by law. The expense of any such examination or evaluation shall be borne by the applicant.

C. Submission of an application for licensure constitutes authorization 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 Subsections A or B of this Section to any person, firm, corporation, association or governmental entity having a lawful, legitimate, and reasonable need therefore including, without limitation, the physical therapy licensing authority of any state; the FSBPT, APTA and its state affiliates; federal, state, county, or parish and municipal health and law enforcement agencies, including the Louisiana Department of Health and Hospitals; and the Armed Services.

D. An applicant who submits false information may be denied licensure by the board.

E. If the board rejects an application for licensure, the reasons for the rejection shall be provided to the applicant. The applicant may submit additional information and request reconsideration by the board. If the applicant remains dissatisfied, a formal hearing may be requested.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2413 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3041 (October 2011).

## **Subchapter G. Examination**

### **§155. Designation of Examination**

A. The examination approved by the board pursuant to R.S. 37:2414 shall be standardized and nationally accepted by FSBPT and/or APTA.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 26:1445 (July 2000) amended by the Physical Therapy Board, LR 37:3041 (October 2011).

### **§157. Eligibility for Examination**

A. To be eligible for examination by the board, an applicant shall possess all qualifications for licensure prescribed by §129.A. However, an applicant who has completed, or will complete prior to examination, his physical therapy or physical therapist assistant education, but who does not yet possess a degree or certificate as required by §129.A.4 or §129.B.4, shall be deemed eligible for examination upon submission to the board of a letter subscribed by the authorized representative of an approved school certifying that the applicant has completed all academic education at such school or college, that a degree in physical therapy or physical therapist assisting will be conferred at the next scheduled convocation of such school, and specifying the date on which such degree will be awarded.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3042 (October 2011).

### **§159. Dates, Places of Examination**

A. Once the application process, including the payment of fees is completed, the applicant will be notified of his eligibility to schedule the examination with an approved testing service.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 23:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011).

### **§161. Administration of Examination**

A. The board's licensing examination is administered by an approved testing service and is computer based. The testing service is authorized and directed by the board to obtain positive photographic identification from all applicants appearing and properly registered for the examination; to establish and require examinees to observe an appropriate seating arrangement; to provide appropriate instructions for taking the examinations; to fix and signal the time for beginning and ending the examination; to prescribe such additional rules and requirements as are necessary or appropriate to the taking of the examination in the interest of the examinees; and to take all necessary and appropriate actions to secure the integrity of the examination process.

B. An applicant for examination shall pay the site fee for the examination directly to the testing service at the time of scheduling with the testing service and in the amount and manner prescribed by the testing service.

C. An applicant who appears for examination shall:

1. present to the appropriate representative of the testing service positive personal photographic and other identification in the form prescribed; and

2. fully and promptly comply with any and all rules, procedures, instructions, directions, or requests made or prescribed by the testing service.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011).

### **§163. Subversion of Examination Process**

A. An applicant who engages or attempts to engage in conduct which subverts or undermines the integrity of the examination process shall be subject to the sanctions specified in §167 of this Subchapter.

B. Conduct which subverts or undermines the integrity of the examination process includes:

1. refusing or failing to fully and promptly comply with any rules, procedures, instructions, directions, or requests made or prescribed by representatives of the testing service;

2. removing from the examination room or rooms any of the examination materials;

3. reproducing or reconstructing, by copying, duplication, written notes or electronic recording, any portion of the licensing examination;

4. selling, distributing, buying, receiving, obtaining, or having unauthorized possession of current, future, or previously administered licensing examination;

5. communicating in any manner with any other examinee or any other person during the administration of the examination;

6. copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the examination;

7. having in one's possession during the administration of the examination any materials or objects other than the examination materials distributed, including, without limitation, any books, notes, recording devices, or other written, printed or recorded materials or data of any kind;

8. impersonating an examinee by appearing for an applicant and taking the examination for, and in the name of an applicant other than himself;

9. permitting another person to appear for and take the examination on one's behalf and in one's name; or

10. engaging in any conduct which disrupts the examination process for other examinees.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011).

### **§165. Finding of Subversion**

A. When, during the administration of examination, there exists reasonable cause to believe that an applicant is engaging, or attempting to engage, in subversion of the exam process, appropriate action shall be taken to promptly terminate such conduct and to report such conduct to the board.

B. In the event of suspected conduct described by §163.B.5 or 6, the suspect applicant shall be permitted to

complete the examination, but shall be removed at the earliest practical opportunity to a location precluding such conduct.

C. When the board has reasonable cause to believe that an applicant has engaged in or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board shall notify the applicant and provide him with an opportunity for a hearing pursuant to the Administrative Procedure Act and applicable board rules.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:663 (July 1991), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011).

#### **§167. Sanctions for Subversion of Examination**

A. An applicant who is found by the board, prior to the administration of the examination, to have engaged in or attempted to engage in conduct which could subvert or undermine the integrity of the examination process may be permanently disqualified from taking the examination and from licensure as a PT or PTA in the State of Louisiana.

B. An applicant who is found by the board to have engaged in or attempted to engage in conduct which subverts or undermines the integrity of the examination process shall be deemed to have failed the examination. Such failure shall be recorded in the official records of the board.

C. In addition to the sanctions permitted or mandated by §167.A and B, as to an applicant found by the board to have engaged in or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board may:

1. revoke, suspend, or impose probationary conditions on any license which has been issued to such applicant;
2. disqualify the applicant, permanently or for a specific period of time from eligibility for licensure in the State of Louisiana; or
3. disqualify the applicant, permanently from eligibility for examination.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3043 (October 2011).

#### **§169. Passing Score**

A. The board adopts a criterion-referenced passing point of 600 which is based on a scale ranging from 200 to 800.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A. (1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 21:1243 (November 1995), amended by the Physical Therapy Board, LR 37:3043 (October 2011).

#### **§171. Restriction, Limitation on Examinations, Additional Requirements**

A. Applicants must successfully pass the examination to obtain a license to practice in Louisiana as a PT or PTA.

B. An applicant, who has failed the examination for the first time, shall have no more than two years from the date of the first examination and no more than four attempts to successfully pass the examination.

C. Applicants who have failed the examination on three occasions, shall, prior to re-application:

1. develop and submit to the board a written remediation plan for additional preparation in areas of identified weakness which shall include two or more of the following:

- a. Practice Exam and Assessment Tool (PEAT) offered by FSBPT;
- b. examination Performance Feedback Report offered by FSBPT;
- c. take a commercial licensure review course;
- d. take a board approved continuing education course;
- e. work as a technician, either as paid staff or volunteer, under the supervision of a board approved licensed PT;
- f. other board approved remediation activity;

2. enter an agreement with the board for an acceptable time table for completion of an approved remediation plan;

3. submit evidence to the board of successful completion of remediation activities with re-application and prior to the scheduling of the examination.

D. No person may be licensed by the board who has failed the examination four or more times, whether or not the examination was taken in Louisiana. Applicants who fail the examination four or more times must repeat an accredited physical therapy or physical therapist assistant education program before reapplying to take the licensing examination.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A. (1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3043 (October 2011).

#### **Subchapter H. Provisional License**

#### **§172. CAPTE Graduate Applicants Pending Examination**

A. An applicant who has graduated from a CAPTE accredited program and met the requirements of §151 may be issued a provisional license to engage in supervised clinical practice under this Rule and §330 when NPTE testing is available only on limited fixed dates.

B. A provisional license granted pursuant to this Rule shall be issued for 90 days and shall designate board approved supervisors and a single worksite. No more than one such provisional license shall be issued to an applicant.

C. A provisional license granted pursuant to this Rule entitles the holder to engage in the practice of physical therapy in the State of Louisiana only for the specified time and creates no right or entitlement to licensing or renewal of

the provisional license. The holder of a provisional license issued under this Section shall practice physical therapy only at the physical location approved by the board.

D. The holder of a provisional license pending examination must schedule the licensure examination prior to the provisional license expiration date.

F. When the NPTE is available on an “on demand” or “continuous” basis to applicants, such provisional licenses will not be issued.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3043 (October 2011).

### **§173. Foreign Graduate Provisional License**

A. A foreign PT graduate who possesses all of the qualifications for licensure prescribed by §137 of this Chapter, except for §137.A.3, shall be issued a provisional license to engage in supervised clinical practice under the requirements of §331 for the purpose of fulfilling in whole or part the requirement of §137.A.3.

B. The holder of a provisional license issued under this Section shall not engage in the practice of physical therapy in any respect other than at the physical location for which he is approved by the board.

C. A provisional license issued under this Section shall expire, and thereby become null and void and of no effect, on the date specified by such provisional license.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3044 (October 2011).

## **Subchapter I. License Issuance, Termination, Renewal, Reinstatement**

### **§175. Issuance of License**

A. If the qualifications, requirements and procedures prescribed by §129 are met, the executive director shall issue to the applicant a license to engage in the practice of physical therapy in the State of Louisiana.

B. A license issued pursuant to examination shall be issued within seven days following the reporting of a passing licensing examination score to the board. A license issued pursuant to reciprocity under §145 shall be issued within seven days following satisfaction of all requirements of §145.

C. A license issued to an applicant for the first time shall be for a term of one year or two years, to be determined by the birth year of the applicant.

D. A licensee shall not copy or otherwise reproduce his license or allow another person to copy or otherwise reproduce his license. Evidence of license status may be verified from the board website.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2415.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR

26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3044 (October 2011).

### **§177. Replacement of License**

A. The board may issue a license to replace a lost or destroyed license upon receipt of a written request and the appropriate fee from the licensee. The board will issue a new original license after name change upon receipt of a name change form, the appropriate fee, and a copy of the legal document enacting the name change.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2415 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3044 (October 2011).

### **§179. Expiration of Licenses**

A. Licenses issued by the board shall expire, and thereby become void, on April 30 of the last year for which it is issued.

B. The timely, acknowledged receipt of a complete application for license renewal, as provided by §181, or online verification of license renewal operates to continue licensure in full force and effect pending issuance of the renewal license document.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3044 (October 2011).

### **§181. Renewal of License**

A. Standard procedure for license renewal and the payment of required fees is by online application through the board website.

B. Renewal applications received by March 31 shall be assessed a renewal fee of \$230. Renewal applications received after March 31 and before April 30 shall be assessed a renewal fee of \$400, as provided by law. Renewal applications received after April 30 shall be deemed as applications for license reinstatement pursuant to §185.

C. For transitional purposes, licenses issued for 2012 shall expire on April 30, 2013.

D. For transitional purposes, renewal licenses issued in 2012 shall be for a term of one year or two years, to be determined by the birth year of the licensee. Thereafter, the term for license renewal shall be for two years. Licensees whose birth year ends in an odd number (2013, 2015 etc.) shall renew in odd-numbered years. Licensees whose birth-year ends in an even number (2014, 2016 etc.) shall renew in even-numbered years.

E. Licensees shall be notified by the board of license renewal deadlines. Upon written request, a renewal application shall be mailed to the licensee.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), amended by the Physical Therapy Board, LR 37:3044 (October 2011).



**§183. Restrictions on License Renewal; Restoration**

A. As required by R.S. 37:2951, the board will not renew a license if a licensee has defaulted on a loan from the Louisiana Office of Financial Assistance as per R.S. 37:2951. Upon notice from the Louisiana Office of Financial Assistance that a repayment agreement has been established, the license shall be renewed.

B. The board will not renew a license if a licensee has defaulted on court ordered or Attorney General's notice of child support arrearages. Upon receipt of notification that a repayment agreement has been established, the license shall be renewed.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3045 (October 2011).

**§185. Reinstatement of Suspended or Revoked License**

A. An application for reinstatement of a suspended license does not require satisfaction of the requirements for initial licensure.

B. Application for reinstatement of a revoked license must be made in compliance with the requirements of initial licensure in Louisiana, and shall not be heard less than three year from the revocation decision.

C. Prior to reinstatement of a license previously revoked, a hearing shall be held by the Board to afford the Respondent an opportunity to present evidence that the cause for the revocation no longer exists and to provide an opportunity for the Board to evaluate changes in the Respondent and/or the conditions which caused the revocation.

D. After evaluation, the board may:

1. deny reinstatement of a revoked license;
2. reinstate a revoked license;
3. require the satisfactory completion of a specific program or remedial education approved by the board; and
4. require monitoring of the Respondent's physical therapy practice as specified by the board.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3045 (October 2011).

**§187. Reinstatement of Lapsed License**

A. An expired license may be reinstated pursuant to the requirements set forth below.

B. A licensee who fails to timely renew his license as provided in §181 shall submit:

1. a complete reinstatement application;
2. the renewal fee of \$400;
3. the reinstatement fee of \$75; and
4. an explanation for the failure to timely renew his license.

C. Reinstatement pursuant to this Section shall also require that applicant or his employer reimburse or reverse charges which have been made for patient treatment during the period for which the applicant did not have a current and valid license.

D. Reinstatement pursuant to this Section does not insulate the applicant from disciplinary action which the

board finds appropriate for practicing without a current license after April 30 to the date of reinstatement.

E. A licensee who allows his license to lapse for reasons other than §187.B shall submit:

1. a complete reinstatement application;
2. the renewal fee of \$230;
3. the reinstatement fee of \$75;
4. pass the board's online jurisprudence examination;
5. an explanation for allowing his license to lapse;
6. two letters of character recommendation from reputable currently licensed physical therapists, physicians, dentists, podiatrists, or chiropractors; and
7. verification of licensure from all states in which the applicant has applied for or held a license/permit.

F. To be eligible for license reinstatement under this Section, an applicant shall have met the continuing education requirements pursuant to §194 within the 24 months preceding his application.

G. Any person whose license has lapsed for more than five years may apply for reinstatement of licensure upon payment of the renewal fee and the reinstatement fee under the following conditions:

1. licensee shall be subject to a three month period of supervised clinical practice;
2. licensee may only practice under the on-premises supervision of a board approved PT who has practiced no less than three years with a Louisiana license in good standing;
3. completion of the General Practice Review Tool offered by the FSBPT and satisfactory completion of continuing education courses indicated by that tool to bring the Applicant's knowledge to current standards.
4. a supervision agreement must be approved by the executive director before a provisional license will be issued. The supervision agreement shall be in force for the entire three month supervisory period. This licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the Supervising PT of Record shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the Supervising PT of Record, the board, in its discretion, may require an additional three month supervisory period; and
5. completion of remedial courses which may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 28:1979 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3045 (October 2011).

**§189. Reinstatement after Military Service**

A. An applicant seeking reinstatement of a license which lapsed during active military service shall be required to pay a license renewal fee only, and that fee shall be proportional to the months remaining in his renewal cycle.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3045 (October 2011).

## Subchapter J. Continuing Education

### §191. Purpose

A. To be approved by the board, a continuing education course or activity as defined in §123, must contribute directly to the professional competence of the licensee and must directly relate to the skills and knowledge required to implement the principles and methods of physical therapy.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), LR 37:3046 (October 2011).

### §193. Course Review Requirements

A. Courses and activities approved by the board in advance of presentation will be posted on the Board website and will indicate the hours of credit which may be earned and which classification under §194.B the course falls to generate acceptable continuing education credits for licensees.

B. Consideration of courses or activities for approved continuing education credits shall be based on the content criteria in §195 and the administrative and program criteria as set forth in the Continuing Education Policy posted on the board website.

C. Proposed continuing education courses or activities shall be submitted to the board for approval in advance of presentation on a form provided on the board website. Sponsors of continuing education courses and activities, or licensees seeking course approval, should look to the board website for guidance on lead time required for review of submissions. Generally, courses or activities of longer duration will require more time for review than courses of short duration.

D. Courses and activities sponsored by the APTA pursuant to content criteria described in §195 will generate acceptable continuing education credits toward the biennial requirements for licensees described in §194.

E. Courses and activities sponsored by the Louisiana Physical Therapy Association and any Louisiana CAPTE accredited program, which meet the content criteria described in §195, will generate acceptable continuing education credits toward the biennial requirements for licensees described in §194. Such courses shall be submitted in advance of presentation in compliance with §193A and B on a form provided on the board website.

F. Charges for course or activity review shall be as follows:

1. review charge for APTA, LPTA, and Louisiana CAPTE accredited program sponsors will be waived;

2. course sponsor prior review charge for sponsors other than §193.F. shall be based on course or activity requested contact hours;

a. course or activity less than eight hours shall be assessed a review charge of \$50;

b. course or activity greater than eight hours shall be assessed a review charge of \$75;

3. licensees seeking course or activity prior approval for a course or activity not listed on the board website as pre-approved shall be assessed a review charge of \$20.

G. Courses or activities not approved in advance by the board may generate acceptable continuing education credits for licensees under these circumstances:

1. the licensee submits an application for approval of the course or activity using the form provided on the board website;

2. the licensee submits the application for course or activity approval within 90 days of completion; and

3. in no case will such application for course or activity approval be considered during the last 90 days of the requestor's license term.

H. Course or activity sponsors may be required to submit to the board verified records of attendance and completion of a sponsored course or activity. No licensee shall receive credit for time not actually spent attending the program.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3046 (October 2011).

### §194. Biennial Requirements

A. Unless exempted under §198, licensees shall successfully complete, document and report to the board at least 30 hours of board-approved continuing education courses or activities in the biennial renewal period. No carryover of continuing education hours from one renewal period to another shall be allowed. Continuing education will be granted in the reporting period in which the academic coursework, clinical instruction, tool, residency, or fellowship is completed.

B. The four types of approved courses or activities and requirement for each are:

1. jurisprudence—a minimum of two contact hours;

2. ethics or professionalism—a minimum of two contact hours;

3. clinical/preventive—a minimum of 18 contact hours, up to six of which may be earned by completion of a board approved self assessment tool

4. administrative—a maximum of eight contact hours may be applied during each renewal period. Additional clinical/preventive hours may be substituted for administrative.

C. No more than 15 hours of continuing education submitted to the board shall be home study, internet or online courses or by other distance learning methods. This excludes the jurisprudence requirement, if taken online.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3046 (October 2011).

## §195. Content Criteria

A. Course or activity content shall address physical therapy competence and practice and shall be designed to meet one of the following goals:

1. update knowledge and skills required for competent performance beyond entry level of the PT or PTA at the time the licensee entered the profession;
2. allow the licensee to enhance his knowledge and skills;
3. provide opportunities for inter-disciplinary learning;
4. extend the limits of professional capabilities and opportunities; and
5. facilitate personal contribution to the advancement of the profession.

B. Required continuing education, as defined in §123, shall include the following:

1. passage of the jurisprudence examination, which may be taken online, or attendance at a traditional board-sponsored Jurisprudence course, either of which fulfills the two hour Jurisprudence requirement;

2. a minimum of two contact hours related to ethics or professionalism;

3. a minimum of 18 contact hours of clinical/preventive courses, six of which may be a board approved self-assessment tool, or activities in increments of no less than two contact hours, including:

a. teaching an approved clinical/preventive course or activity. A licensee may receive two hours of credit for each contact hour approved for the course or activity, not to exceed 10 hours. This credit will be given only for the first time the course is presented, during the renewal period;

i. board policy regarding course approval during subsequent renewal periods will be available on the board website.

b. ten hours of credit for an initial certification by the American Board of Physical Therapy Clinical Specialties;

c. one hour of credit for every two hours spent in an approved post-professional clinical residency or fellowship, not to exceed ten hours credit;

d. coursework in a postgraduate physical therapy curriculum, or transitional DPT program from an accredited college or university will be accepted. Courses will be credited for each satisfactorily completed hour resulting in a grade of B or higher. One semester hour shall be equal to 10 contact hours;

i. board policy regarding submission of materials to demonstrate completion will be available on the board website;

4. licensees may obtain credit for no more than eight contact hours for administrative courses or activities. Administrative courses or activities may include any combination of the following:

a. a course or activity designed to enhance skills in management of a physical therapy practice;

b. a maximum of five hours credit for clinical instructors serving as the primary clinical instructor for PT and PTA students or provisional licensees. One hour credit may be earned per 120 hours of clinical instruction during the renewal period. Proof of clinical instruction shall be documented on a form provided by the board and shall be signed by two of the following:

- i. clinical instructor;
- ii. student;
- iii. center coordinator clinical education; or
- iv. academic coordinator clinical education;

c. a maximum of five clinical hour credit during the renewal period for publication of scientific papers, abstracts, textbook chapters and poster or platform presentations at conferences relating to PT. Textbook chapter credit will be given only for the year of publication.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011).

## §197. Reporting Requirements; Audit

A. It is the responsibility of each licensee to assure that his continuing education hours are timely reported with his license renewal application.

B. The reporting of continuing education hours by course or activity sponsors and by licensees shall be made only on forms approved by and available from the board website. Forms filed by course or activity sponsors or licensees shall be legibly printed or typewritten, and shall be completed and verified by the course or activity sponsor or licensee. A stamp or other image provided by and imprinted by the course sponsor on course materials shall suffice for proof of completion of that continuing education activity.

C. Continuing education activities undertaken for the purpose of license renewal shall be maintained by the licensee in a file in which records of activities are kept, including dates, subjects, duration of the program, certificates of participation and completion, and any other appropriate documentation for a period of four years after the program date. Upon request, course or activity sponsors and licensees shall supply the board with such documentation.

D. The board shall conduct an audit of the continuing education records of a number of the licensees to be determined by the board each renewal period. The board will notify licensees who are randomly selected for audit to determine compliance with the continuing education requirements. Licensees chosen for the audit shall submit to the board by the specified date copies of all records and documentation showing completion of the continuing education courses or activities previously submitted for fulfillment of continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended LR 19:208 (February 1993), LR 21:394 (April 1995), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011).

## §198. Exemptions from CE Requirements

A. PTs or PTAs licensed in Louisiana are exempt from the Subchapter J continuing education requirements for the calendar year in which they graduate from an accredited

physical therapy education program. For the second year of the licensee's renewal period, 15 contact hours must be completed and reported in keeping with the requirements of §194.

B. Upon approval by the board of a written request made in compliance with Subsection C, the board may extend the period for compliance or exempt the following from compliance with the Subchapter J. continuing education requirements:

1. licensees on extended active military service for a period in excess of three months during the applicable reporting period; or

2. licensees who are unable to fulfill the requirement because of illness, natural disaster, or other personal hardship.

C. Written requests for an exemption under Subsection B, including supporting documentation, must be received by the board at least 45 days prior to the end of the renewal period for which the exemption is sought, or immediately after the licensee becomes aware of the facts or circumstances upon which the exemption is sought, whichever is later.

1. A licensee who is a member of the armed forces reserves and called to active military service will have his CEUs prorated in proportion to the number of months of documented active duty.

2. A licensee whose license expires during a period of active military service will be given a complete waiver of continuing education requirements for the renewal period in which he is activated. Active duty military personnel shall be exempt proportionally for continuing education for months of documented active service in the renewal cycle during which active military service terminates.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended by the Physical Therapy Board, LR 37:3047 (October 2011).

### **§199. Noncompliance and Reinstatement**

A. Noncompliance. Noncompliance with continuing education requirements includes, but is not limited to, incomplete reports, unsigned reports, unsigned verification of course or activity completion, failure to report a sufficient number of approved continuing education hours as defined in §193, or any other matters considered to be noncompliance by the board.

B. Notice. The board shall send written notice of noncompliance to a licensee stating that his license has lapsed for failure to renew pursuant to R.S. 37:2417. The notice shall request that the licensee furnish to the board within 30 days of receipt of the notice, the following:

1. a written explanation for failure to complete required CE; or if applicable;

2. an affidavit with documentary proof that the licensee has complied with the continuing education requirements, or an affidavit setting forth the reasons for failure to comply with the continuing education requirements because of illness, natural disaster, other personal hardship or extended active military service during the reporting period and stating that he did not provide physical therapy services during that period.

C. Finding. If the licensee:

1. satisfactorily explains the failure to renew, his license may be reinstated upon payment of the renewal fee for the current renewal period and the reinstatement fee; or

2. does not successfully establish compliance or acceptable exemption from compliance with continuing educational requirements, he may be required to take the licensing examination and pay the fees for examination and re-licensure. Passage of the examination fulfills the continuing education requirements for the year the noncompliance occurred, but shall not be applicable for subsequent reporting periods.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended LR 19:208 (February 1993), LR 21:394 (April 1995), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3048 (October 2011).

## **Subpart 2. Practice**

### **Chapter 3. Practice**

#### **Subchapter A. General Provisions**

##### **§301. Scope of Chapter**

A. The rules of this Chapter govern the practice of physical therapy in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2407 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Physical Therapy Board, LR 37:3048 (October 2011).

##### **§303. Professional Standards**

A. A licensed PT is authorized to engage in the practice of physical therapy as set forth in the Practice Act and the board's rules which includes, but is not limited to, the performance of physical therapy evaluations, consultative services, wound care and debridement, the storage and administration of aerosol and topical agents, the performance of passive manipulation, and preventive services all as more fully defined in §123.

B. A PT is responsible for managing all aspects of the physical therapy care of each patient.

C. A PT shall exercise sound professional judgment based upon his knowledge, skill, education, training, and experience, and shall perform only those procedures for which he is competent. If, during evaluation, reassessment or screening, the PT finds that treatment which is outside the scope of his knowledge, experience, or expertise is needed, the PT shall notify the patient or client and provide a referral to an appropriate healthcare practitioner.

D. Before working in a school or home health setting, a PTA shall have one year of supervised work experience.

E. A PTA may act as a Clinical Instructor for a PTA student, provided the PTA has one year of supervised work experience in the practice setting in which he will act as the Clinical Instructor for the PTA student.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR

26:1447 (July 2000), LR 34: 1909 (September 2008), amended by the Physical Therapy Board, LR 37:3048 (October 2011).

### **§305. Practice with Prescription or Referral**

A. Except as set forth in R.S. 37:2418.C and §307.C, physical therapy treatment shall be based on the prescription or referral of a person licensed to practice medicine, surgery, dentistry, podiatry, or chiropractic.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011).

### **§307. Physical Therapy Services without Prescription or Referral**

A. These rules are intended to facilitate and implement the provisions of R.S. 37:2418.C through C(5). They are meant as practical guidelines, while maintaining flexibility in the rendering of physical therapy services, without eliminating the opportunity for oversight and supervision.

B. As used in connection with providing wellness or preventive services referred to in R.S. 37:2418 C(4), the PT shall:

1. perform a screening to determine whether treatment or wellness/preventive services are indicated. The therapist shall inform the individual of the screening results and make recommendations for follow-up with the appropriate health care provider if needed;

2. assess the client's wellness/preventive services needs, and, if such services are indicated and desired by the client, develop a written plan, which describes the services to be provided to the client.

C. Regarding physical therapy treatment provided pursuant to R.S. 37:2418.C(5):

1. physical therapy treatment for a diagnosed condition or conditions may be provided after the PT has determined that the condition has been diagnosed within the preceding 90 days by a health care provider authorized by law to make a diagnosis.

2. the PT shall provide to the diagnosing healthcare provider, the plan of care for physical therapy services within 15 days of the physical therapy intervention, as set forth in R.S. 37:2418(C)(5).

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 31:441 (February 2005), amended by the Physical Therapy Board, LR 37:3049 (October 2011).

### **§309. Early Childhood Services**

A. In the provision of early childhood services through the Early Childhood Intervention (ECI) program, the PT conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill family-centered goals.

B. Subject to the provisions of this Section, the PT shall implement physical therapy services in accordance with the recommendations accepted by the Interdisciplinary Team, as stated in the Individual Family Service Plan.

C. Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1436, or when warranted by a

change in the child's condition, and include onsite reexamination of the child.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011).

### **§311. Treatment with Dry Needling**

A. The purpose of this rule is to establish standards of practice, as authorized by R.S. 37:2405 A.(8), for the utilization of dry needling techniques, as defined in §123, in treating patients.

B. Dry needling is a physical therapy treatment which requires specialized physical therapy education and training for the utilization of such techniques. Before undertaking dry needling education and training, a PT shall have no less than two years experience working as a licensed PT. Prior to utilizing dry needling techniques in patient treatment, a PT shall provide documentation to the executive director that he has successfully completed a board-approved course of study consisting of no fewer than 50 hours of face-to-face instruction in intramuscular dry needling treatment and safety. Online and other distance learning courses will not satisfy this requirement. Practicing dry needling without compliance with this requirement constitutes unprofessional conduct and subjects a licensee to appropriate discipline by the board.

C. In order to obtain board approval for courses of instruction in dry needling, sponsors must document that instructors utilized have had no less than two years experience utilizing such techniques. Instructors need not be physical therapists, but should be licensed or certified as a healthcare provider in the state of their residence.

D. A written informed consent form shall be presented to a patient for whom dry needling is being considered, telling the patient of the potential risks and benefits of dry needling. A copy of a completed form shall be preserved in the patient treatment record and another copy given to the patient.

E. Dry needling treatment shall be performed in a manner consistent with generally accepted standards of practice, including sterile needle procedures and the standards of the U.S. Centers for Disease Control and Prevention. Treatment notes shall document how the patient tolerated the technique and the outcome of treatments.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011).

### **§313. Transfer of Patient Care**

A. A PT shall document the transfer of care of the patient, as appropriate, to another health care provider in the event of elective termination of physical therapy services by the PT.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011).

### **§315. Legend Drugs and Devices**

A. In providing physical therapy as authorized by law, PTs are authorized to procure from licensed distributors, store and utilize legend devices and topical legend drugs which are employed in the delivery of physical therapy.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011).

### §317. Licensee Information

A. Changes to licensee information. Applicants and licensees must notify the board in writing of any change in a residential or business address, telephone number or email address within 30 days that such change takes effect.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2415 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3050 (October 2011).

### Subchapter B. Prohibitions

#### §321. Unauthorized Practice; Practice Restrictions

A. The clinical supervisor must be an APTA certified clinical instructor or, within the three years prior to serving as a supervisor, have previously served as clinical instructor for a PT student as part of a CAPTE accredited program. To be approved as a clinical supervisor, a PT shall have at least three years of clinical experience with an unrestricted license. A clinical supervisor shall not supervise more than one provisional licensee at any given time.

B. Before an individual is issued a provisional license, the applicant shall submit to the board:

1. a signed Statement of Responsibility completed by the requesting clinical supervisor;
2. a signed Statement of Placement completed by the director of physical therapy services at the practice site where the clinical supervised practice will take place which includes the name, address, and telephone number and email address for such person; and
3. a description of the types of physical therapy services provided at the site.

C. The executive director shall approve or deny a request made under §331 after assessing whether the facility provides the opportunity for a provisional license holder to attain the knowledge, skills, and attitudes to be evaluated according to the board's Clinical Performance Evaluation; and determines if the site provides a broad base of clinical experience to the provisional licensee including a variety of physical agents, therapeutic exercises, evaluation procedures, and patient physical therapy diagnoses.

1. Clinical sites are approved on a case-by-case basis.

D. A provisional licensee shall not begin practicing physical therapy until the executive director has approved the clinical supervisor and the work site, and the provisional licensee has completed the personal interview with a board representative, and has received his provisional license.

E. A provisional licensee shall complete a supervised clinical practice at a board-approved clinical site for a minimum of four hours per day, with on-premises supervision by a board-approved PT.

1. The supervised clinical practice shall consist of no less than 1,000 hours and shall be accomplished at a rate of no more than 40 hours and no less than 20 hours per week.

2. The approved clinical supervisor shall co-sign all of the provisional licensee's treatment documentation within five days of treatment.

F. Supervisor Absence. If, due to illness or continuing education, the board designated Supervising PT of Record

cannot fulfill his supervisory obligations for a provisional licensee:

1. if absent for five or fewer consecutive days, another PT in good standing may supervise in his place. In such case, the substitute PT is not required to be approved by the board; however, the board designated supervisor, the substitute supervisor, and the supervised individual, shall all be held accountable for the care provided by those supervised;

2. if absent for more than five consecutive days, the Supervising PT of Record shall send a written request to the executive director for approval of a substitute supervising PT during his period of absence. The substitution can only occur once written approval is provided by the executive director to the designated supervisor.

G. Required supervised clinical practice shall be:

1. no less than 333 hours in a hospital setting;
2. no less than 333 hours in an out-patient clinic; and
3. no less than 334 hours in one or more of these practice settings: home health, extended care, rehabilitation clinic, school system, or private practice.

H. The approved clinical supervisor shall:

1. observe, assist and support the provisional licensee during the supervised clinical practice;
2. rate the provisional licensee's performance during his clinical practice using criteria in the board's Clinical Performance Evaluation, indicating the dates of observation, demonstration or discussion of each skill;
3. assess skills required for success in such setting with recommendations for improvement upon completion of a supervised clinical practice site;
4. submit the results of the supervised clinical practice to the board in a timely manner. Approval of the next clinical placement or granting of license, shall not take place until this report is received and evaluated by the executive director; and
5. continue with clinical supervision until the supervised individual receives notice of termination of supervision by issuance of permanent license.

I. A provisional licensee shall not supervise any personnel unless assistance is required to ensure the safety and welfare of the patient during ambulation, transfers, or functional activities.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2423 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3050 (October 2011).

#### §323. Use of Titles and terms; Restrictions

A. A PT shall use the letters "P.T." in connection with his name or place of business to denote licensure. A PTA shall use the letters "P.T.A." in connection with his name to denote licensure.

B. A PT student who is pursuing a course of study leading to a degree as a PT in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education shall use the letters "S.P.T." in connection with his name while participating in this program. A PTA

student who is pursuing a course of study leading to a degree as a PTA in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapist assisting education shall use the letters "S.P.T.A." in connection with his name while participating in this program.

C. No person or business entity, its employees, agents, or representatives shall use in connection with that person's name or the name or activity of the business, the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist", "registered physical therapist", "licensed physical therapist", "doctor of physical therapy", the letters "PT", "DPT", "LPT", "RPT", "physical therapist assistant", "P.T.A.", "physiotherapist assistant", or any other words, abbreviations, or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a PT licensed pursuant to the Practice Act.

D. No person or business entity shall advertise or otherwise promote another person as being a "physical therapist", "physiotherapist", "P.T.", "physical therapist assistant", "physiotherapist assistant", or "P.T.A" unless the individual so advertised or promoted is licensed as a PT or PTA under the Practice Act. No person or business entity shall offer, provide, or bill any person for "physical therapy" or "physiotherapy" unless the individual performing those services is licensed pursuant to the Practice Act.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2419 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3050 (October 2011).

### **§325. Exemptions**

A. The prohibitions of §321.A of this Chapter shall not apply to a person employed by any department, agency, or bureau of the US Government when acting within the course and scope of such employment, nor shall they prohibit a person from acting under and within the scope of a license issued by an agency of the State of Louisiana.

B. A student shall be exempt from licensure when pursuing a course of study leading to a degree in physical therapy or physical therapist assisting in a physical therapy education program approved by the board and while satisfying a supervised clinical rotation related to his education.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 24:40 (January 1998), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3051 (October 2011).

## **Subchapter C. Supervised Practice**

### **§329. Scope of Chapter**

A. The rules of this Subchapter prescribe certain restrictions and requirements for supervision of physical therapists assistants, provisional licensees, technicians and students.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 19:208 (February 1993), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3051 (October 2011).

### **§330. Supervision Requirements for CAPTE Graduates Pending Examination**

A PT holding a provisional license pending examination shall engage in the practice of physical therapy under the supervision of a board approved supervisor.

B. Supervision of a PT with a provisional license pending examination shall include:

1. daily face to face communication between the supervising physical therapist and provisional licensee;
2. on premises observation of patient care in the provisional licensee's practice location, a minimum of 2 hours per day with a minimum total of 10 hours per week; and
3. availability of the supervisor at all times to provide advice to the provisional licensee and to the patient during physical therapy treatment given by a provisional licensee.

C. A PTA holding a provisional license pending examination shall engage in the practice of physical therapy under the supervision of a board approved supervisor. The PTA applicant holding a provisional license shall receive continuous supervision as defined in §123.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405.2.A(4).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 33, amended by the Physical Therapy Board, LR 37:3051 (October 2011).

### **§331. Foreign Graduate Supervised Clinical Practice with Provisional Licensees**

A. The clinical supervisor must be an APTA certified clinical instructor or, within the three years prior to serving as a supervisor, have previously served as clinical instructor for a PT student as part of a CAPTE accredited program. To be approved as a clinical supervisor, a PT shall have at least three years of clinical experience with an unrestricted license. A clinical supervisor shall not supervise more than one provisional licensee at any given time.

B. Before an individual is issued a provisional license, the applicant shall submit to the board:

1. a signed Statement of Responsibility completed by the requesting clinical supervisor;
2. a signed Statement of Placement completed by the director of physical therapy services at the practice site where the clinical supervised practice will take place which includes the name, address, and telephone number and email address for such person; and
3. a description of the types of physical therapy services provided at the site.

C. The executive director shall approve or deny a request made under §331 after assessing whether the facility

provides the opportunity for a provisional license holder to attain the knowledge, skills, and attitudes to be evaluated according to the board's Clinical Performance Evaluation; and determines if the site provides a broad base of clinical experience to the provisional licensee including a variety of physical agents, therapeutic exercises, evaluation procedures, and patient physical therapy diagnoses.

1. Clinical sites are approved on a case-by-case basis.

D. A provisional licensee shall not begin practicing physical therapy until the executive director has approved the clinical supervisor and the work site, and the provisional licensee has completed the personal interview with a board representative, and has received his provisional license.

E. A provisional licensee shall complete a supervised clinical practice at a board-approved clinical site for a minimum of four hours per day, with on-premises supervision by a board-approved PT.

1. The supervised clinical practice shall consist of no less than 1,000 hours and shall be accomplished at a rate of no more than 40 hours and no less than 20 hours per week.

2. The approved clinical supervisor shall co-sign all of the provisional licensee's treatment documentation within five days of treatment.

F. Supervisor Absence. If, due to illness or continuing education, the board designated Supervising PT of Record cannot fulfill his supervisory obligations for a provisional licensee:

1. if absent for five or fewer consecutive days, another PT in good standing may supervise in his place. In such case, the substitute PT is not required to be approved by the board; however, the board designated supervisor, the substitute supervisor, and the supervised individual, shall all be held accountable for the care provided by those supervised;

2. if absent for more than five consecutive days, the Supervising PT of Record shall send a written request to the executive director for approval of a substitute supervising PT during his period of absence. The substitution can only occur once written approval is provided by the executive director to the designated supervisor.

G. Required supervised clinical practice shall be:

1. no less than 333 hours in a hospital setting;  
2. no less than 333 hours in an out-patient clinic; and  
3. no less than 334 hours in one or more of these practice settings: home health, extended care, rehabilitation clinic, school system, or private practice.

H. The approved clinical supervisor shall:

1. observe, assist and support the provisional licensee during the supervised clinical practice;

2. rate the provisional licensee's performance during his clinical practice using criteria in the board's Clinical Performance Evaluation, indicating the dates of observation, demonstration or discussion of each skill;

3. assess skills required for success in such setting with recommendations for improvement upon completion of a supervised clinical practice site;

4. submit the results of the supervised clinical practice to the board in a timely manner. Approval of the next clinical placement or granting of license, shall not take place until this report is received and evaluated by the executive director; and

5. continue with clinical supervision until the supervised individual receives notice of termination of supervision by issuance of permanent license.

I. A provisional licensee shall not supervise any personnel unless assistance is required to ensure the safety and welfare of the patient during ambulation, transfers, or functional activities.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2410.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 15:388 (May 1989), LR 17:667 (July 1991), LR 19:208 (February 1993), LR 24:41 (January 1998), amended by the Physical Therapy Board, LR 37:3051 (October 2011).

### **§333. Physical Therapist Responsibilities; Supervision of Physical Therapist Assistants**

A. A Supervising PT of Record is responsible for and shall participate in the patient's care. Such participation by the PT shall include, at a minimum:

1. conducting the initial patient evaluation and documenting a plan of care for the patient;

2. treating and reassessing the patient at least every sixth treatment day or every 30 days, whichever occurs first;

3. treating the patient for the final treatment session unless the patient is physically unavailable; and

4. writing the discharge summary.

B. A Supervising PT of Record shall comply with the following requirements in providing patient care and in supervising PTAs.

1. The level of responsibility assigned to a PTA pursuant to §333 is at the discretion of the Supervising PT of Record who is ultimately responsible for the care provided by this PTA.

2. In all settings, the Supervising PT of Record shall:

a. perform an evaluation and set up a treatment plan on each patient prior to implementation of treatment;

b. treat and reassess the patient at least every sixth treatment day or every 30 days, whichever occurs first;

c. treat and assess the patient for his final treatment session when feasible, as defined in §123, and write a discharge summary;

d. be readily accessible by beeper or telephone and available to the patient by the next scheduled treatment session upon request of the patient or PTA; and

e. hold a patient care conference with a PTA regarding the patient. The PT is responsible for determining the frequency of the conferences consistent with accepted standards of practice; however, such conference shall occur at least every sixth treatment day or every 30 days, whichever occurs first.

C. In a wellness setting, after conducting an appropriate screening as to suitability for wellness or preventive services, a PT may delegate the provision of client wellness or preventive services to a PTA or a technician to perform and/or assist in the implementation of wellness services.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418.F and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy



Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3052 (October 2011).

### **§335. Supervision of Physical Therapy Technicians**

A. The level of responsibility assigned to a PT technician is at the discretion of a Supervising PT of Record who is ultimately responsible for the care provided by the technician. Documentation of education or in-service training completed by the physical therapy technician shall be maintained in the technician's personnel file.

1. In all practice settings, during the provision of physical therapy services, the supervising PT shall provide continuous, in-person supervision of the physical therapy technician.

2. A physical therapy technician may assist a PTA only with those aspects of patient treatment which have been assigned to the physical therapy technician by a PT.

3. To ensure the safety and welfare of a patient during ambulation, transfers, or functional activities, the PTA may utilize one or more physical therapy technicians for physical assistance.

B. In a physical therapy wellness setting, after conducting an appropriate screening as to suitability for wellness or preventive services, a PT may delegate the provision of specified client wellness or preventive services to a physical therapy technician who has appropriate education, training or experience to perform and/or assist in the implementation of wellness or preventive services. The PT should be available to the technician by phone or other communications device when such assistance is being provided.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418.F and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011).

### **§337. Clinical Instruction of Student PTs and PTAs**

A. A clinical instructor shall provide on-premises supervision to a PT or PTA student in all practice settings. A PTA may act as a clinical instructor for a PTA student in all practice settings provided that the PT supervisor of the PTA is available by telephone or other communication device.

B. A PTA can be a clinical instructor for the PTA student provided the PTA has one year practice experience.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418.F and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011).

### **§339. Limitation on Supervision Ratios**

A. Supervision Ratio. It is the responsibility of each PT to determine the number of PTAs he can supervise safely; however, in no case shall the number of individuals

supervised by a PT on any given day exceed five, nor exceed the following limitations:

1. no more than four PTAs or technicians or any combination thereof;
2. no more than one provisional licensee; or
3. no more than five students.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2418.F and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011).

### **§341. Documentation Standards**

A. A written record of physical therapy treatment shall be maintained for each patient. A complete record shall include written documentation of prescription or referral, initial evaluation, treatment(s) provided, PT/PTA conferences, progress notes, re-evaluations or re-assessments, and patient status at discharge all as defined in §123.

1. A prescription or referral is a written request for physical therapy evaluation or treatment signed by a healthcare provider lawfully authorized to make such request which may initially be a verbal order but must be later confirmed in writing. The verbal order shall be documented by the PT in the patient's record. If the verbal order is not confirmed in writing, then the PT shall send a written communication requesting a written prescription or referral to the prescribing practitioner within 15 days of commencement of treatment or by the fifth treatment session, whichever occurs first. A copy of the written communication to the prescribing or referring practitioner must be maintained in the patient's record.

2. An initial physical therapy evaluation is the written documentation using physical and cognitive findings, objective tests and measurements, patient history, pertinent medical diagnosis, signs, symptoms, and the PT's interpretation of such findings, as well as goals and a treatment plan or program as defined in §123. The initial physical therapy evaluation shall be documented and signed by the PT performing the evaluation within seven days after performing the evaluation. An initial physical therapy evaluation shall not be documented or signed by a PTA or any other personnel.

3. Progress note is the written documentation of the patient's subjective status, changes in objective findings, and progression or regression toward established goals. A progress note shall be written and signed only by the Supervising PT of Record or PTA and shall not be written or signed by a PT technician. A progress note shall be written a minimum of once per week, or if the patient is seen less frequently, then at every visit.

4. Re-assessment or Re-evaluation is the written documentation which includes all elements of a progress note as well as the interpretation of objective findings compared to the previous evaluation with a revision of goals and treatment plans as indicated. A reassessment must be written at least once per month, or, if the patient is seen less frequently, then at every visit. A reassessment shall be

written and signed by the Supervising PT of Record and shall not be written or signed by a PTA or other personnel.

5. Treatment Record is the written documentation of each patient visit which includes specific treatment and/or any equipment provided which shall be signed or initialed by the Supervising PT of Record or PTA. A treatment record shall be maintained only if a progress note is not written for each patient visit. A treatment record may be in the form of a checklist, flow sheet, or narrative.

6. Patient Care Conference is the written documentation of the face-to-face meeting held to discuss the status of a patient. A written record of the conference shall be signed and dated by the PT and PTA and shall be entered in the patient treatment record at the time of the conference, documenting treatment recommendations and decisions made.

7. Discharge Summary is the written documentation of the reasons for discontinuation of care, degree of goal achievement and a discharge plan which shall be written and signed by the Supervising PT of Record. A discharge summary shall not be written or signed by a PTA or other personnel. A discharge summary shall be written at the termination of physical therapy care.

B. A licensee shall maintain accurate patient treatment and billing records and shall not falsify, alter, or destroy such records, the result of which would be to impede or evade investigation by the board or other lawful authorities.

C. The documentation standards set forth above do not mandate a particular format; however, a complete physical therapy record must include these elements.

D. A signature stamp shall not be used in lieu of a written signature on physical therapy patient records. Forms of electronic signatures, established pursuant to written policies and mechanisms to assure that only the author can authenticate his own entry, are acceptable.

E. Documentation by a student must be co-signed by the Supervising PT of Record or supervising PTA.

F. A written record of an initial screening for wellness or preventive services shall be kept along with plans for implementation of a wellness or preventive program.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 21:395 (April 1995), LR 26:1447 (July 2000), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011).

#### **Subchapter D. Disciplinary Proceedings**

##### **§343. Sanctions in Disciplinary Proceedings**

A. The board, after due notice and hearing as set forth herein and in the Louisiana Administrative Procedure Act, R.S. 49:950 and following, may refuse to issue a license or provisional license, or may suspend, revoke, or impose probationary conditions and/or restrictions on a licensee upon finding that the licensee has violated the Practice Act, or any of the Rules promulgated by the board.

B. Board orders in disciplinary proceeding may require the Respondent to reimburse the board for travel, meals, per diem, the cost of investigators, stenographers, attorneys, and other reasonably associated costs.

C. In placing a Respondent on probation, the board may impose such additional terms, conditions and restrictions as it deems appropriate for the period of probation. The board shall specify in its order the exact duration of the probationary period. Upon finding that a Respondent placed on probation has failed to comply with the terms and conditions of the board order, the board may take such additional disciplinary action as it deems appropriate, following notice and hearing.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3054 (October 2011).

##### **§345. Unprofessional Conduct**

A. The board will consider any charge of conduct which fails to conform to the Practice Act, and board rules to carry out the provisions of the Act and will take appropriate action where violations are found. The rules of this Chapter complement the board's authority to deny, suspend, revoke or take such other action against a licensee, as it deems appropriate.

B. As used in R.S. 37:2420.A (7) of the Practice Act and in these Rules, the term unprofessional conduct includes but is not limited to:

1. departure from, or failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice in the State of Louisiana or the Code of Ethics and related documents of APTA, or the commission of any act contrary to honesty, justice, good morals, patient safety or the best interest of the patient, whether committed in the course of the licensee's practice or otherwise, regardless of whether actual injury to a patient results therefrom, including, but not limited to:

- a. failure to use sound professional judgment;
- b. performing procedures for which the licensee lacks competence; or
- c. failure to inform and refer the patient or client to an appropriate practitioner, when the licensee becomes aware of findings and/or the need for treatment which are outside the scope of the PT's competence;

2. improperly delegating or supervising—a PT retains responsibility to his patient for the training, delivery and results of physical therapy services rendered to his patient. A PT shall not:

a. delegate professional responsibilities to a person the PT knows, or has reason to know, is not qualified by education, training, experience or licensure to perform; or

b. fail to exercise appropriate supervision over a person who is authorized to practice only under PT supervision;

3. failing to create or maintain medical record—a licensee shall create and maintain adequate and legible patient records. In addition, a licensee shall:

a. not falsely create or alter a medical record or destroy a medical record except as authorized by law;

b. upon receipt of proper authorization, and in conformity with R.S. 40:1299.96, make patient medical records in the PT's possession available within a reasonable period of time to the patient, the patient's representative, or another physician or licensed health care provider;

c. make arrangements for patient access to medical records created by the licensee after relocating or closing a physical therapy practice, retiring, or being prohibited from practice by order of the board;

d. make arrangements, or assist another PT practicing in the same group to make arrangements, for access by a patient to his medical records after the PT has left a physical therapy practice, relocated a practice to a new location, closed a practice, or retired;

e. insure proper destruction of medical records by methods approved by state or federal authorities; and

f. not abandon or desert medical records;

4. exercising undue influence—a PT shall exercise his professional judgment in the best interest of his patients. A licensee shall not:

a. place his or her own financial gain over the interest and welfare of a patient in initiation or continuation of physical therapy services that are contraindicated or cannot reasonably result in a beneficial outcome; or

b. exercise influence over a patient in such a manner as to abuse or exploit the physical therapy provider/patient or client relationship for the purpose of securing personal compensation, gratification, gain or benefit of any kind or type, unrelated to the provision of physical therapy services;

5. sexual misconduct—inappropriate sexual or intimate conduct, includes, but is not limited to sexual intimacy, contact, exposure, gratification, abuse, exploitation or other sexual behavior with or in the presence of a patient or any other individual in connection to the licensee's practice of physical therapy regardless of consent by the patient. Such conduct may be verbal, physical, visual, written or electronic, or it may consist of expressions of thoughts, feelings or gestures that are sexual or reasonably may be construed by a patient or other individual as sexual or which may reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or another individual. Sexual misconduct between a licensee and a former patient after termination of the therapist-patient relationship may also constitute unprofessional conduct if the sexual misconduct is a result of the exploitation of trust, knowledge, influence or emotions derived from the professional relationship;

6. disruptive behavior—aberrant behavior, including but not limited to harassment, sexual or otherwise, manifested through personal interaction with employees, co-workers, hospital personnel, health care professionals, patients, family members or others, which interferes with patient care or could reasonably be expected to interfere with the process of delivering quality care or jeopardizing patient safety;

7. conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or related to the practice of physical therapy;

8. engaging in conduct which results in an arrest and the initiation of criminal prosecution, even if criminal charges are eventually lessened or dropped, when the conduct leading to the arrest can be verified and constitutes behavior which could put the person or property of patients at risk of harm from a treating licensee;

9. utilizing dry needling techniques in patient treatment without first obtaining appropriate specialized

training and education as required by §311 and providing acceptable documentation of such specialized education to the board.

10. making or participating in any communication, advertisement, or solicitation which is false, fraudulent, deceptive, misleading or unfair in violation of board rules, or which contains a false, fraudulent, deceptive, misleading or unfair statement or claim;

11. disclosure to a third party not involved in a patient's care, of information or records relating to the physical therapy provider-patient relationship, except when such disclosure is authorized by the patient or when required or permitted by law;

12. failing to submit to physical or mental examination or for drug screening or testing at the time and place directed by the executive director pursuant to §373 or as otherwise provided in the rules;

13. failing to timely notify the board of a name change, or change in business or home address, telephone numbers or email addresses as required by R.S. 37:2415.B.

C. By implementing the meanings set forth in these rules, the board does not intend to restrict and reserves its authority and right to take action based upon R.S. 37:2405(B)(10), in any instance in which the particular facts and circumstances of a complaint, investigation or adjudication rise to a level of conduct that the board may in its discretion, find to be unprofessional conduct.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3054 (October 2011).

### §347. Fraud or Misrepresentation

A. A person who "attempts to or attains a license by fraud or misrepresentation," as used in R.S. 2420.A (2) of the Practice Act, includes a person who:

1. makes 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 an application for a license under Chapter 1 of these rules; or

2. makes any representation, or fails to make a representation or engages in any act or omission, the result of which is false, deceptive, fraudulent, or misleading in achieving or obtaining any of the qualifications for a license required by Chapter 1 of these rules.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3055 (October 2011).

### §349. Commission of a Felony

A. As used in R.S. 37:2420.A (4) of the Practice Act, a "felony" is a crime defined as such under the laws of the US, or of any state. The term "convicted", as applied to a licensed PT or PTA, or an applicant for such license is a judgment entered against such person by a court of competent jurisdiction on the basis of a finding or verdict of

guilty or a plea of guilty or nolo contendere. Such a judgment provides cause for administrative action by the board so long as it has not been reversed by an appellate court of competent jurisdiction, notwithstanding that an appeal or other application for relief from such judgment may be pending.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3055 (October 2011).

### **§351. Substance Abuse and Habitual Intemperance**

A. As used in R.S. 37:2420.A (5) of the Practice Act, "habitually intemperate" means:

1. repeated excessive use or abuse of alcohol; or
2. the ingestion, self administration, or other use of legally controlled substances or medications which affect the central nervous system, other than pursuant to and used in accordance with a lawful prescription and/or medical advice.

B. As used in R.S. 37:2420.A of the Practice Act, the phrase "abused controlled dangerous substances as defined by federal or Louisiana law" means physiological or psychological dependence on any legally controlled substance or medication with a potential for inducing physiological or psychological dependence or tolerance.

C. A Respondent shall appear for drug screening and testing at the facility designated by the executive director within six hours of initial contact by the board representative sent to the telephone number or email address designated for such purposes by Respondent pursuant to §355, or as otherwise provided in the rules.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3056 (October 2011).

### **§353. Alternative to Disciplinary Proceedings**

A. Under the provisions of R.S. 37:911 and following, the board has the authority to establish and implement Recovery programs for PTs and PTAs as an alternative to the disciplinary process. The RPTP is established to assist board licensees who have demonstrated actual or potential inability to practice physical therapy with reasonable skill and safety to patients because of the use of alcohol or drugs, because of illness, or as a result of any mental or physical condition. The goal of the RPTP is for PTs or PTAs to be treated and to return to practice in a manner which will not endanger public health, safety and welfare.

B. The purpose of the RPTP is to encourage voluntary participation of PTs or PTAs in appropriate rehabilitative medical treatment and ongoing aftercare and monitoring. When disciplinary proceedings have been initiated or could be initiated against a licensee pursuant to R.S. 37:2401–2424, such proceedings may be deferred or suspended to allow the licensee to participate in the RPTP.

C. Upon receipt of a complaint which involves practitioner, the executive director shall refer the practitioner for participation in the RPTP. Only PTs or PTAs whose

conditions have reliable indicators for return to safe practice will be eligible for participation in the RPTP.

D. In addition to providing an alternative to discipline, the RPTP accepts licensees who have been diagnosed with a physical, and/or mental impairment, or substance abuse and/or dependency and are already subject to discipline ordered by the board.

E. The RPTP may be administered by board staff directly or the board may delegate to a qualified outside contractor the administration and operation of all or part of RPTP on such terms as it deems prudent. Such contractor shall be charged with the powers and responsibilities set forth in these rules.

F. The board shall cooperate with a contract operator of RPTP and shall act responsibly to meet its obligations under the Practice Act, board rules, RPTP agreements and contracts with outside contractors.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), LR 37:3056 (October 2011).

### **§355. Objectives of RPTP**

A. The RPTP objectives are:

1. to ensure the health, safety and welfare of the public through a program which closely monitors practitioners whose capacity to practice physical therapy with reasonable skill and safety to patients has been, or may potentially be, compromised because of the use of alcohol or drugs, because of illness, or as a result of any mental or physical condition;

2. to promote safe physical therapy care by preventing and/or restricting the practice of the chemically, physically, and/or mentally impaired PT or PTA; and

3. to provide a structured program for PTs and PTAs seeking recovery from the impairment through a non-punitive process.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3066 (October 2011).

### **§357. Admission to RPTP as an Alternative to Disciplinary Proceedings**

A. Participation in RPTP is voluntary and may be in place of formal disciplinary proceedings for licensees with no previous disciplinary action involving impairment by any licensing authority.

1. Involvement by the licensee in the non-disciplinary alternative will remain confidential as long as the licensee complies with all stipulations of the RPTP agreement.

2. Admission criteria include:

- a. a Louisiana licensed PT or PTA;
- b. a graduate of a school of physical therapy or physical therapist assisting eligible for licensure in Louisiana;

- c. a PT or PTA currently enrolled in a peer assistance/alternative program in another jurisdiction and requesting licensure in Louisiana;

- d. a voluntary request for admission to RPTP whether referred by self or other sources;

e. addiction to or use of alcohol and/or other mood altering substances including prescription drugs, or has a physical or mental condition, which impairs or potentially impairs the ability of the practitioner to perform duties safely;

f. has no criminal convictions or pending criminal charge that involves violence or danger to another person, or involves a crime which constitutes a threat to patient care;

g. no diversion of chemicals for the purpose of sale or distribution;

h. no dealing or selling of illicit drugs;

i. no co-existing untreated physical, emotional or psychiatric problems which would impair physical therapy competency;

j. no related practice problems involving death or significant harm to a patient; and

k. agrees to comply with all RPTP requirements and signs the RPTP Agreement including a statement acknowledging chemical dependency or other impairment.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011).

### **§359. Discretionary Authority**

A. The board may order an individual with an active disciplinary order into the RPTP as stipulated in a board order.

B. The board may cause to be made non-confidential the records, files and information related to a successfully completed RPTP in the event that a former participant becomes the subject of a subsequent disciplinary action for violation of the Practice Act or board rules related to substance abuse and/or chemical dependency.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011).

### **§361. RPTP Non-compliance**

A. When a licensee ceases to be in compliance with his RPTP Agreement, he shall be referred back to the board for regular disciplinary proceedings.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011).

### **§363. Licensees Leaving the State**

A. A RPTP participant who moves from Louisiana to another state with an alternative program shall have records transferred to that program.

B. A RPTP participant who moves to a state where there is no alternative program shall have his records transferred to the licensing board in the receiving state.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011).

### **§365. Licensure of Persons with a History of Substance Abuse**

A. The board may deny a license to or discipline an applicant/respondent who has been found to have a history of substance abuse.

B. In review of a complaint alleging intemperate use of drugs or alcohol by a respondent/applicant, the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice physical therapy:

1. documentation demonstrating the degree of sobriety obtained;

2. documentation showing completion of a drug or alcohol rehabilitation program;

3. evidence of participation in board-accepted aftercare;

4. a current status report from a drug/alcohol abuse counselor or board-accepted aftercare sponsor; and

5. notarized letters of recommendation.

C. The burden to provide the foregoing documentation to the board shall be solely at the expense of the respondent/applicant.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 28:1981 (September 2002), LR 37:3057 (October 2011).

### **§367. Substance Abuse Recovery Program**

A. Licensees may be required to submit to medical evaluation by a board-approved medical professional to determine competence and possible impairment.

B. In lieu of suspension or revocation of a license or the denial of an application for a license, to practice physical therapy or physical therapist assisting, the board may permit an applicant or licensee to actively participate in a board-approved Substance Abuse Recovery Program (SARP) if:

1. the board has evidence that the applicant or licensee is impaired, which includes substance abuse;

2. the applicant or licensee has not been convicted of a felony relating to substance abuse, which includes alcohol or drug abuse, in a court of law of the US or a court of law of any state or territory, or another county;

3. the applicant or licensee enters into a written Consent Order with the board for a license with appropriate restrictions and he timely complies with all the terms of the Consent Order, including maintaining satisfactory progress in the SARP and adhering to limitations on the licensee's practice imposed by the board to protect the public; and

4. as part of the Consent Order, the applicant or licensee shall sign a waiver allowing the SARP to release information to the board and to report to the board if the applicant or licensee does not comply with the requirements of the Consent Order or the SARP or is unable to practice or work with reasonable skill or safety.

C. Failure to voluntarily enter into a Consent Order pursuant to this Rule shall precipitate the board's right to pursue formal disciplinary action against the applicant or licensee which may result in denial, suspension, or revocation of a license to practice physical therapy or physical therapist assisting after due notice and hearing.

D. Failure to comply with the requirements of the Consent Order, the SARP, or the inability to practice physical therapy competently and safely shall result in denial, suspension or revocation of a license to practice summarily or after due notice and hearing.

E. The applicant or licensee shall be responsible for all costs associated with the Consent Order, evaluation, treatment, and monitoring of the SARP.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 28:1981 (September 2008), amended by the Physical Therapy Board, LR 37:3057 (October 2011).

### **§369. Abuse of Referrals**

A. Violation of R.S. 37:1745 will subject a PT to disciplinary action. R.S. 37:1745 provides, in pertinent part:

"(2) Healthcare provider" means a person, partnership, or corporation licensed by the state to provide health care or professional services as a physician, chiropractor, dentist, dental hygienist, podiatrist, optometrist, physical therapist, psychologist, licensed professional counselor, registered or licensed practical nurse, pharmacist, and any officer, employee, or agent thereof acting in the course and scope of his employment.

(B). No health care provider shall offer, make, solicit, or receive payment, directly or indirectly, overtly or covertly, kind as or in-kind, for referring or soliciting patients. Payments representing a return on investment based upon a percentage of ownership are not considered a direct or indirect payment for the purposes of this Section."

B. As used in R.S. 2420 A.(8) of the Practice Act, the phrase "engages directly or indirectly in the division, transferring, assigning, rebating, or refunding of fees received for professional service with a referring practitioner or any relative or business associate of that referring practitioner" means the exploitation of the physical therapy referral mechanism so that a referring practitioner receives compensation, payment, or anything of value, including but not limited to rental fees in excess of fair market value, or any other unearned monies or value in kind, in return for a patient referral when the referring practitioner does not have an ownership interest in the physical therapy practice involved.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3058 (October 2011).

### **§371. Cease and Desist Orders; Injunctive Relief**

A. The board may seek to issue in any competent court of law a writ of injunction enjoining any Respondent from unlawfully practicing physical therapy without a license issued pursuant to the provisions of the Practice Act, R.S. 37:2401 and following, and/or any rules promulgated thereto. This injunction shall not be released upon the posting of a bond by the person. The provisions of R.S. 37:2422 shall further govern the use and effect of this procedure.

B. The board is empowered to issue an order to any person or entity engaged in any activity, conduct, or practice constituting a violation of the statute or the rules promulgated by the board, directing that person or entity to

forthwith cease and desist from such activity, conduct, or practice. If the person alleged to have violated the Practice Act or the rules is licensed by another Louisiana healthcare provider licensing board, notification of suspected violations of the Practice Act or of board rules shall be sent to the executive director of the board which has issued a license to that healthcare provider for review and response by that board to the Louisiana Physical Therapy Board.

C. If the person or entity to which the board directs a cease and desist order does not cease and desist the prohibited activity, conduct, or practice within the timeframe directed by said order, the board may seek, in any court of competent jurisdiction and proper venue, a writ of injunction enjoining such person or entity from engaging in such activity, conduct, or practice.

D. Upon proper showing by the board that such person or facility has engaged in the prohibited activity, conduct, or practice, the court shall issue a temporary restraining order prohibiting the person or entity from engaging in the activity, conduct, or practices complained of, pending the hearing on a preliminary injunction, and in due course a permanent injunction shall be issued after a contradictory hearing, commanding the cessation of the activity, conduct, or practices determined to be unlawful by the court.

**AUTHORITY NOTE:** Promulgated in accordance with La R.S. 37:2422 and Act 535 of 2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3058 (October 2011).

### **§373. Violations**

A. The following conduct shall also constitute violations the Practice Act and board rules:

1. allowing another person to use a licensee's wall certificate, pocket identification card, license number, or national provider identifier for any purpose other than to identify himself as the lawful holder of those credentials;

2. practicing or enabling practice by an impaired provider, a licensee shall not:

a. engage in the practice of physical therapy while under the influence of a mood-altering substance that compromises the professional judgment or practice or has the potential to compromise the medical judgment or practice. If the board receives apparently reliable information, including but not limited to reports made pursuant to R.S. 37:1745.14, which information or report puts in question a licensee's or applicant's current fitness and ability to practice physical therapy with reasonable skill and safety to patients, the licensee or applicant shall submit to such physical or mental examination, evaluation, test, or drug/alcohol screen as requested by the executive director to determine the licensee's or applicant's fitness and ability to practice physical therapy with reasonable skill and safety to patients. Records of such examinations, evaluations, tests and screens shall be maintained by the board in confidence unless such records are admitted into the record of any adjudication proceeding before the board or subpoenaed by court order;

3. failing to assess and evaluate a patient's status;

4. performing or attempting to perform techniques or procedures for which the licensee is not qualified by education, experience, licensure or training;

5. delegating physical therapy functions or responsibilities to an individual lacking the license ability or knowledge to perform the function or responsibility involved;

6. causing, or permitting another person to cause, physical or emotional injury to the patient, or depriving the patient of his individual dignity;

7. providing treatment interventions that are not warranted by the patient's condition or continuing treatment beyond the point of reasonable benefit to the patient;

8. practicing in a manner which evidences the failure to perform on a continuing basis in compliance with the Minimal Standards of Acceptable and Prevailing Physical Therapy Practice as defined in §123;

9. providing substandard care as a PTA by exceeding the authority to perform components of physical therapy interventions selected by the Supervising PT of Record or through a deliberate or negligent act or failure to act, whether or not actual injury to any person occurred;

10. abandoning a patient without documenting the transfer of care or by inappropriately terminating the patient/practitioner relationship; or

11. documenting services provided which have not been provided as documented or billing for services which have not been provided.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2421 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3058 (October 2011).

### **§375. Disciplinary Process and Procedures**

A. The purpose of the following rules is to supplement and effectuate the applicable provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 and following, regarding the disciplinary process and procedures. These rules are not intended to amend or repeal the provisions of the Louisiana Administrative Procedure Act, and, to the extent any of these rules are in conflict therewith, the provisions of the Louisiana Administrative Procedure Act shall govern.

B. A disciplinary proceeding, including the formal hearing, is less formal than a judicial proceeding. It is not subject to strict rules and technicalities, but must be conducted in accordance with considerations of fair play and constitutional requirements of due process.

C. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the Respondent did certain acts or omissions and, if he did, whether those acts or omissions violated the Practice Act or board rules; and to determine the appropriate disciplinary action.

D. Pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the board is required to report certain information, including final adverse actions it has taken against its licensees, to the secretary of Health and Human Services of the US for recordation in the Health Integrity and Protection Data Bank. The board may designate an agent to act on its behalf to report information and submit queries to the Health Integrity and Protection Data Bank as required by Federal law, as may be amended from time to time.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 26:2792 (December 2000), amended by the Physical Therapy Board, LR 37:3059 (October 2011).

### **§377. Initiation of Complaints**

A. Complaints may be initiated by any person or by the board on its own initiative. A licensee is obligated to report to his supervisor or employer, and to the board, significant violations of the Practice Act, board rules or those set forth in the Code of Ethics and related documents of APTA. Failure by a licensee to report such violations to his supervisor or employer and to the board may subject the licensee to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), LR 26:1448 (July 2000), amended by the Physical Therapy Board, LR 37:3059 (October 2011).

### **§379. Emergency Action**

A. If the board finds that public health, safety, and welfare require emergency action and incorporates a finding to that effect in its order, a summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. Such proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3059 (October 2011).

### **§381. Disposition of Complaints**

A. Some complaints may be settled informally by the board and the Respondent without a formal hearing. The following types of informal dispositions may be utilized:

1. Disposition by Correspondence. For less serious complaints, the executive director or legal counsel may write to the Respondent explaining the nature of the complaint received. If the Respondent's subsequent response satisfactorily explains the situation, the matter may be dropped. If the situation is not satisfactorily explained, it may be scheduled for an Informal Conference.

2. Informal Conference. An Investigative Committee of the board may conduct an Informal Conference with the Respondent. The Respondent shall be given reasonable notice to participate in the Informal Conference and provided with a description of the issues to be discussed, the possible violations of law or rules and whether admissions by Respondent in the Informal Conference may later be used in a formal hearing.

3. Consent Order. If the Respondent and the board member participating in the Investigative Committee agree on the essential facts and law arising out of the complaint and on sanctions to be imposed on the Respondent, the complaint may be resolved by a Consent Order to be presented by the participating board member or by board legal counsel for approval, amendment or rejection. If accepted by the board and the Respondent, the Consent Order shall be finalized as a board order and shall be

reported to the HIPDB and published as a disciplinary action of the board.

B. An Agreement reached between a complainant and a Respondent shall not preclude disciplinary action by the board on the issues raised in the complaint brought to the board.

C. A complaint may be dismissed for the following reasons:

1. the absence of adequate, credible evidence; or
2. other reasons which the Investigative Committee believes are justification for dismissal.

D. When it is the decision of the Investigative Committee to dismiss a complaint, the complainant shall be provided with a letter explanation for dismissal of the complaint.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:390 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3059 (October 2011).

### **§383. Failure to Respond or Cooperate with the Board**

A. Licensees shall cooperate with and assist the board in carrying out its duties. A licensee shall, among other matters:

1. respond or provide information or items requested, respond to a subpoena, or complete an evaluation within the time designated by the board or its staff;
2. not attempt to influence the board, its members, staff or agents by means of intimidation, falsehoods or other means prohibited by law;
3. not contact members of the board directly or through others during the pendency of a complaint in an attempt to influence the outcome of an investigation or disciplinary proceeding; and
4. not contact or attempt to contact a complainant or witness for purposes of intimidation or harassment regarding a complaint or an investigation by the board.

B. If the Respondent does not respond to the original communication from the board within ten days of a request by the board, a second letter shall be sent to the Respondent by certified mail, return receipt requested, seeking a response by a specified date.

C. If the Respondent fails to reply to the board's second request or otherwise fails to cooperate with the board, the board shall record the circumstances of the failure to cooperate and shall notify the Respondent of the date for an Informal Conference or Formal Hearing and that failure to appear and participate may result in action which could eventually lead to suspension or revocation of license, or other appropriate sanctions under the law.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3060 (October 2011).

### **§385. Monitoring of Licensees**

A. A Respondent who is required by board order to provide information or perform certain acts will be monitored by a board representative to ensure that the requirements imposed by the board order are met.

B. Respondents working under a board order resulting from disciplinary proceedings shall provide to the executive director their preferred telephone and/or email address for expedited communications regarding compliance with board orders. Once designated by the Respondent, all communication regarding compliance shall be directed by board representatives to that telephone number or email address and the Respondent shall be responsible for responding to such communications within four hours of the time the message was sent to the designated telephone number or email address. Failure of the Respondent to respond to the board representative within four hours shall be grounds for disciplinary action against the Respondent. If the Respondent desires to change the designated means of communication, they shall do so in writing sent to the executive director.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3060 (October 2011).

### **§387. Formal Hearings**

A. The board is authorized by R.S. 37:2420, to initiate administrative proceedings against persons to whom it has issued a license to practice as a PT or PTA or against any applicant requesting a license. The board and the Respondent accused of a violation are the parties to the proceeding. The person has the right to appear and be heard, either in person or through counsel; the right to notice, a statement of what accusations have been made; the right to present evidence and to cross examine; and the right to have witnesses subpoenaed.

B. If the Respondent does not appear, either in person or through counsel, after proper notice has been given, the Respondent is deemed to have waived these rights and the board may proceed with the hearing without the presence of the Respondent.

C. Disciplinary proceedings shall include certain steps, and may include other steps as follows.

1. The board has received or originated a complaint alleging that a licensee or applicant has acted in violation of the Practice Act or board rules. The identity of a complaining party shall not be revealed to the Respondent except when such information is offered as evidence in a formal hearing, is subpoenaed by a court, or is necessary for due process purposes.

2.a. The complaint is investigated by the board's staff or attorney to determine if there is sufficient evidence to warrant disciplinary proceedings. Once the complaint is under investigation, no board member (except board members serving as members of an Investigative Committee) shall receive or review any information relevant to the subject matter of the investigation or communicate with the Respondent or his legal representative, potential witnesses, or any member of the Investigative Committee concerning any issue of fact or law relevant to the investigation. A board member who has served on the Investigative Committee shall not serve as a member of a hearing panel of the board in the adjudication of a case previously investigated by the board member.

b. A decision to initiate a formal complaint or charge is made if one or more of the following conditions exist:



i. the conduct complained of is sufficiently serious;

ii. the Respondent, through board correspondence, has been given an opportunity to show compliance with lawful requirements for the retention of his license without restriction as contemplated by R.S. 49:961.C, but the Respondent fails to respond, affirmatively waives the opportunity or provides an unconvincing response to the board's correspondence; or

iii. an Informal Conference is conducted, but fails to resolve all of the issues or reach a Consent Order acceptable to the board and the Respondent.

3. A sworn complaint is filed, charging the violation of one or more of the provisions of the Practice Act and/or board rules and the specific violation thereof.

4. A time and place for a hearing is fixed by the chairman or an agent of the board.

5. a. At least 20 days prior to the date set for the hearing, a copy of the charges in the form of an Administrative Complaint shall be served on the Respondent by certified mail with return receipt as well as by regular first class mail at the most current address reflected in the official records of the board, or by personal service on the Respondent. Respondent is obligated to provide current contact information to the board as required by §317. If service by certified mail is not effective or is returned unclaimed, attempted personal service does not succeed and attempted notice at Respondent's email address and telephone number also are unsuccessful, the complaint may be adjudicated by default pursuant to R.S. 49:955.D.

b. The content of the charges limits the scope of the hearing and the evidence which may be introduced. The charges may be amended at any time up to ten days prior to the date set for the hearing.

c. If the board is unable to describe the matters involved in detail at the time the sworn complaint is filed, this complaint may be limited to a general statement of the issues involved. Thereafter, upon respondent's request, the board shall provide a more definite and detailed statement.

d. The respondent may file a written answer to the complaint within 15 days of service, admitting or denying each of the separate allegations. Any matter admitted by the respondent shall be deemed proved and established for the purpose of adjudication. In the event the respondent does not answer the complaint, all allegations will be deemed denied.

e. At any time after service of the administrative complaint, a respondent who chooses to be represented by legal counsel shall provide written notification to the board's prosecuting attorney of the name, address and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, correspondence, administrative complaints, subpoenas, orders or other process shall be served on Respondent through his counsel of record.

6. Except for extreme emergencies, motions requesting a continuance of a hearing shall be filed no less than five days prior to the time set for the hearing. The motion shall contain the reason for the request, which reason must have relevance to due process.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:205 B (10) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy

Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3060 (October 2011).

### **§389. Issuance of Subpoenas**

A. The chairman, or an authorized agent of the board, shall issue subpoenas on behalf of the board for disciplinary proceedings and when requested to do so, may issue subpoenas for respondent.

B. Subpoenas include:

1. a subpoena requiring a person to appear and give testimony; and

2. a subpoena duces tecum, which requires that a person produce books, records, correspondence, or other materials over which he has control.

C. A subpoena requested by a respondent shall not be issued unless the respondent deposits with the board sufficient money to pay the fees and expenses to which a witness in a civil proceeding is entitled under R.S. 13:3671. In addition, the board shall set the amount of any additional compensation for a witness subpoenaed to testify as an expert based on the value of the time employed and the degree of skill and learning required to formulate and present an expert opinion, which additional compensation shall be paid in advance by the party requesting the subpoena for the attendance of such witness.

D. A motion to limit or quash a subpoena may be filed with the board, but not less than 72 hours before the hour set for the hearing.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (4) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3061 (October 2011).

### **§391. Conduct of Hearing**

A. The hearing shall be convened by the board chair or acting board chair at the time, date and place provided in the notice to respondent, at which time the board's primary role is to receive evidence and argument, and to reach a decision. Any board member, who, because of bias or interest, is unable to provide a fair hearing, shall be recused from the particular proceeding. The reasons for the recusal are made part of the record. Should the majority of the board members be recused for a particular proceeding, the governor shall be requested to appoint a sufficient number of pro tem members to provide a quorum for the proceeding in accordance with R.S. 49:960B.

B. Any objection to the composition of the hearing panel or the qualifications of any member of the hearing panel shall be made and ruled on by the chair before any evidence is received.

C. The board shall be represented by its investigating board member who has conducted the investigation and by its prosecuting attorney who presents evidence to support the charges contained in the administrative complaint.

D. Respondent may present evidence personally or through an attorney, and witnesses may testify on his behalf.

E. Evidence includes the following:

1. oral testimony given by witnesses at the hearing, except that, for good cause, testimony may be taken by deposition. The cost of such deposition shall be borne by the requesting party;

2. documentary evidence, such as written or printed materials including public, business or institutional records, books and reports;

3. visual, physical and illustrative evidence;

4. admissions, which are written or oral statements of the respondent a party made either before or during the hearing; and

5. facts officially noted into the record, usually readily determined facts making proof of such unnecessary.

F. All testimony shall be received under oath. If the witness objects to swearing, the word "affirm" may be substituted.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3061 (October 2011).

### **§392. Order of Hearing**

A. Unless respondent is notified otherwise no less than 72 hours prior to the beginning of the hearing, the order of proceedings shall be as follows:

1. the board's representative makes an opening statement of what he intends to prove, and what action is sought from the board;

2. the respondent or his attorney makes an opening statement, explaining why he believes that the charges against respondent are not legally founded;

3. the board's representative presents the evidence against the respondent;

4. the respondent or his attorney cross examines;

5. the respondent presents evidence;

6. the board's representative cross examines;

7. the board's representative rebuts the respondent's evidence;

8. the respondent surrebuts the evidence against him;

9. each party makes closing statements. The board's representative makes the initial closing statement and the final statement; and

10. motions may be made before, during, or after a hearing. All motions shall be made at an appropriate time, according to the nature of the request. Motions made before or after the hearing shall be in writing. Those made during the course of the hearing may be made orally since they become part of the record of the proceeding.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3062 (October 2011).

### **§393. Decision of the Board**

A. The decision of the board shall be reached in the following manner:

1. determine the facts established by the evidence presented in the hearing;

2. determine whether the facts in the case support the charges brought against the respondent; and

3. determine whether charges brought are a violation of the Practice Act or board rules.

B. The vote of the board shall be recorded. A majority of the quorum of the board in attendance at the hearing shall be necessary to render a decision, unless otherwise agreed upon

by the parties. Minority views may be made part of the record.

C. Sanctions against the respondent shall be based upon the findings of fact and conclusions of law determined by the board. The respondent shall be notified by mail of the decision of the board.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3062 (October 2011).

### **§395. Record of the Hearing**

A. The record of the hearing shall include:

1. all papers filed and served in the proceeding;

2. all documents and other materials accepted as evidence at the hearing;

3. statements of matters officially noticed;

4. notices required by the statutes or rules, including notice of the hearing;

5. affidavits of service or receipts for mailing or process or other evidence of service;

6. stipulations, settlement agreements or consent orders, if any;

7. records of matters agreed upon at a prehearing conference;

8. reports filed by the hearing officer, if one is used;

9. orders of the board and its final decision;

10. actions taken subsequent to the decision, including requests for reconsideration and rehearing; and

11. a transcript of the proceedings, if one has been made, or a tape recording or stenographic record.

B. The record of the proceeding shall be retained until the time for any appeal has expired, or until the appeal has been concluded. The record is not transcribed unless a party to the proceeding so requests, and the requesting party shall pay for the cost of the transcript.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3062 (October 2011).

### **Subchapter E. Post-adjudication Remedies**

#### **§396. Reconsideration of Decisions**

A. The board may reconsider a matter which it has decided. This may involve a rehearing of the case, or a reconsideration of the case based on the existing record. Such reconsideration may occur when a party who is dissatisfied with a decision of the board files a petition requesting that the decision be reconsidered by the board.

B. A petition by a party seeking reconsideration or rehearing must be in proper form and filed within ten days after notification of the board's decision. The petition shall set forth the grounds for the rehearing, which shall include one or more of the following:

1. the board's decision is clearly contrary to the law and evidence;

2. there is newly discovered evidence by the party since the hearing which is important to the issues and which the party could not have discovered with due diligence before or during the hearing;

3. there is a showing that issues not previously considered ought to be examined in order to dispose of the case properly; or

4. it would be in the public interest to review and further consider the issues and the evidence.

C. The board's decision to grant or deny a requested reconsideration of its decision is final and not subject to review or appeal.

D. The board shall reconsider a matter when ordered to do so when the case is remanded for reconsideration or rehearing by a court to which the board's decision has been appealed.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3062 (October 2011).

### **§397. Judicial Review of Adjudication**

A. Any respondent whose license has been revoked, suspended, denied or otherwise sanctioned by the board has the right to have the proceedings of the board reviewed by the state district court having jurisdiction over the board, provided that such petition for judicial review is filed within 30 days after receipt of the notice of the decision of the board. If judicial review is granted, the board's decision is enforceable in the interim unless the court orders a stay.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.B (10) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3063 (October 2011).

### **§399. Appeal**

A. A respondent aggrieved by any final judgment rendered by the state district court may obtain a review of said final judgment by appeal to the appropriate circuit court of appeal. Pursuant to the applicable Section of the Louisiana Administrative Procedure Act, La R.S. 49:965, this appeal shall be taken as in any other civil case.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3063 (October 2011).

### **Subpart 3. Fees**

#### **Chapter 5. Fees**

##### **§501. Fees**

A. The board may collect the following fees:

1. Application \$200
2. Re-instatement \$75
3. Renewal of License, per year \$115
4. License Verification \$40
5. Duplicate Wall License \$50
6. Duplicate Wallet License \$20

B. The biennial renewal fee provided in this Rule shall be received by the board office prior to May 1 of each period.

C. If the biennial renewal fee is received by the board office on or subsequent to May 1, the applicant shall apply

for reinstatement pursuant to §185 and shall pay the renewal fee and the reinstatement fee.

D. The board may assess reasonable charges with regards to administrative business expenses and services.

AUTHORITY NOTE: Promulgated in accordance with La R.S. 37:2405.A (1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 17:667 (July 1991), LR 18:963 (September 1992), LR 21:396 (April 1995), LR 28:1982 (September 2002), amended by the Physical Therapy Board, LR 37:3063 (October 2011).

Cheryl Gaudin  
Executive Director

1110#025

### **RULE**

#### **Louisiana Lottery Corporation**

##### **On-Line Lottery Games (LAC 42:XV.141)**

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., has amended the rules and regulations pertaining to the operations of on-line lottery games, in particular LAC 42:XV.141, to allow the Louisiana Lottery Corporation to offer the following on-line lottery game: "Mega Millions."

#### **Title 42**

#### **LOUISIANA GAMING**

##### **Part XV. Lottery**

##### **Chapter 1. On Line Lottery Games**

##### **§141. Multi-State Lottery**

A. This Section authorizes the Louisiana Lottery Corporation, through an agreement with the Multi-State Lottery Association (MUSL), to offer the following games: "powerball," "daily millions," "rolldown," and "mega millions." Introduction of any new game conducted by MUSL may only be accomplished by amendment of this Section to include the game as an authorized game. The detailed information regarding the rules of the powerball game, the daily millions game, the rolldown game and the mega millions game will be contained in a game directive promulgated by the president. The game directive must be signed by the president prior to the start of the game. The game directive will be distributed and posted at every corporation office and will be available for public inspection during the sales period of powerball, daily millions, rolldown and mega millions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on October 21, 1994, and promulgated in *The Advocate*, October 28, 1994, amended LR 23:67 (January, 1997), LR 26:1631 (August 2000), LR 37:3063 (October 2011).

Rose J. Hudson  
President

1110#026

## RULE

### Department of Natural Resources Office of Conservation

#### Hydraulic Fracture Stimulation Operations (LAC 43:XIX.118)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and Title 30 of the Louisiana Revised Statutes of 1950 (R.S. 30:4 et seq.), the Louisiana Office of Conservation hereby amends LAC 43:XIX Subpart 1 (Statewide Order No. 29-B) Chapter 1 General Provisions.

The recent development of the Haynesville Shale in North Louisiana is made possible through the use of multi-stage hydraulic fracture stimulation technology. This technology involves the introduction of large amounts of fluids under very high pressure into a well to create fractures in the rock which then allow oil and/or gas to flow into the wellbore. The intense development of the Haynesville Shale in Louisiana and other shale resources across the United States has created a large amount of public interest in the hydraulic fracturing process and its potential effect on the environment.

In addition, in November 2010, a review of Office of Conservation policies and regulations associated with the hydraulic fracturing process was conducted by the non-profit, multi-stakeholder organization, STRONGER, Inc. to assess the effectiveness and adequacy of current regulations. Their report, finalized in March 2011, recommended some of the changes included in this amendment.

As a result of the aforementioned conditions, this Rule was drafted by staff of the Office of Conservation using portions of the hydraulic fracturing regulations recently promulgated in the State of Arkansas and statutes recently passed in Texas as models.

The Rule requires that a work permit be obtained from the Office of Conservation (OC) prior to initiating hydraulic fracture stimulation operations on a well. Following completion of hydraulic fracturing operations, information on fracturing fluid composition and volumes are to be reported to OC or to a publicly accessible registry.

The intent of the Rule is to provide transparency to ensure that hydraulic fracturing operations are conducted in a manner which is protective of the public health and the environment and to collect technical information on the hydraulic fracturing operations conducted in Louisiana.

#### Title 43

#### NATURAL RESOURCES

#### Part XIX. Office of Conservation—General Operations Subpart 1. Statewide Order No. 29-B

#### Chapter 1. General Provisions

#### §118. Hydraulic Fracture Stimulation Operations

A. The provisions of this Rule shall apply to all new wells for which an initial drilling permit is issued on or after the effective date of this Rule that are stimulated by the application of fluids, which contain proppant such as sand or man-made inert material, with force and/or pressure in order to create artificial fractures in the formation for the purpose of improving the capacity to produce hydrocarbons.

B. An application for hydraulic fracture stimulation shall be made to the district office on Form DM-4R in accordance

with the provisions of LAC 43:XIX.105 and a proper work permit shall be received from the district manager prior to beginning operations.

C.1. Following completion of the Hydraulic Fracture Stimulation Operation, the operator shall, for purposes of disclosure, report the following information on or with the Well History and Work Resume Report (Form WH) in accordance with the requirements of LAC 43:XIX.105:

a. the types and volumes of the Hydraulic Fracturing Fluid (base fluid) used during the Hydraulic Fracture Stimulation Operation expressed in gallons; and

b. a list of all additives used during the Hydraulic Fracture Stimulation Operation, such as acid, biocide, breaker, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, scale inhibitor, proppant and surfactant; and

c. for each additive type, listed under Subparagraph b above, the specific trade name and suppliers of all the additives utilized during the Hydraulic Fracture Stimulation Operation; and

d. a list of chemical ingredients contained in the hydraulic fracturing fluid that are subject to the requirements of 29 CFR Section 1910.1200(g)(2) and their associated CAS numbers;

e. the maximum ingredient concentration within the additive expressed as a percent by mass for each chemical ingredient listed under Subparagraph d;

f. the maximum concentration of each chemical ingredient listed under Subparagraph d, expressed as a percent by mass of the total volume of hydraulic fracturing fluid used.

2.a. Notwithstanding Subparagraph d, if the specific identity of a chemical ingredient and the chemical ingredient's associated CAS number are claimed to be trade secret, or have been finally determined to be entitled to protection as a trade secret under 29 CFR Section 1910.1200(i), the entity entitled to make such a claim may withhold the specific identity of the chemical ingredient and the chemical ingredients associated CAS number from the list required by Subparagraph d. If the entity entitled to make such a claim elects to withhold that information, the report must:

i. disclose the chemical family associated with the ingredient; and

ii. include a statement that a claim of trade secret protection has been made by the entity entitled to make such a claim.

b. An operator will not be responsible for reporting information that is not provided to them due to a claim of trade secret protection by the entity entitled to make such a claim.

3. Nothing in Paragraph 2 above shall authorize any person to withhold information which is required by state or federal law to be provided to a health care professional, a doctor, or a nurse.

4. The operator may furnish a statement signifying that the required information has been submitted to the Ground Water Protection Council Hydraulic Fracturing Chemical Registry or any other similar registry, provided all information is accessible to the public free of charge, to satisfy some or all of the information requirements of this Subsection.

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 37:3064 (October 2011).

James H. Welsh  
Commissioner

1110#019

## RULE

### Department of Public Safety and Corrections State Uniform Construction Code Council

#### Wood Structural Panel Standards (LAC 55:VI.Chapter 3)

In accordance with the provisions of R.S. 40:1730.26, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules, the LSUCCC hereby adopts the following Rule regarding the establishment of minimum standards for wood structural panels used in wind-borne debris regions for protection of openings.

#### 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. - A.1.a.ii. ...

iii. Amend chapter 16, section 1609.1.2, exceptions 1. Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings. Panels shall be precut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7, with corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table 1609.1.2 with corrosion-resistant attachment hardware provided and anchors permanently installed on the building is permitted for buildings with a mean roof height of 45 feet (13,716 mm) or less where wind speeds do not exceed 140 mph (63 m/s).

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. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 40:1730.26 and La. R.S. 40:1730.28.

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), effective

January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), LR 37:3065 (October 2011),

Jill P. Boudreaux  
Undersecretary

1110#022

## RULE

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Calcasieu Lake Oyster Harvester Permit (LAC 76:VII.533)

The Wildlife and Fisheries Commission does hereby promulgate rules and regulations relative to the Calcasieu Lake Oyster Harvester Permit. Authority to establish such rules and regulations is vested in the Wildlife and Fisheries Commission by R.S. 56:6 and R.S. 56:435.1.1.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 5. Oysters

#### §533. Calcasieu Lake Oyster Harvester Permit

A. Permit. Beginning July 1, 2011 and extending through June 30, 2014, any oyster taken from the Calcasieu Lake Public Oyster Area for commercial purposes during the open season shall only be taken by a person legally issued a Calcasieu Lake Oyster Harvester Permit by the department. The permit does not grant any rights to the oyster resource or any rights to harvest oysters from the waters of the state and shall not be sold, exchanged, or otherwise transferred. The permit shall be valid for a period beginning on October 1 of a given year and ending on September 30 of the following year. There is no cost for the permit and no more than 126 permits shall be effective at any one time. In the event that a permit is vacated, that permit may be re-issued to the next eligible applicant. The department may retain the information for an additional 30 applicants in the event that permits are vacated. This permit is only applicable for commercial harvest. Recreational fishermen may harvest one sack per person per day.

B. Eligibility. Only those persons meeting the eligibility requirements outlined in R.S. 56:435.1.1 and this Rule shall be issued a permit. To be eligible for this permit the applicant must hold current and valid licenses and permits required for the harvest of oysters, including a commercial fisherman license and an oyster harvester license. As outlined in R.S. 56:435.1.1, 126 permits will be made available, and completed permit applications will be processed on a first-come-first-served basis determined by the order in which the completed permit application is received by the department. Of the available permits, 63 shall be issued to persons who can prove through department trip-ticket landings data that he commercially harvested oysters from Calcasieu Lake during open season at any time since January 1, 2001. The remaining 63 permits shall be issued to any person who holds all other licenses and permits required for the harvesting of oysters.

C. Applications. The department shall make available on its website an online application form. Applicants must complete an online application form and submit the completed form to the department no earlier than 9 a.m. on

the last Monday of September. A complete application shall include the applicant's name, physical address, mailing address, phone number, commercial fisherman license number, oyster harvester license number, a personal identification number (issued by a state or federal agency), and indicate if the applicant has harvested oysters commercially in Calcasieu Lake since January 1, 2001. The above described online submission of the application shall be the only acceptable method for the department and only applicants who submit a completed application in that manner will be processed. Completed permit applications will be processed on a first come-first served basis determined by the order in which the completed permit application is received by the department. Upon receipt and processing of the permit applications, 63 permits shall be issued to the first applicants to submit completed permit applications who commercially harvested oysters from Calcasieu Lake during open season at any time since January 1, 2001 as verified by the department's trip ticket landings

data. Thereafter, an additional 63 permits shall be issued to the first applicants remaining who submitted completed permit applications and who are otherwise eligible. Completed permit applications will only be processed for those persons who meet eligibility requirements as outlined in R.S. 56:435.1.1 and this Rule.

D. Enforcement. The penalties for violation of these commission regulations pertaining to taking, possessing, recording or reporting of landings or selling oysters from Calcasieu Lake shall be as provided for in R.S. 56:435.1.1(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 and R.S. 56:435.1.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 37:3065 (October 2011).

Robert J. Barham  
Secretary

1110#016

# Notices of Intent

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

#### Bulletin 118—Statewide Assessment Standards and Practices

(LAC 28:CXI.312, 315, 317, 701, 1348, 1803, 1808, 1813, 1817, 1821, 2401, 2403, 2405, 2407, 3303, 3305, and 3505)

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*: §312. Administrative Error, §315. Emergencies During Testing, §317. Virtual Charter Schools, §701. Overview of Assessment Programs in Louisiana, §1348. Last Cohorts, §1803. Introduction, §1805. EOCT Development and Implementation Plan, §1808. Biology Test Structure, §1813. Performance Standards, §1817. EOCT Achievement Level Descriptors, §1821. First Cohort, §2401. Description, §2403. Introduction, §2405. Format, §2407. Membership, §3303. Special Education Students, §3305. Students with One or More Disabilities According to Section 504, and §3505. Foreign Exchange Students. These revisions will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security; Chapter 7, Assessment Program Overview; Chapter 18, End-of-Course Tests (EOCT); Chapter 33, Assessment of Special Populations; and Chapter 35, Assessment of Students in Special Circumstances. A new assessment chapter was added, Chapter 24, Academic Skills Assessment (ASA) along with its new policy language and guidelines. New policy language, updates and edits were made to Chapters 3, 7, 13, 18, 33, and 35. New policy language additions were made to Chapters 18 and 24.

#### Title 28 EDUCATION

#### Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

#### Chapter 3. Test Security

#### §312. Administrative Error

A. Administrative errors that result in questions regarding the security of the test or the accuracy of the test data are considered testing irregularities. If it is deemed necessary to void the test, the district test coordinator must fax a completed void form to the LDE, Division of Assessments and Accountability, as directed in the *District and School Test Coordinators Manual*. The original void verification form, along with a copy of the account of the incident, must also be mailed to the LDE, Division of Assessments and Accountability, as directed in the manual.

B. - G3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), LR 34:66 (January 2008), LR 34:1351 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 38:

#### §315. Emergencies During Testing

A. - A.7. ...

B. End-of-Course (EOC) Tests Emergency Plan

1. Each district shall develop and adopt an emergency plan that includes the steps to be followed in the event of an emergency that results in disruption of online testing.

2. ...

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 38:

#### §317. Virtual Charter Schools

A. Virtual charter schools shall be responsible for testing their own students.

1. Virtual charter schools shall test their students with staff of the virtual school. Virtual charter schools shall administer all state assessments and are subject to the Louisiana School and District Accountability System. Virtual charter schools shall conduct all state assessments at secure, proctored locations within reasonable distance of students' homes, as approved by the charter authorizer.

2. Parents and/or family members of the students of the virtual school shall not test their own children and/or family members. The local school district shall not test any students enrolled in virtual charter schools unless there is a written agreement between the local school district and the virtual charter school. No local school district shall ever be required to test students attending the virtual school.

3. The district will develop and submit to LDOE annually a test security policy approved by its board.

4. The virtual charter school's assessment plan shall be part of its board approved test security policy. The plan must identify:

a. the state assessments to be administered throughout the year;

b. the cities/towns where testing will occur;

c. description of testing locations;

d. qualifications of testing personnel;

e. procedures for implementation of the requirement of a photo ID of all students to ensure the students reporting for testing are the actual students assigned to that testing site; and

f. provisions for students' transportation to the testing locations.

5. LDOE will monitor the assessment plan.

6. If the student population of the virtual school is spread across multiple parishes, the virtual school shall secure testing centers in those parishes (e.g., public library meeting rooms; public meeting facility; private meeting facility; rooms at community colleges, technical colleges,

colleges). Testing centers shall be physical locations and must be submitted to LDOE prior to testing. A plan for providing student transportation to the assessment location on an as needed basis.

7. Thirty days prior to testing, the virtual charter school shall provide LDOE a list of students with testing accommodations as specified in the IEP for students with disabilities according to IDEA, IAPs for students with disabilities according to section 504, and accommodation plans for limited English proficient (LEP) students.

8. Within 30 days of testing, the virtual charter schools shall provide LDOE documentation of training in test administration and test security for each test administration. A copy of the following must be included:

- a. the agenda;
- b. all training materials; and
- c. all sign-in-sheets.

9. Within 30 days of testing, the virtual charter school shall provide LDOE documentation of the test administration including the:

- a. testing locations;
- b. schedule;
- c. all sign-in sheets for the students assessed with the name of the assessment administered;
- d. days and times the student was assessed; and
- e. provided accommodations.

10. LDOE staff shall have the authority to:

- a. monitor the implementation of the testing plan;
- b. require changes to the testing plan as deemed necessary.

11. LDOE staff shall:

- a. notify virtual charter schools of any new requirements to their testing plan;
- b. annually evaluate the testing plan to ensure full compliance with policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:

## Chapter 7. Assessment Program Overview

### §701. Overview of Assessment Programs in Louisiana

A. ...

Name of Assessment Program	Assessment Population	Administered
<b>Kindergarten Screening</b>		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987–
<b>Norm-Referenced Tests (NRTs)</b>		
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)
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)

Name of Assessment Program	Assessment Population	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)
<b>Criterion-Referenced Tests (CRTs)</b>		
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	English II	fall 2008–
EOCT	Geometry	fall 2009–
EOCT	Biology	fall 2010–
EOCT	Applied Algebra I form	spring 2011–
EOCT	English III	fall 2011–
<b>Integrated NRT/CRT</b>		
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)
<b>Special Population Assessments</b>		
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–
Academic Skills Assessment (ASA) and ASA LAA 2 form	Students pursuing a State-Approved Skills Certificate (SASC) or GED	spring 2012–

B. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 25:2169 (November 1999), amended LR 38:

**Chapter 13. Graduation Exit Examination**  
**Subchapter D. GEE Assessment Structure**

**§1348. Last Cohorts**

A. First-time freshmen in 2009–2010 comprise the last cohort of GEE.

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 38:

**Chapter 18. End-of-Course Tests**

**Subchapter B. General Provisions**

**§1803. Introduction**

A. - B. ...

1. algebra I/ applied algebra 1 form ;

2. - 5. ...

6. U.S. history.

C. - E. ...

F. Since these tests are being developed for use in Louisiana schools, any school selected for field tests shall participate in the field tests. In spring, 2012, the U. S. history field tests will be administered.

G. - G.5. ...

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 35:214 (February 2009), amended LR 36:477 (March 2010), LR 38:

**§1805. EOCT Development and Implementation Plan**

Course	Test Administration	Year 1 2008– 2009	Year 2 2009– 2010	Year 3 2010– 2011	Year 4 2011– 2012	Year 5 2012– 2013
Algebra I	Field Test					
	Operational Test	√	√	√	√	√
English II	Field Test					
	Operational Test	√	√	√	√	√
Geometry	Field Test	√				
	Operational Test		√	√	√	√
Biology	Field Test		√			
	Operational Test			√	√	√
English III	Field Test			√		
	Operational Test				√	√
U.S. History	Field Test				√	
	Operational Test					√

Note: The field test in the table is the stand-alone field test for the initial item development.

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 38:

**Subchapter C. EOCT Test Design**

**§1808. Biology Test Structure**

A. The biology EOC tests include 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 38:

**Subchapter D. Achievement Levels and Performance Standards**

**§1813. Performance Standards**

A. Performance standards for EOCT Algebra I, English II, Geometry, and Biology tests are finalized in scaled-score form.

B. - B.2. ...

\* \* \*

3. Geometry Scaled-Score Ranges

Geometry	
Achievement Level	Scaled-Score Ranges
Excellent	731-800
Good	700-730
Fair	665-699
Needs Improvement	600-664

#### 4. Biology Scaled-Score Ranges

Biology	
Achievement Level	Scaled-Score Ranges
Excellent	740-800
Good	700-739
Fair	661-699
Needs Improvement	600-660

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 38:

#### Subchapter E. Achievement Level Descriptors §1817. EOCT Achievement Level Descriptors

A. - C. ...

\* \* \*

#### D. Biology Achievement Level Descriptors

Excellent
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> <li>design an appropriate experiment that includes a hypothesis, variables, and controls;</li> <li>analyze the role of the Sun in living systems and various biological processes;</li> <li>analyze biogeochemical cycles and how components relate to a specific ecosystem;</li> <li>analyze the components and energy flow in food webs and ecosystems, and predict how populations will be impacted by changes;</li> <li>differentiate between prokaryotic and eukaryotic cells using structural and functional differences among organelles;</li> <li>compare active and passive transport;</li> <li>analyze balanced equations of photosynthesis and cellular respiration;</li> <li>create and use a Punnett square to calculate the probabilities of the genotypes and phenotypes of offspring; and</li> <li>evaluate and describe the impact of emerging technologies on society.</li> </ol>
Good
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> <li>determine the validity of a conclusion by analyzing experimental data;</li> <li>identify and describe the components of the biogeochemical cycles;</li> <li>use radioactive elements to determine the age of earth materials;</li> <li>calculate the energy transfer between trophic levels of an energy pyramid;</li> <li>analyze and compare the movement of molecules across a cell membrane;</li> <li>explain and evaluate the roles and uses of ATP in a cell;</li> <li>explain and compare the stages of an organism's development, including mitosis and meiosis;</li> <li>compare the structure, function, and interrelationships of organ systems and their components among various organisms and within humans;</li> <li>compare the structures, functions, and cycles of viruses to those of cells;</li> <li>determine the relationship between vaccination and immunity; and</li> <li>evaluate various methods of disease transmission and prevention.</li> </ol>

Fair
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> <li>identify appropriate lab safety measures and equipment;</li> <li>interpret data and/or a graph to draw appropriate conclusions;</li> <li>describe how organisms respond to different stimuli;</li> <li>determine and compare ages of rock layers, with and without fossils;</li> <li>apply various evolutionary models and the fossil record to explain relationships between organisms;</li> <li>explain how specific behaviors contribute to various species' survival;</li> <li>describe the role of enzymes in living systems;</li> <li>recognize the basic structure and components of a nucleic acid;</li> <li>describe the relationship between DNA, genes, chromosomes, and proteins;</li> <li>identify and compare organisms using a dichotomous key; and</li> <li>analyze and describe how organisms maintain homeostasis.</li> </ol>
Needs Improvement
<p>Students at this achievement level are generally working toward the ability to:</p> <ol style="list-style-type: none"> <li>identify appropriate lab safety measures and equipment;</li> <li>interpret data and/or a graph to draw appropriate conclusions;</li> <li>describe how organisms respond to different stimuli;</li> <li>explain how specific behaviors contribute to various species' survival; and</li> <li>describe the relationship between DNA, genes, chromosomes, and proteins.</li> </ol>

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 35:216 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), LR 38:

#### §1821. First Cohort

A. The first cohort comprises students who were first-time ninth graders in 2010–2011 and all first-time ninth graders thereafter. First cohort students are required to score Fair or above on EOC English II or English III, Algebra I or Geometry, and Biology or U.S. history to be eligible for a standard high school diploma.

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 38:

#### Chapter 24. Academic Skills Assessment (ASA)

##### Subchapter A. Background

#### §2401. Description

A. A statewide assessment program developed for students pursuing a state-approved skills certificate (SASC) or GED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:

##### Subchapter B. General Provisions

#### §2403. Introduction

A. ASA will be administered to students pursuing a state-approved skills certificate (SASC) or GED.

B. ASA or ASA LAA 2 will be administered to students with disabilities identified under IDEA who meet LAA 2 participation criteria.

C. ASA or ASA LAA 2 will be administered in the first and second year of program (SASC or GED):

1. in year one, the students will take ASA Mathematics; and

2. in year two, the students will take ASA English language arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:

### **Subchapter C. ASA Test Design**

#### **§2405. Format**

A. English language arts.

B. Mathematics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:

### **Subchapter D. Target Population**

#### **§2407. Membership**

A. Students pursuing a state-approved skills certificate (SASC or GED).

B. Remaining students presently enrolled in the Options (PreGED/Skills) Program for 2011-2012 only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:

## **Chapter 33. Assessment of Special Populations**

### **§3303. Special Education Students**

A. - A.1. ...

2. New accommodations or changes to an accommodation for a statewide assessment must be on a student's IEP form 30 days prior to the start of testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1560 (July 2005), amended LR 32:239 (February 2006), LR 36:983 (May 2010), LR 38:

### **§3305. Students with One or More Disabilities**

#### **According to Section 504**

A. - B.3. ...

4. New accommodations or changes to an accommodation for a statewide assessment must be on the student IAP form 30 days prior to the start of testing.

5. Documentation for how the student meets the definition of substantially limited in Section 1630.2 of the Americans with Disabilities Act (ADA) of 1990 must be on file at the school.

C. - I.3.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24 et seq., R.S. 17:391-400, R.S. 17:1941 et seq., R.S. 17:397, R.S. 17:1946, and R.S. 17:1947.1.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1560 (July 2005), amended LR 32:239 (February 2006), LR 33:262 (February 2007), LR 38:

## **Chapter 35. Assessment of Students in Special Circumstances**

### **§3505. Foreign Exchange Students**

A. Foreign exchange students shall take the appropriate assessment for their enrolled grade during the scheduled assessment period.

B. If foreign exchange students are screened and determined to be limited English proficient, they may qualify for test accommodations provided they are used in the student's regular classroom instruction and assessment.

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 31:1563 (July 2005), amended LR 34:2557 (December 2008), repromulgated LR 35:62 (January 2009), LR 38:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

#### **Public Comments**

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

New and updated policy language will be added to Chapter 3, Test Security, regarding Administrative Error and End-Of-Course (EOCT) emergencies that may occur during testing. New policy language is being added to address Virtual Charter Schools. In Chapter 7, Assessment Program Overview, the testing chart will be edited to reflect the addition of Biology, Applied Algebra, English III, and the Academic Skills Assessment (ASA) LAA 2 form spring 2012 as new

assessments. New policy language, Section 1348, Last Cohorts will be added to Chapter 13, Graduation Exit Examination (GEE) that identify the last group of students required to take the GEE test for a Louisiana high school diploma. Chapter 18, End-Of-Course Tests (EOCT), is being updated to reflect the addition of applied algebra and US history as EOC assessments, add new policy language regarding the biology EOC test structure, scale-score ranges, and achievement level descriptors. The addition of new policy in Chapter 24, Academic Skills Assessment (ASA) with a brief description, test design, and target population of this assessment is provided. Chapter 33, Assessment of Special Populations, which addresses special education students and students with disabilities, will be updated to provide information about new policy guidelines regarding accommodation changes to Individualized Accommodation Plans (IAPs) or Individualized Education Plans (IEPs) before the administration of statewide assessments. Chapter 35, Assessments of Students in Special Circumstances, policy language will be updated to provide information about foreign exchange 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  
1110#069

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 126—Charter Schools—Virtual Schools  
(LAC 28:CXXXIX.103, 515, 3701, 3703, 3705 and 3707)

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: §103. Definitions, §515. Application Components, and Chapter 37. Virtual Charter Schools.* The proposed rules define virtual charter schools as a specific kind of charter school and articulate specific requirements for the schools, including requirements around virtual charter applications, state testing, the provision of technical access to students enrolled at the schools, and the funding of the virtual schools. The proposed policy requires that students who are considered at risk or can demonstrate need be provided with the technical access (laptops, internet connectivity) that will enable them to participate in the virtual environment. The proposed policy also lays out specific questions that must be answered by those seeking to operate virtual schools in Louisiana as part of their charter request for applications. The charter policy also requires that virtual charters provide

a testing plan that meets requirements set forth by the department to ensure a safe and secure testing environment for students enrolled in the schools.

**Title 28**

**EDUCATION**

**Part CXXXIX. Bulletin 126—Charter Schools**

**Chapter 1. General Provisions**

**§103. Definitions**

A. - A.2. ...

B. *Appropriate Technical Infrastructure*—any servers, programs, Internet access, and/or management systems that allow user interaction, provide sufficient bandwidth to host courses or online services, and sustain peak periods of usage without a reduction in performance.

C. *At-Risk Pupil*—any pupil about whom at least one of the following is true:

1. is eligible to participate in the federal free or reduced lunch program by demonstrating that he meets the income requirements established for participation in the program, not necessarily by participating in the program;

2. is under the age of 20 and has been withdrawn from school prior to graduation for not less than one semester;

3. is under the age of 20 and has failed to achieve the required score on any portion of the examination required for high school graduation;

4. is in the eighth grade or below and is reading two or more grade levels below grade level as determined by one or more of the tests required pursuant to R.S. 17:24.4;

5. has been identified as an exceptional child as defined in R.S. 17:1943 not including gifted and talented; or

6. is the mother or father of a child.

D. *BESE* and/or *Board*—the State Board of Elementary and Secondary Education as created by the Louisiana Constitution and the Louisiana Revised Statutes.

E. *Charter*—the agreement and authorization to operate a charter school, which includes the charter contracts and exhibits, which incorporate the charter school application.

F. *Charter Operator*—the nonprofit corporation or school board authorized to operate a charter school.

G. *Management Organization*—an organization contracted by the charter operator to directly manage a charter school.

H. *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.

I. *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.

J. *Charter School Law*—Louisiana Laws, R.S. 17:3971 et seq., governing the operation of a charter school.

K. *Chartering Authority*—a local school board or the State Board of Elementary and Secondary Education.

L. *Core Subject*—core subject shall include those subjects defined as core subjects in Bulletin 741.

M. *Department of Education* or *LDE*—the Louisiana Department of Education.

N. *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.

O. *Hearing Officer*—the individual assigned by BESE to perform adjudicatory functions at charter school revocation hearings.

P. *Instructional Coach*—a parent or guardian, extended adult family member, or other adult designated by the parent or guardian who works in person with each virtual charter school student under the guidance of the Louisiana-licensed professional teacher.

Q. *Instructional and Communication Hardware*—any equipment used to ensure students can access and engage with the educational program (e.g., headphones, wireless air cards, learning management systems, web-based communication tools).

R. *Local School Board*—any city, parish, or other local education agency.

S. *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.

T. *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.

U. *Technical Access*—computer and internet availability sufficient to ensure access for all students.

V. *Virtual School*—an educational program operated for a minimum of one academic year and covering specified educational learning objectives for the purpose of obtaining a Louisiana certified diploma, the delivery of such a program being through an electronic medium such that the students are not required to be at a specific location in order to receive instruction from a teacher, but instead access instruction remotely through computers and other technology, which may separate the student and teacher by time and space. This does not preclude the ability of said program to host face-to-face meetings, including field trips, extracurricular activities, conferences between the student, parents, and teachers, or any such related events.

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, LR 34:1357 (July 2008), amended LR 38:

## **Chapter 5. Charter School Application and Approval Process**

### **§515. Application Components**

A. - G. ...

H. In the case of a proposed virtual charter school, the request for applications shall additionally require the applicants to provide:

1. a testing plan that meets the requirements set forth in Section 317 of Bulletin 118;

2. a plan for delivering instruction in the event of technical and other course delivery problems which prevent normal course delivery;

3. a summary of data protection and recovery procedures in the event of catastrophic system failure;

4. a staff/teacher acceptable use policy for technology that complies with R.S. 17:3996(21);

5. a school electronic communication policy that complies with the federal Child Internet Protection Act and R.S. 17:100.7, including information on school Internet safety and filtering practices and policies;

6. a plan for providing professional development appropriate to the delivery method used and the acceptable use and electronic communication policies;

7. a plan for providing adequate, timely, and appropriate technical support to students, teachers, facilitators, and instructional coaches;

8. a plan for providing orientations to enrolled students, their parents, and their instructional coaches on the course delivery model prior to the beginning of the class;

9. a plan outlining the nature, frequency, and location of all required and optional in-person meetings and interactions between parents and school faculty, including but not limited to parent/teacher conferences, open houses, and school community meetings;

10. a plan for verifying student participation and performance, including specific intervention procedures the school will take when students are not participating as required; and

11. a plan for complying with Title 28, Chapter 11, §1119 Health Screening as part of enrollment and the ongoing functioning of the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 38:

## **Chapter 37. Virtual Charter Schools**

### **§3701. Application of this Bulletin**

A. All rules, requirements, and regulations established in this *Bulletin 126—Charter Schools* shall apply to the authorization and operation of any virtual charter school, except as specifically set forth in *Bulletin 741—Louisiana Handbook for School Administrators*, Section 907, Secondary—Class Times and Carnegie Credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

### **§3703. Curriculum in Virtual Charter School**

A. The virtual charter school shall ensure that all course content is being used under an appropriate and valid license and shall defend, indemnify and hold harmless BESE, LDE and the students and parents for any claims of non-compliance.

B. The virtual charter school shall make courses available to all students by complying with web accessibility guidelines and standards (W3C, section 508, and Louisiana and institutional guidelines) to the maximum extent reasonably possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

**§3705. Technical Requirements for Virtual Charter Schools**

A. The following technical specifications are required for all virtual charter schools:

1. enrolled students will have access to appropriate technical access;
2. provide each student enrolled in the program with all the necessary instructional materials;
3. provide each full-time student enrolled in the program who qualifies for free or reduced-price school lunches under the National School Lunch Act, is considered at-risk for the purpose of calculating funding through the Minimum Foundation Program, or does not have a computer or internet access in his or her home with:
  - a. all equipment necessary for participants in the virtual instruction program, including, but not limited to, a computer, computer monitor, and printer, if a printer is necessary to participate in the program; and
  - b. access to or reimbursement for all Internet services necessary for online delivery of instruction;
4. the virtual charter school will have the appropriate license to allow student/teacher usage of the proprietary technology through a license agreement with the owner of the technology;
5. timely and appropriate technical support, as described in the charter operator’s application;
6. course technical requirements will be provided prior to enrollment;
7. the appropriate technical infrastructure to support their course offerings for effective course delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

**§3707. Virtual Charter School Funding**

A. For purposes of funding, each Type 2 virtual charter school shall be funded in accordance with the provisions of §2301 of this bulletin, except that the local portion of the per pupil amount received pursuant to the Minimum Foundation Program formula adopted each year shall be reduced by 10 percent, with such amount being distributed to the city, parish, or other local school system within which the Type 2 virtual charter school is located.

B. Any Type 1, 3, 4 or 5 virtual charter school shall be funded in accordance with the provisions of §2301 of this bulletin with no exceptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 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., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 126—Charter Schools—Virtual Schools**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules define virtual charter schools as a specific kind of charter school and articulate specific requirements for the schools, including requirements around virtual charter applications, state testing, the provision of technical access to students enrolled at the schools, and the funding of the virtual schools. All virtual charter schools will be funded the same as any other charter of their type, except Type 2 Virtual Charter Schools. The local portion of the per pupil amount received by a Type 2 Virtual Charter School pursuant to the Minimum Foundation Program formula adopted each year shall be reduced by 10% with such amount being distributed to the district where the virtual school is located. There will be a cost of \$164 associated with publication of the proposed rule change in the *Louisiana Register*.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections at the state or local government level.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed policy requires that students who are considered to be at risk, qualify for free lunch or reduced lunch, or does not have a computer or Internet access in his or her home be provided all equipment necessary to participate in the program and access to or reimbursement for Internet services for delivery of instruction.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed bulletin revision will have no effect on revenue collections at the state or local government level.

Beth Scioneaux  
Deputy Superintendent  
1110#070

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.501, 503, 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 129—The Recovery School District*: §501. Transfer to the Recovery School District, §503. Conditional Supervisory Memorandum of Understanding, and §505. Return of Schools to LEA. Chapter 5 outlines the process and procedures relating to the transfer of schools that are academically unacceptable or are determined to be academically in crisis to the recovery school district and the criteria and policy for a school to transfer out of the recovery school district. The recovery school district was created in 2003 by legislative act. The proposed policy aligns the Recovery School District with BESE Bulletin 111, *The Louisiana School District and State Accountability System*.

#### Title 28 EDUCATION

#### Part CXLV. Bulletin 129—The Recovery School District 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 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 such that the school earns the ability to transfer out of the RSD according to *Bulletin 111—The Louisiana School District and State Accountability System*. (LAC 28:LXXXIII.2403. Transfer of Schools out of the Recovery School District).

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.

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 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 R.S. 17:10.7 to determine the best method 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 37:878 (March 2011), amended LR 38:

##### §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 the LEA to implement to bring the failing school to acceptable levels of performance and outline any other conditions the LEA must meet or provide to support the school's turnaround.

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 procedures and conditions 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.

C. At the end of the contract period, LEAs shall be released from the MOU if the school achieves a school performance score (SPS) greater than the current academically unacceptable school (AUS) bar or, if the board has adopted an increase to the AUS bar, that higher threshold. However, if desired by the successful LEA and approved by the state superintendent of education, an MOU may be extended in order to continue supports and services to the LEA.

D. At the end of the contract period, LEAs that do not achieve the required SPS score shall be immediately transferred to the RSD, unless the State Superintendent elects to extend 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 37:878 (March 2011), amended LR 38:

#### **§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.

B. Transfer of schools from the jurisdiction of the RSD shall occur in accordance with *Bulletin 111—The Louisiana School District and State Accountability System*. (LAC 28:LXXXIII.2403. Transfer of Schools out of the Recovery School District).

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 37:878 (March 2011), amended LR 38:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? 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., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 129—The Recovery School District**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed changes to Chapter 5 align the policy to current approved BESE practices and policies regarding the transfer of schools who are either academically unacceptable or determined to be academically in crisis to the jurisdiction of the Recovery School district. The cost to publish and distribute the Bulletin will be approximately \$2,000.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed policy 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  
1110#071

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—Educational Leader  
(LAC 28: CXV.337 and 507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators: §337. Written Policies and Procedures and §507. Louisiana Educational Leader Induction (LELI) Program*. This revised policy will discontinue the state-administered Louisiana educational leader induction (LELI) program. The state-administered LELI Program will be phased out after the 2010-2011 school year and transitioned to the local school districts after July 1,



2011. The revised policy will require districts to administer and assist newly appointed principals, assistant principals, and district leaders in building administrative, instructional, and professional knowledge and skills in order to train, support, and retain effective leaders.

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for  
School Administrators**

**Chapter 3. Operation and Administration**

**§337. Written Policies and Procedures**

A. - B. ...

C. Each LEA shall have policies and procedures that address, but are not limited to, the following:

1. - 26. ...

27. provision of a district-administered induction program for all newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification (refer to §507).

28. - 29. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:81; R.S.17:240.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1261 (June 2005), amended LR 33:429 (March 2007), LR 35:1101 (June 2009), LR 36:1224 (June 2010), LR 37:1141 (April 2011), LR 37:1380, 1380 (May 2011), LR 37:2134 (July 2011), LR 38:

**Chapter 5. Personnel**

**§507. District Educational Leadership Induction  
Program**

A. All newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification shall participate in a district-administered educational leadership induction program aligned to state guidelines available on [www.teachlouisiana.net](http://www.teachlouisiana.net). (Prior to July 1, 2011, newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification were required to participate in the state-approved Louisiana Educational Leader Induction (LELI) program.)

B. The district educational leadership induction program shall include but is not limited to these four core components:

1. professional development;
2. school site visits;
3. mentor-facilitated face to face meetings; and
4. access to district assigned mentors.

C. Completion of a district educational leadership induction program is required for the following:

1. individuals appointed to a principalship, assistant principalship, or district level leadership position;
2. an individual serving as acting principal or acting assistant principal if he/she is serving in a full-time, full-year administrative capacity.

D. A newly appointed assistant principal, principal, and district leader who completes a district Educational Leader Induction Program and three years of successful educational leadership experience may request to have his/her provisional principal status or Educational Leader Level 1 endorsement updated to Educational Leader Level 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3761.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1266 (June 2005), amended LR 32:1416 (August 2006), LR 38:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No
3. Will the proposed Rule affect the functioning of the family? No
4. Will the proposed Rule affect family earnings and family budget? No
5. Will the proposed Rule affect the behavior and personal responsibility of children? No
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 741—Louisiana Handbook for  
School Administrators—Educational Leader**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This revised policy will discontinue the state-administered Louisiana Educational Leader Induction (LELI) Program. The state-administered LELI Program will be phased out after the 2010-2011 school year and transitioned to the local school districts after July 1, 2011. The revised policy will require districts to administer and assist newly appointed principals, assistant principals, and district leaders in building administrative, instructional, and professional knowledge and skills in order to train, support and retain effective leaders. All districts will customize their induction program to include the four core components: professional development, school site visits, mentor-facilitated face to face meetings, and district-assigned mentors. Some districts will continue using induction programs that were already in place at the district level and will incorporate the core components, while some districts will implement a new program. The cost to implement an induction program at the district level will vary across districts and is indeterminable. Districts may use a combination of Minimum Foundation Program funds and local funds to implement this program. 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  
1110#073

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—Physical Education  
(LAC 28: CXV.2357)

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*: §2357. Physical Education. These policy revisions require that off-campus training programs must meet required instructional minutes, cover the required content standards, and be supervised by qualified personnel to count for PE credit. These changes will not result in an increase in costs or savings to state or local governmental units. These policy revisions to Section 2357 will ensure that policies regarding content standards and instructional time are being met and that proper supervision is provided for off-campus PE.

### Title 28 EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction §2357. Physical Education

A. - I. ...

J. Off-campus athletic training programs may substitute for Physical Education I and Physical Education II if the following conditions are met:

1. permission of the principal;
2. the student participates in the off-campus athletic training program for an amount of time equal to or greater than the required instructional minutes necessary to obtain credit;
3. the off-campus athletic training programs are aligned to the state physical education content standards and GLEs, as verified by the school principal;
4. a reporting system for attendance and grading is established;
5. the off-campus athletic training program is under the direction of a qualified instructor or coach, as verified by the school principal and submitted to the DOE;
  - a. A qualified instructor or coach is one that has a bachelor's or master's degree in an area related to the

activity, has regional or national accreditation or a license in an area related to the activity, or can present evidence of substantial accomplishment in the area (such as awards, newspaper articles, published research in the field, etc.)

6. approval of the local school board;
7. approval by the DOE by submitting documentation verifying the following:
  - a. off-campus training program and its alignment with the state standards and GLEs;
  - b. record of student's attendance and participation;
  - c. qualifications of the instructor; and
  - d. verification that the school principal has reviewed the documentation.
8. a hold harmless agreement signed by the parent or guardian of the student who would be participating in the off-campus athletic program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:17.1; R.S. 17:24.4; R.S. 17:276.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1297 (June 2005), amended LR 33:430 (March 2007), LR 38:

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

### Public Comments

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Physical Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These policy revisions to Section 2357 will ensure that policies regarding content standards and instructional time are being met and that proper supervision is provided for off-

- campus Physical Education. These changes will not result in an increase in costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
 There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
 There will be no costs or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
 There will be no effect on competition and employment.

Beth Scioneaux  
 Deputy Superintendent  
 1110#074

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—Sexual Offenses Affecting Minors (LAC 28: CXV.337 and 502)

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: §337. Written Policies and §502. Staff Misconduct*. These policy changes require an employee arrested for any of the crimes listed in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect to report his/her arrest to the local education agency and a school bus operator arrested for a violation of R.S. 14:98, 98.1 to report his/her arrest to the local education agency. These policy revisions to sections 337 and 502, are required by Act 533 of the 2010 Regular Legislative Session and Act 267 of the 2011 Regular Legislative Session.

**Title 28  
 EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 3. Operation and Administration**

**§337. Written Policies and Procedures**

A. Each LEA shall have written policies governing all school activities as they relate to students, the instructional program, staff, buildings, services, and the curriculum.

B. Each LEA shall have policies and procedures stated in written form for instructional programs, graduation ceremonies, student activity programs, and student services.

C. Each LEA shall have policies and procedures that address, but are not limited to, the following:

1. - 27. ...

28. an employee arrested for any of the crimes listed in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect.

29. the reporting of school bus operator arrests for violations of R.S. 14:98, 98.1, or any other law or ordinance that prohibits operating a vehicle while under the influence

of alcohol or any abused substance or controlled dangerous substance set forth in the schedules provided in R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7(29); R.S. 17:81; R.S.17:240; R.S. 17:100.8.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1261 (June 2005), amended LR 33:429 (March 2007), LR 35:1101 (June 2009), LR 36:1224 (June 2010), LR 37:1141 (April 2011), LR 37:1380, 1380 (May 2011), LR 37:2134 (July 2011), LR 38:

**Chapter 5. Personnel  
 §502. Staff Misconduct**

A. - C.6 ...

D. A school employee shall report his or her arrest for a violation of any of the crimes provided in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect on file in the central registry pursuant to Article 615 of the Children’s Code within 24 hours of the arrest. However, if the school employee is arrested on a Saturday, Sunday, or a legally declared school holiday such report shall be made prior to the school employee next reporting for his work assignment at a school.

1. School employee means any employee of, an LEA including a teacher, substitute teacher, bus driver, substitute bus driver, or janitor, and shall include all temporary, part-time, and permanent school employees.

2. All school governing bodies shall promulgate reporting policies and/or procedures to be followed by any employee arrested for the aforementioned offenses.

3. The report shall be made by the school employee to a person or persons as specified by the LEA

4. The report shall be made by the school employee regardless of whether he or she was performing an official duty or responsibility as a school employee at the time of the offense.

5. In addition, the school employee shall report the disposition of any legal proceedings related to any such arrest within twenty four hours, which shall also be made a part of any related files or records.

6. Failure to comply with these provisions shall result in the following:

a. suspension, with or without pay, of said employee by the employee’s LEA if such employee is serving a probationary term of employment or if the provisions of law relative to probation and tenure are not applicable to the employee;

b. removal proceedings under R.S. 17:45, 443, 462, 493, 523, or 533, as applicable, for tenured employees;

i. written and signed charges alleging such failure shall be brought against any such tenured employee.

7. Unless criminal charges are instituted pursuant to an arrest which is required to be reported, all information, records, hearing materials, and final recommendations of the school pertaining to such reported arrest shall remain confidential and shall not be subject to a public records request.

E. A school bus operator shall report his arrest for a violation of R.S. 14:98, 98.1, or any other law or ordinance that prohibits operating a vehicle while under the influence of alcohol or any abused substance or controlled dangerous substance set forth in the schedules provided in R.S. 40:964.

1. School bus operator means any employee of an LEA whose duty it is to transport students in any school bus

or activity bus to and from a school approved by BESE or to and from any school-related activity.

2. The report shall be made by the operator to a person or persons as specified by the LEA in rules and regulations.

3. Such report shall be made within twenty four hours of the arrest or prior to the operator next reporting for his work assignment as a school bus operator, whichever time period is shorter.

4. Such report shall be made by the school bus operator regardless of who owns or leases the vehicle being driven by the operator at the time of the offense for which he was arrested and regardless of whether the operator was performing an official duty or responsibility as a school bus operator at the time of the offense.

5. A school bus operator who fails to comply with the provisions of this Section shall be terminated by the LEA employing the operator if such operator is serving a probationary term of employment as provided by R.S. 17:492 or if the provisions of law relative to probation and tenure of bus operators are not applicable to the operator.

6. A school bus operator employed by an LEA who is a regular and permanent employee of the board as provided by R.S. 17:492 shall be subject to removal as provided by R.S. 17:493 for failure to comply with the provisions of this Section.

a. Written and signed charges alleging such failure shall be brought against the bus operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15; R.S. 17:81.9; R.S. 17:587.1; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:431 (March 2007), LR 34:607 (April 2008), repromulgated LR 35:444 (March 2009), amended LR 35:1099 (June 2009), LR 37:1138 (April 2011), LR 38:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed rule? Yes.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education,

P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators Sexual Offenses Affecting Minors**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

These policy revisions to Sections 337 and 502, are required by Act 533 of the 2010 Regular Legislative Session and Act 267 of the 2011 Regular Legislative Session. They require an employee arrested for any of the crimes listed in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect to report his/her arrest to the local education agency. In addition, a school bus operator arrested for a violation of R.S. 14:98, 98.1 or any other law or ordinance that prohibits operating a vehicle while under the influence of alcohol or any abused substance or controlled dangerous substance set forth in the schedules provided in R.S. 40:964 to report his/her arrest to the local education agency. These changes will not result in an increase in costs or savings to state or local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1110#072

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Leader  
(LAC 28:CXXXI.240, 703, 705, 707, 721, and 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*: §240. Educational Leader Practitioner (Residency) Program, §703. Introduction, §705. Educational Leader Certificate Level 1, §707. Educational Leader Certificate Level 2, §721. Out-of-State Principal Level 1 (OSP1), and §723. Out-of-State Principal Level 2 (OSP2). This revised policy will

discontinue the state-administered Louisiana Educational Leader Induction (LELI) Program. The state-administered LELI Program will be phased out after the 2010-2011 school year and transitioned to the local school districts after July 1, 2011. The revised policy will require districts to administer and assist newly appointed principals, assistant principals, and district leaders in building administrative, instructional, and professional knowledge and skills in order to train, support, and retain effective leaders.

**Title 28**  
**EDUCATION**

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

**Chapter 2. Louisiana Educator Preparation Programs**

**Subchapter C. Alternate Educational Leader Preparation Programs**

**§240. Educational Leader Practitioner (Residency) Program**

A. State-approved private providers and Louisiana colleges or universities may choose to offer an Educational Leader Practitioner (Residency) Program for purposes of certifying successful candidates for Educational Leader Level 1 certification. (Two additional alternate paths are available to individuals seeking an Educational Leader Certificate Level 1—see Chapter 7, §705 for Path 1 and Path 2.) Educational Leader Practitioner Program providers must submit a program proposal to the Louisiana Department of Education, Division of Certification and Preparation. Programs will be reviewed for adherence to program guidelines, and those meeting guidelines will be recommended to the Board of Elementary and Secondary Education for approval status. The Educational Leader Practitioner Program is a streamlined certification path that combines intensive coursework and practical, on-the-job experience.

1. - 8.f. ...

9. On-Going Support (Second and Third Year). Program providers will give support services to educational leaders who have completed the practitioner leader program and are serving as school leaders during their second and third years in the program. Support services were coordinated with the state-administered Louisiana Education Leaders Induction Program prior to July 1, 2011. The district-administered educational leadership induction program after July 1, 2011 will include regular visits to their schools from a successful, veteran principal who provides feedback and coaching and leads regular cohort meetings.

10. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:818 (May 2007), amended LR 38:

**Chapter 7. Administrative and Supervisory Credentials**

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

**§703. Introduction**

A. The Educational Leadership Certification structure, effective July 1, 2006, provides for four levels of leader certification: Teacher Leader; Educational Leader Level 1;

Educational Leader Level 2; and Educational Leader Level 3. The Teacher Leader Endorsement is an option for a teacher to be identified as a teacher leader; it is not a state required credential for a specific administrative position. The Educational Leader Level 1 license is an entry-level license for individuals seeking to qualify for school and/or district leadership positions (e.g., assistant principals, principals, parish or city supervisors of instruction, supervisors of child welfare and attendance, special education supervisors, or comparable school/district leader positions). An individual moves from a Level 1 to a Level 2 license upon completion of the state-administered Educational Leader Induction Program prior to July 1, 2011 or the district-administered educational leadership induction after July 1, 2011 and the required years of experience. The Level 3 license qualifies an individual for employment as a district superintendent.

B. - B.3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1822 (October 2006), amended LR 33:819 (May 2007), LR 38:

**§705. Educational Leader Certificate Level 1**

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

6. Upon employment as a school/district educational leader, an individual with an Educational Leader Level 1 endorsement must have enrolled in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011. Once employed as a school/district educational leader, the individual has three years to complete the induction program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1823 (October 2006), amended LR 33:819 (May 2007), LR 38:

**§707. Educational Leader Certificate Level 2**

A. - A.1.b. ...

c. have completed the Educational Leader Induction Program under the administration of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011:

i. ...

ii. the induction program must be completed within a three-year period;

1.d. - 2.c. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1823 (October 2006), amended LR 33:820 (May 2007), LR 38:

**Subchapter B. Out-of-State Administrative Certification Structure**

**§721. Out-of-State Principal Level 1 (OSP1)**

A. This is a three year, non-renewable Louisiana certificate issued to an individual who holds comparable out-of-state certification as a principal or educational leader. It authorizes the individual to serve as a principal or assistant

principal in a Louisiana public school system, and is issued when upon employment as a principal or assistant principal in a Louisiana public school system.

1. Eligibility requirements:

a. - d. ...

2. Educational Leader Induction Program Requirements. Upon employment as a principal or an assistant principal in a Louisiana public school system, an individual holding an OSP1 certificate must enroll in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011. The individual has three years to complete the induction program.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1824 (October 2006), amended LR 35:2325 (November 2009), LR 38:

**§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. - b.iii. ...

c. completion of the Educational Leader Induction Program under the administration of the Louisiana Department of Education prior to July 1, 2011 or the district-administered education leadership induction.

2. ...

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), LR 38:

**Family Impact Statement**

In accordance with section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

**Public Comments**

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A.

Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 746—Louisiana Standards for  
State Certification of School Personnel  
Educational Leader**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The state-administered Louisiana Educational Leader Induction (LELI) Program will be phased out after the 2010-2011 school year and transitioned to the local school districts after July 1, 2011. This revised policy changes references from the state-administered Louisiana Education Leaders Program to the district-administered educational leadership induction program when referring to school personnel that must complete an educational leadership induction program for certification. 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  
1110#075

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). The proposed policy revision will allow candidates the option of completing nine semester hours in reading or passing the Praxis Teaching Reading exam (#0204) for add-on purposes. The Praxis elementary content exam and early childhood coursework requirements will be retained. This policy revision will align the early childhood add-on requirements to the middle grades add-on policy that was adopted by BESE in February 2011.

**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. - B.3. ...

C. Individuals holding a valid Early Interventionist Certificate must achieve the following:

1. passing score for Praxis Elementary Education: Content Knowledge exam (#0014);
2. twelve credit hours of combined nursery school and kindergarten coursework (art, math, science, social studies); and
3. nine semester hours of reading coursework or passing score for Praxis Teaching Reading exam (#0204).

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 38:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746—Louisiana Standards for  
State Certification of School Personnel—Requirements  
to add Early Childhood (Grades PK-3)**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed policy revision will allow candidates the option of completing nine semester hours in reading or passing the Praxis Teaching Reading exam (#0204) for add-on purposes. The PRAXIS elementary content exam and early childhood coursework requirements will be retained. 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  
1110#078

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 Elementary  
(Grades 1-5) (LAC 28:CXXXI.607)

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: §607. Requirements to add Elementary (Grades 1-5)*. The proposed policy revision will allow candidates the option of completing nine semester hours in reading or passing the Praxis Teaching Reading exam (#0204) and would eliminate the 36 semester hours of coursework, since teachers will have demonstrated content mastery by passing the Praxis elementary content exam. This policy revision will align the elementary grades 1-5 add-on requirements to the middle grades add-on policy that was adopted by BESE in February 2011.

**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**

**§607. Requirements to add Elementary (Grades 1-5)**

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3) 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 K-6 exam; and
3. nine semester hours of reading or passing score for Praxis Teaching Reading exam (#0204).

B. - B.3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 38:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746—Louisiana Standards for  
State Certification of School Personnel—Requirements  
to add Elementary (Grades 1-5)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision will allow candidates the option of completing nine semester hours in reading or passing the Praxis Teaching Reading exam (#0204) and would eliminate the 36 semester hours of coursework, since teachers will have demonstrated content mastery by passing the PRAXIS elementary content exam. 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  
1110#079

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 allows the renewal of a School Nurse certification by the completion of 15 contact hours or 5 Continuing Education Units (CEUs) of professional development, which will align with the State Board of Nursing. In addition, the proposed policy will give school nurses the option of completing contact hours or semester hours for renewal of their Ancillary School Nurse certificate.

**Title 28  
EDUCATION**

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

**Chapter 4. Ancillary School Service Certificates  
Subchapter A. General Ancillary School Certificates  
§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 15 contact hours of professional development to equal five hours of continuing education units (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 contact hours must be completed through the American Nurses Credentialing Center (ANCC), the state Board of Nursing or district approved professional development; or

b. six semester hours earned in the field of nursing, education, and/or other health related subjects completed at a regionally accredited college or university since the Type B certificate was issued; and

c. 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 15 contact hours of professional development to equal five hours of continuing education units (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 contact hours must be completed through the American Nurses Credentialing Center (ANCC), the state Board of Nursing or district approved professional development; or

b. six semester hours earned in the field of nursing, education, and/or other health related subjects completed at a regionally accredited college or university since the Type A certificate was issued; and

c. 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 38:

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

### Public Comments

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Nurse

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision allows the renewal of a School Nurse certification by the completion of 15 contact hours or 5 Continuing Education Units (CEUs) of professional development which will align with the State Board of Nursing. In addition, the proposed policy will give school nurses the option of completing contact hours or semester hours for renewal of their Ancillary School Nurse 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  
1110#076

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—Social Worker (LAC 28:CXXXI.413)

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*: §413. Social Worker. The proposed policy revision will align state

policy with amendments made to R.S. 37:2701 changing the name of the social worker license from graduate social worker (GSW) to Licensed Master's Social Worker (LMSW) and also will require license holders to earn continuing education units for license renewal.

**Title 28  
EDUCATION**

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

**Chapter 4. Ancillary School Services Certificates**

**Subchapter A. General Ancillary School Certificates**

**§413. Social Worker**

A. Social Worker—issued to individuals with master's degrees in social work or social welfare.

B. Provisional School Social Worker—valid for three years.

1. Eligibility requirements:

a. a licensed master's social worker (LMSW) issued under R.S. 37:2701 et seq.;

b. an individual must work under the supervision of a licensed clinical social worker (LCSW) for a minimum of one hour per week if providing clinical social work services and complete a minimum of 20 continuing professional development/education units (CEUs) each year of the validity of this certificate. Of the 20 CEUs, 10 hours must be related to the provision of school social work services and/or services to children. These CEUs will remain on file at the employing system.

2. Renewal Guidelines—nonrenewable.

C. Qualified School Social Worker

1. Eligibility requirements—one of the following:

a. licensed clinical social worker (LCSW), in accordance with R.S. 37:2701 et seq.;

b. certificate as a licensed master's social worker (LMSW), in accordance with R.S. 37:201 et seq.; receive a minimum of one hour per week of supervision by a LCSW, if providing clinical social work services; and have work experience in one or more of the following social work practice settings within the past five years:

i. school setting;

ii. mental health setting;

iii. correction setting;

iv. family/child/community service agency;

v. medical social services in which social services were delivered to families and children;

vi. private clinical practice in which social work services were delivered to adults, children, and families; or

vii. have graduate social worker field experience in the above social work practice settings plus two years of work experience, to be judged by the Louisiana State Board of Certified Social Work Examiners.

2. This certificate is valid provided the holder maintains current Louisiana licensure as a social worker and completes a minimum of 20 continuing professional development/education units (CEUs) in the years of the validity of this certificate. Of the 20 CEUs, 10 hours must be related to the provision of school social work services and/or services to children. These CEUs will remain on file at the employing system. A social worker who changes employing

school systems must provide a copy of his/her current Louisiana license to serve as a social worker.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1809 (October 2006), amended LR 38:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746—Louisiana Standards for  
State Certification of School Personnel—Social Worker**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed policy revision will align state policy with amendments made to R.S. 37:2701 changing the name of the Social Worker license from Graduate Social Worker (GSW) to Licensed Master's Social Worker (LMSW) and also will require license holders to earn continuing education units for license renewal. 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  
1110#077

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1706—Regulations for Implementation of the  
Children with Exceptionalities Act—Expenditures  
(LAC 28:XLIII.133)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*, Subpart 1. Regulations for Students with Disabilities: §133. Expenditures. The proposed rules implement Act 515 of the 2010 Regular Legislative Session, the School Choice Pilot Program for Certain Students with Exceptionalities. The proposed rules clarify the requirements for participating school and student eligibility. The policy clarifies the obligations of participants and gives clear timelines for reporting the entrance, exit, and transfer of students at participating schools. The proposed policy also clarifies the financial obligations of the Department of Education and participating schools and families. This includes a requirement that schools not increase tuition after the school submits eligibility documentation to the state as part of the eligibility process conducted by the state. The proposed policy ensures payments to participating schools are aligned with the same schedule for public schools receiving money from the state.

**Title 28  
EDUCATION**

**Part XLIII. Bulletin 1706—Regulations for  
Implementation of the Children  
with Exceptionalities Act**

**Subpart 1. Regulations for Students with Disabilities  
Chapter 1. State Eligibility  
Subchapter F. Students with Disabilities Enrolled by  
their Parents in Private Schools**

**§133. Expenditures**

A. - D. ...

E. School Choice Pilot Program for Certain Students with Exceptionalities

1. Introduction

a. The purpose of the School Choice Pilot Program for Certain Students with Exceptionalities, hereafter referred to as the “program,” shall be to provide certain students with exceptionalities the opportunity to attend schools of their parents’ choice that provide educational services specifically tailored to address said students’ specific needs.

2. Definitions

a. *Approved Non-public School*—

i. non-public school that meets the following criteria:

(a). approved, provisionally approved, or probationally approved by the State Board of Elementary and Secondary Education pursuant to R.S. 17:11 and according to *Brumfield, et al. v. Dodd, et al.* 425 F. Supp. 528.

b. *Continuous Attendance*—

i. student is enrolled and actively attending school.

c. *Educational Certificate*—

i. award amount allocated to an eligible school on behalf of an eligible student by the Louisiana Department of Education that shall be equivalent to 50 percent of the per pupil allocation of state funds to the city, parish, or other local public school district in which the eligible student is residing for that school year, but shall not exceed the amount of tuition charged by the eligible nonpublic school.

d. *Enrollment Status*—

i. the category of enrollment at an eligible non-public school as evidenced by attendance and registration.

e. *Entrance Requirements*—

i. requirements for entry into a participating non-public school.

f. *IEP*—

i. a plan that provides the basis for programming for students with exceptionalities as specified in Bulletin 1530.

g. *Transfer*—

i. a change in enrollment status resulting from the movement of an eligible student from one approved non-public school to another eligible non-public school during the current school year.

h. *Tuition*—

i. the total costs associated with one year of enrollment at an eligible non-public school as assessed to similarly situated students.

i. *Services Plan*—

i. a plan that provides the basis for services programming for students with exceptionalities as specified in Bulletin 1530.

3. Eligibility

a. Student Eligibility

i. A student shall be eligible to participate in the program after submission of an application to the Louisiana Department of Education not later than February tenth of the year prior to the year of eligibility and in accordance with the following requirements:

(a). evaluation of the student by a local education agency as defined in R.S. 17:1942 and resulting in a determination that services are required for one of the following exceptionalities:

(i). autism;

(ii). mental disability;

(iii). emotional disturbance;

(iv). developmental delay;

(v). other health impairment;

(vi). specific learning disability; or

(vii). traumatic brain injury;

(b). having an individual education plan or a services plan for any service excluding gifted and talented as defined in R.S. 17:1942 and in accordance with Title 34 of the Code of Federal Regulations Part 300.37;

(c). residence within an eligible parish in accordance with Act 515;

(d). eligibility to attend public school and enter into kindergarten or grades 1-8.

ii. An eligible student may be expelled from the school in accordance with the school's discipline policies or may be disqualified from enrollment if the student is no longer eligible for the program as determined by the department.

b. School Eligibility

i. A non-public school shall be eligible to enroll students through the program if it:

(a). is an approved non-public school, as determined by the State Board of Elementary and Secondary Education pursuant to R.S. 17:11 and has been so approved for the school year prior to the school's participation in the program, and

(b). has provided needed educational services to students with exceptionalities, as defined in R.S. 17:1942, excluding students deemed to be gifted or talented, for at least two years, and

(c). has provided needed services to students by teachers holding appropriate special education certification or other appropriate education and training as defined in Bulletin 1706, and

(d). provides services and instruction in accordance with a student's individual education plan.

ii. A non-public school seeking eligibility for this program shall provide the Louisiana—Department of Education with the following documents in accordance with timelines determined by the Louisiana Department of Education:

(a). a list of student exceptionalities that the school is able and willing to serve, as defined in R.S. 17:1942;

(b). an itemized tuition calculation including all costs for special education services by specific disability as listed in this section of Bulletin 1706 and all mandatory fees for the upcoming year, as well as the previous year.

iii. Any non-public school that does not meet these requirements shall not receive approval for program participation.

c. Eligible School Obligations

i. Once a non-public school is determined to be eligible for the program it shall provide the following assurances and information, as well as meet the following deadlines in order to retain eligibility:

(a). determination of the number of eligible students it will accept in any year of program participation and establishment of criteria for enrollment of students;

(b). no student seeking to enroll and participate in the program shall be required to take an entrance exam beyond what is required of all other similarly situated students as an entrance requirement;

(c). provision of all rules, policies, and procedures of the school, including but not limited to academic policies and disciplinary policies and procedures, to the parent or guardian of an eligible student;

(d). completion of student enrollment by April thirtieth of the school year prior to the non-public school's participation in the program;

(e). submission to the Louisiana Department of Education of a list of all eligible students conditionally enrolled in the school by June 1 of the year prior to the program year.

4. Finances

a. Parental Obligations

i. Parents of eligible students shall declare all other federal, state, local, and private financial aid to the student for educational purposes to the Louisiana Department of Education.

ii. Parents of eligible students shall be responsible for paying any outstanding tuition obligations regardless of the educational certificate award, except for undisbursed educational certificate funds.

b. School Obligations

i. Any eligible school shall declare all other federal, state, local, and private financial aid to eligible students for educational purposes to the Louisiana Department of Education.

ii. Any eligible school shall not increase tuition above itemized calculations provided to the Louisiana Department of Education by the school during eligibility determination.

iii. Any eligible school shall not require parents to pay for undisbursed educational certificate funds, unless student becomes ineligible for the pilot program but remains at the school.

iv. Any eligible school shall be subject to an audit of educational certificate funds by the Department of Education.

c. Louisiana Department of Education Obligations

i. The Louisiana Department of Education shall determine the total amount of the educational certificate after declaration by both parent and school of all other financial aid, subtracting any such aid from the maximum educational certificate value.

ii. The Louisiana Department of Education shall disburse educational certificate funds in four separate payments to the eligible school in the months of September, November, February, and May.

iii. Payments shall be based on per pupil count dates as determined by the Louisiana Department of Education. The count dates used are September 15, November, February, and May 5.

iv. Should any of the count dates occur on a weekend, the count shall take place no later than the next business day.

v. Should an eligible student begin attending an eligible non-public school after the start of the school year, the Louisiana Department of Education shall determine the method of disbursing the appropriate educational certificate amount.

5. Notifications of Change

a. School Notification Requirements

i. Any participating school shall notify the Louisiana Department of Education in writing within 10 days when there are changes in eligibility requirements including but not limited to: tuition, enrollment status, transfer, IEP, continuous attendance, and other types of financial aid as defined in this bulletin.

6. Student Records

a. Any participating school shall make all program participants' records available upon request by the Louisiana Department of Education.

7. Re-enrollment

a. Each eligible school and student shall submit a re-enrollment application to continue participation in the pilot program the following school year. If either the school or student loses eligibility, another initial application for the pilot program may be submitted to the Louisiana Department of Education.

8. Lottery

a. The Louisiana Department of Education shall hold a lottery for eligible, non-continuing students prior to the start of the school year, if demand for the pilot program exceeds available slots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008), amended LR 38:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights 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., November 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Expenditures**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules implement Act 515 of the 2010 Regular Legislative Session, the School Choice Pilot Program for

Certain Students with Exceptionalities. The proposed rules clarify the requirements for a participating school, student eligibility and the obligations of participants. The two-year pilot program operating in parishes with populations in excess of 190,000 persons, according to the most recent federal decennial census, provides certain students with exceptionalities the opportunity to attend nonpublic schools of their parents' choice that provide educational services specifically tailored to address specific needs of students. The Department of Education will award educational certificates to eligible students which are equivalent to 50% of the state per pupil allocation in the Minimum Foundation Program formula of the school district in which the student is residing for that school year, but will not exceed the amount of tuition charged by the eligible nonpublic school. The Department of Education was appropriated \$1,896,505 in state general funds in FY 12 to pay for educational certificates for approximately 1,000 students to go towards tuition at the nonpublic school. If a student participating in the program transfers from a public school, the student will no longer be counted in the Minimum Foundation Program and the local school district will not be responsible for educating that student in a public school. There will be a cost of \$164 associated with publication of the proposed rule change in the *Louisiana Register*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections at the state or local government level.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Parents of students participating in the pilot program are responsible for paying any outstanding tuition obligations regardless of the educational certificate award, except for undisbursed educational certificate funds. Any eligible school shall not require parents to pay for undisbursed educational certificates, unless the student becomes ineligible for the pilot program but remains at the school.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed bulletin revision will have no effect on revenue collections at the state or local government level.

Beth Scioneaux  
Deputy Superintendent  
1110#080

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT  
Student Financial Assistance Commission  
Office of Student Financial Assistance**

Scholarship/Grant Programs—Establishing Eligibility  
(LAC 28:IV.703)

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 implements Act 203 of the 2011 Regular Session of the Louisiana Legislature to revise the TOPS core curriculum requirements for students graduating during the 2013-2014 school year and thereafter to add History of Religion to the list of advanced social science courses and to reduce from two to one the number of art units required to substitute for one unit of Fine Arts Survey. (SG12134NI)

**Title 28  
EDUCATION**

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

**Scholarship and Grant Programs**

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

**§703. Establishing Eligibility**

A. - A.5.a.i.(e). ... \* \* \*

(f). beginning with the graduates of academic year (high school) 2013-14, at the time of high school graduation, an applicant must have successfully completed 19 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
2	Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Math – Pre-Calculus, Advanced Math – Functions and Statistics, Integrated Mathematics III
1	Biology
1	Chemistry
2	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit)
1	American History
2	World History, Western Civilization, World Geography or History of Religion
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit)
1	Fine Arts Survey; (or substitute one unit of a performance course in music, dance, or theater; or substitute one unit of a visual art course; or substitute one unit of a studio art course )
2	Foreign Language, both units in the same language

A.5.a. ii.(a). - J.4.b.ii. ...

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

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

(December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 38:

**Family Impact Statement**

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.

**Public Comments**

Interested persons may submit written comments on the proposed changes (SG12134NI) until 4:30 p.m., November 10, 2011, 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—Establishing Eligibility**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed change implements the modification to the TOPS Core Curriculum requirements mandated by Act 203 of the 2011 Regular Session of the Louisiana Legislature by changing the core curriculum requirements listed in the Louisiana Administrative Code Title 28 Part IV. *Student Financial Assistance – Higher Education Scholarship and Grant Programs*. There are no costs or savings anticipated due to implementation of the proposed rule changes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenue collections of state and local governments will not be affected by the proposed changes.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The changes mandated by Act 203 of the 2011 Regular Session of the Louisiana Legislature to the TOPS Core Curriculum for students graduating from high school during the 2013-14 Academic Year will give these and future students additional flexibility in scheduling high school courses so that they can meet the requirements for a TOPS Award, pursue electives that meet their interests or future education aspirations, and have additional opportunities to make adjustments for any errors or unforeseen events that may limit their ability to complete the TOPS Core Curriculum requirements.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will have no impact on competition or employment.

George Badge Eldredge  
General Counsel  
1110#018

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary

Removal of Recyclable Material from a Non-Processing Transfer Station (LAC 33:VII.115 and 508) (SW056)

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 Solid Waste regulations, LAC 33:VII.508.N (SW056).

This Rule will clarify and encourage the removal of non-putrescible commercial recyclable waste at non-processing transfer stations even in the presence of municipal solid waste. This Rule will clarify the sort-process of the waste stream at the transfer station and describe what qualifies as acceptable non-putrescible commercial recyclable matter that can be recovered. The basis and rationale for this rule is to allow the recovery of valuable materials which will reduce the volume of waste sent for landfill disposal. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part VII. Solid Waste

#### Subpart 1. Solid Waste Regulations

#### Chapter 1. General Provisions and Definitions

#### §115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

\* \* \*

*Process*—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle or at a non-processing transfer station), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique that is designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* does not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither does the definition include activities of an industrial generator to simply separate wastes from the manufacturing process, nor does it include separating recyclable material from commercial waste streams at a *non-processing transfer station*.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning

Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:1023 (June 2008), LR 34:1399 (July 2008), LR 37:1563 (June 2011), LR 38:

#### Chapter 5. Solid Waste Management System Subchapter A. General Standards for Nonpermitted Facilities

#### §508. Standards Governing Non-Processing Transfer Stations for Solid Waste

A. - B. ...

C. No processing or disposal shall occur at a non-processing transfer station except for facilities separating non-putrescible recyclable materials from commercial solid waste.

1. Recovered commercial recyclable materials shall not contain putrescible waste and shall be relatively dry. Types of recyclable materials that are acceptable include:

- a. recyclable paper;
- b. recyclable wood;
- c. recyclable glass;
- d. mixed rigid plastics (e.g. 5-gallon buckets, crates, and pallets);
- e. ferrous and non-ferrous metal materials; and
- f. other acceptable commercial recyclable materials approved by the administrative authority.

2. Identification of loads containing acceptable commercial recyclable materials shall occur by:

- a. driver identification; and
- b. visual inspection of open top loads before they reach the tipping floor.

3. Recyclable materials shall be stored in enclosed containers such as trailers, compaction vehicles and enclosed buildings. Staging of the collected recyclable materials shall not exceed 30 days.

4. Non-processing transfer stations that separate non-putrescible commercial recyclable materials shall submit an annual recycling report to the Office of Environmental Services by August 1 of each year.

D. - M. ...

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 33:1034 (June 2007), amended LR 33:2142 (October 2007), LR 34:613 (April 2008), LR 35:925 (May 2009), LR 38:

#### Family Impact Statement

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

#### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW056. Such comments must be received no later than December 6, 2011, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@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 SW056. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

**Public Hearing**

A public hearing will be held on November 29, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

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 Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Removal of Recyclable Material from a  
Non-Processing Transfer Station**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed Rule change will have no impact on state or local governmental expenditures. The proposed Rule change will allow for the removal of non-putrescible commercial recyclable waste from non-processing transfer stations. Previously, the removal of such waste would require a processing permit.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change. Previously, the department was not collecting fees from non-processing transfer stations that did not remove non-putrescible waste. The removal of such waste without a processing permit by the transfer station may encourage recycling of the waste items.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed Rule change will result in negligible costs for the regulated community with the implementation of the annual report. The recyclable materials that are processed through the facilities are already tracked. Under the proposed Rule change, the tracking information will be provided to the Department of Environmental Quality in an annual report.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed Rule will have no effect on competition and employment in the public or private sector.

Herman Robinson, CPM  
Executive Counsel  
1110#044

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of State Uniform Payroll**

**Payroll Deduction  
(LAC 4:III.101, 106, 112, 114, 127 and 131)**

Editor's Note: This Notice of Intent is being repromulgated to correct a submission error. The original Notice may be viewed in its entirety on pages 2820-2822 of the September 20, 2011 edition of the *Louisiana Register*.

In accordance with R.S. 42:455, notwithstanding any other provision of law to the contrary, the Office of the Governor, Division of Administration, Office of State Uniform Payroll is proposing to adopt amendments to the rule regarding payroll deductions for state employees. The purpose of the amendment is to adjust the timelines for the submission of applications, policy changes, and enhancements for statewide vendor deductions so that they coincide with the new Office of Group Benefits Flexible Benefits Plan year and to make technical changes.

**Title 4  
ADMINISTRATION  
Part III. Payroll**

**Chapter 1. Payroll Deductions  
§101. Definitions**

\*\*\*

*Administrative Coordinator*—a statewide vendor designated representative who provides the single authorized contact for communication between the vendor and state departments/agencies, company representatives, the Division of Administration, Office of State Uniform Payroll, payroll systems outside of the LaGov HCM payroll system and any administrative contract(or).

*Agency Number*—three digit identifier representing a single agency in the LaGov HCM payroll system which serves as a key for processing and reporting.

\*\*\*

*Flexible Benefits Plan Year*—the annual period of time designated for participation (e.g., January 1 through December 31).

\*\*\*

*Integrated Statewide Information System Human Resource Payroll System (ISIS HR)*—Repealed.

\*\*\*

*LaGov Human Capital Management Payroll System (LaGov HCM)*—the statewide system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

\*\*\*

*Statutory Vendors*—any entity having deductions mandated or permitted by federal or state statute which includes, but is not limited to union dues, credit unions, IRC §457 and §403(b) plans, health and life insurance products sponsored by the Office of Group Benefits, retirement systems, Student Tuition Assistance and Revenue Trust Program (START), and qualified United Way entities.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1026 (May 2000), LR 32:84 (January 2006), LR 38:

**§106. Statewide Vendor Annual Renewal and New Application Process**

A. ...

B. Written notice of requests for a new statewide vendor payroll deduction or for current vendors to add additional products or to add additional policy forms or service plans under the current products should be sent to OSUP prior to July 1 annually, in order for the vendor to receive an application form from OSUP. Applications for the purpose of providing deductions for IRA's, annuities, noninsurance investment programs or group plans are not permitted.

C. On or before August 1 annually, OSUP will provide deduction application forms along with instructions for completion to each renewal and new entity on file.

D. On or before August 31 annually, renewal and new applications must be completed and submitted to the Division of Administration, Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804 or 1201 North Third Street, Ste. 6-150, 70802.

1. - 2.g. ...

E. On or before October 1 each year, OSUP will conduct a compliance review and shall notify vendors of any products that will be removed due to not meeting the participation requirements in §114.C.3. In a separate letter, the vendor will be notified whether their annual application has been conditionally approved.

F. Between September and April each year, the EPBC shall conduct a thorough review of all products authorized for deduction and new applications.

1. - 3. ...

G. On or before April 1 annually, the EPBC shall issue a summary report of opinions resulting from the annual review of products and new applications, along with recommended actions to the commissioner of administration.

H. ...

I. On or before May 1 annually, the commissioner of administration shall advise OSUP whether EPBC recommendations relative to current products and new applications have been accepted or denied.

J. On or before May 31 annually, OSUP will:

1. - 2. ...

3. notify LaGov HCM payroll system user agencies and other departments/agencies and governing boards of authorized deductions by vendor and product name, providing LaGov HCM system information and the effective date. Governing boards shall notify universities.

K. Payroll systems outside of the LaGov HCM payroll system will advise vendors whether the deduction will be established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:86 (January 2006), amended LR 38:

**§112. Statewide Vendor Requests for Enhancements/Changes to Products**

A. Requests for enhancements to existing statewide vendor products, policies or service plans must be submitted to OSUP for review and approval by April 1 and October 1 annually.

1. - 1.e. ...

2. OSUP and the EPBC will review the request and notify the vendor of approval or denial by June 1 and December 1 annually.

a. If approved, OSUP will include in the approval notification the procedures for implementing the enhancement for July 1 and January 1 annually.

b. ...

B. Notification of policy changes must be submitted to OSUP by July 1 annually.

1. - 1.c. ...

2. OSUP will review the information submitted and notify the vendor by September 30 annually and provide procedures for implementing the policy change for January 1 annually.

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 26:1027 (May 2000), amended LR 32:87 (January 2006), LR 38:

**§114. Statewide Vendor Requirements and Responsibility**

A. - C.2. ...

3. maintain individual product (product categories as defined by OSUP) participation levels that meet or exceed 100 employees paid through the LaGov HCM payroll system. Vendors will be allowed 12 months after initial product approval to meet the minimum product participation requirements;

4. - 5.c. ...

d. the authorization must specify product name, IRC §125 eligibility, monthly premium or fee, and the semi-monthly (24 annually) premium or fee. Statewide vendor deductions in the LaGov HCM payroll system must be semi-monthly deduction amounts only (to the second decimal place). Payroll systems outside of the LaGov HCM payroll system which permit monthly deductions may continue same;

5.e. - 8.a. ...

b. monthly reconciliation exception listing shall identify the employee by Social Security number and payroll agency number and shall be grouped within payroll agency numbers for LaGov HCM payroll system agencies and similarly for payroll systems outside of the LaGov HCM payroll system;

9. furnish evidence of reconciliation to OSUP as requested by that office. Like verification may be required by other payroll systems outside of the LaGov HCM payroll system;

C.10. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:87 (January 2006), amended LR 38:

**§127. Department/Agency Responsibility**

A. - B.5. ...

6. process refunds for amounts previously deducted from any vendor which receives LaGov HCM payments only as directed by OSUP policy. Payroll systems outside of the LaGov HCM payroll system shall establish written policy for remittance and refund of deductions taken;

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 38:

**§131. Fees**

A. Data, information, reports, or any other services provided to any vendor or any other party by the LaGov HCM payroll system or other state payroll system may be subject to payment of a fee for the cost of providing said data, information, reports, and/or services in accordance with the Uniform Fee Schedule established by rule promulgated by the DOA under R.S. 42:458.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 37:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a state enforcement function.

**Public Comments**

Interested persons may submit written comments to the Andrea Hubbard, Director of the Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804-9095. All comments must be received no later than 5 p.m., November 20, 2011.

Steven Procopio, Ph.D.  
Assistant Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Payroll Deduction**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated direct material effect on state agencies or local governmental units as a result of the proposed administrative rule. The proposed administrative rule adjusts the timelines for the submission of applications, policy changes and enhancements for statewide vendor deductions to coincide with the new Office of Group Benefits Flexible Benefits plan year, which is being changed from July to June (state fiscal year) to January to December (calendar year) beginning January 1, 2012.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

State of Louisiana employees, Louisiana human resource/payroll staff and insurance vendors having payroll deductions will be directly affected by this rule. There are three major changes to the rule which affect these groups: 1) timeline was adjusted for the application process to coincide with the new Office of Group Benefits Flexible Benefits Plan year, 2) timeline was adjusted for the vendor requests for enhancements to products, and 3) timeline was adjusted for the vendor requests for changes to approved products. Because employees, agencies, and vendors currently operate under similar timelines (with a different time period), and no substantive changes are being made to the rule, there will be no effect on the costs or economic benefits to these groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated impact on competition and employment as a result of this proposed action.

Steven Procopio  
Assistant Commissioner-Finance  
1110#021

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

Training Tracks (LAC 46:XLI.Chapter 19)

The Louisiana State Racing Commission hereby gives notice that it intends to amend the following rules. The proposed Rule will provide the commission with more regulatory guidance regarding licensed training tracks.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part XLI. Horseracing Occupations**

**Chapter 19. Training Tracks**

**§1903. License Information**

A. Anyone desiring to operate a training track must make application to the commission on or before April 15 of each year. On or before May 1 each year, the commission will

consider all applications for a license to operate a training track.

B. An applicant seeking such license shall provide the following information:

1. the full name of the person, partnership, corporation, or limited liability company, and the names of agents for service of process within Louisiana;

2. if an association or corporation, the names of the stockholders and directors of the corporation or the names of the members of the association;

3. if a partnership or limited liability company, the names and addresses of each partner or member, the relative proportions of such interests, and terms of management;

4. the exact location where it is desired to operate a training track;

5. a statement of the assets and liabilities of the person or entity applying for the license;

6. name of liability insurer, policy number, name of insureds, and certificate of insurance in an amount not less than \$1,000,000;

7. such other information as the commission may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 4:289 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

#### **§1904. License Renewal**

A. After being granted a license to operate as a training track, any person or corporation desiring to continue to operate as a training track must submit an application for a license on a yearly basis to the commission on or before April 15 each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 17:260 (March 1991), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

#### **§1905. Authority and Jurisdiction**

A. The commission, its stewards, agents and employees shall have full authority and jurisdiction over a licensed training track as may be appropriately exercised pursuant to R.S. 4:141 et seq., and the *Rules of Racing* as such apply to an association or licensee or permittee and consistent therewith.

B. Any individual deriving economic benefit from employment on the grounds of a training track shall be licensed by the commission whether he or she is in the employ of the training track or an individual. Economic benefit includes, but is not limited to, fixed salary, hourly wages, or income from gratuities.

C. Any licensed training track shall disclose in writing any and all activity it has reason to believe may be criminal under the laws of this state or the United States and violations of the *Rules of Racing* to the Louisiana State Racing Commission. Failure to do so may subject the training track to a penalty by way of fine and/or suspension of license.

D. Any owner, supervisor, or employee of a licensed training track shall at all times keep from the premises of the

training track, including but not limited to its auxiliary buildings, barns, sheds and offices, any person who is known to be ordered by the commission to be excluded, ejected or otherwise deemed not in good standing. The commission, or designated racing stewards, may revoke, limit, condition, or suspend the license of or impose a fine on any individual or licensee in accordance with the law of this state and rules and regulations of the commission, if the licensee or person knowingly and willfully fails to act to exclude or eject any person who is known to be excluded, ejected or otherwise deemed not in good standing by the commission.

E. Each training track shall provide one ambulance during all days and at all times designated within the license for the conduct of official work-outs. During such time, the ambulance shall be ready for duty, properly equipped to provide emergency medical services, including equipment and personnel, and shall have immediate access to the racing strip.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 4:289 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:

#### **§1906. Production of Books, Memorandum, or Documents; Removal of Official or Employee; Manner of Keeping Books; Witnesses; Penalty**

A. The commission may compel the production of all books, memoranda, or documents showing receipts of accounts payable and accounts receivable of any person licensed to conduct a training track. As a condition of licensing, the commission may require that the books, financial statement, or other statement of any licensee be kept in a manner provided by the commission.

B. The commission, a racing steward, or a designated representative of either may visit, investigate, audit, and place inspectors in the offices, tracks or place of business of the licensed training track.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

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

#### **§1907. Grounds for Denial or Termination of Training Track License**

A. The commission may refuse, suspend, or withdraw a training track license for just cause, which shall include but not be limited to any of the following:

1. any actions which are found to violate the provisions of this chapter or other applicable *Rules of Racing* to the Louisiana State Racing Commission, the laws of this state or the United States;

2. corrupt practice;

3. willful falsification and/or misstatement of material fact in an application for license;

4. material false statement to the commission, racing stewards, or its duly authorized representative;

5. continued failure to meet the terms and conditions of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

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

### Family Impact Statement

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

### Public Comments

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA70119-5100.

Charles A. Gardiner III  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Training Tracks

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated direct material impact on state or local governmental units as a result of the proposed administrative rule change. The proposed administrative rules clarify existing rules regarding training tracks including: amending the application for a training track license, requiring the licensing of anyone who derives economic benefit from employment on a training track grounds, requiring licensed training tracks to exclude from its premises any person who is not in good standing with the commission, requiring training tracks to provide an ambulance during all days and at all times designated for official workouts, and permitting the commission to compel the production of all books, memoranda and documents showing receipts of accounts payable or accounts receivable of any person licensed to conduct training at training tracks.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local government units. The Louisiana State Racing Commission already licenses the majority of individuals utilizing training tracks.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

As a result of this rule change, individuals that derive an economic benefit from employment on the grounds of a licensed training track will incur an indeterminable cost to be licensed by the commission. Licensed training tracks may incur indeterminable costs to provide an ambulance at all times designated for the conduct of official workouts. Licensed training tracks may incur indeterminable cost to produce all books, memoranda, or documents showing receipts of accounts payable or accounts receivable of any person licensed to conduct a training track. A licensed training track may incur the cost of keeping their books or financial statements in a manner provided by the commission. These costs are not estimated to be significant.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment. Passage of this rule will require

licensed Louisiana training tracks to exclude individuals who have previously been excluded, ejected and/or deemed in bad standing by the commission and who may be seeking employment on licensed training tracks.

Charles A. Gardiner III  
Executive Director  
1110#082

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

### Office of the Governor Licensing Board for Contractors

Contractors (LAC 46:XXIX.Chapters 1-15)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2192, which is the Contractor Licensing Law, the Louisiana State Licensing Board for Contractors (LSLBC) hereby gives notice of its intent to update its rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXIX. Contractors

#### Chapter 1. General Provisions

#### §101. Contractor's Recordkeeping

A. It shall be the responsibility of each licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, and electrical contractor to maintain adequate records at all times to show compliance with the licensure requirements of all subcontracts and subcontractors. Such records shall be made available to the board's inspectors at all reasonable times. The failure to maintain adequate records or the failure to furnish copies of such records within 72 hours notice thereof shall constitute a violation of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:135 (March 1982), LR 12:76 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:601 (July 1990), LR 19:1125 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### §103. Disassociation of a Qualifying Party

A. When a qualifying party terminates his or her employment or association with the licensee, the licensee must notify the board in writing within 30 days of the disassociation. Failure by the licensee to cause a new person to qualify as its qualifying party within 60 days of the disassociation will subject the licensee to suspension or revocation of the license.

B. Failure to notify the board of the disassociation of a qualifying party constitutes a violation pursuant to R.S. 37:2158.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR

19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§105. Report of Changes**

A. A licensee shall notify the board in writing of any change to the following information and shall provide any and all documentation and fees required by the board within 15 days after such change:

1. the licensee's type of business structure (sole proprietorship, partnership, limited liability company, corporation, etc.)
2. the licensee's business address;
3. the licensee's name;
4. the identity or address of the licensee's registered agent;
5. the identity, address, or ownership percentage of each shareholder;
6. the identity of each officer and the office held;
7. the identity or address of each partner; and
8. the identity or address of each member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§107. Enforcement of Act and Rules**

A. The board, pursuant to R.S. 37:2158 and R.S. 37:2161, may bring suit to enjoin violations of this act and the executive director and/or his designated agent and/or the legal counsel for the board is hereby authorized to institute such suit on behalf of the board and to sign the verification of the petition for injunction and to do all things necessary in connection with the institution of such legal proceedings when so directed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§109. Name**

A. Each contractor, residential building contractor, home improvement contractor, mechanical contractor, and electrical contractor shall bid, contract for, and perform work in the name which appears on the official records of the state Licensing Board for Contractors for the current license.

B. If a licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor assigns a contract, or any portion of a contract for which a license is required to another contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor, the person or firm to which it is assigned and who performs the work must possess the proper current license. No unlicensed contractor shall be permitted to assign a contract, or any portion of a contract, in an amount for which a license is required to a licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor in circumvention of the Contractors Licensing Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§110. Reliance upon Exemption**

A. Any contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor relying on an exemption when bidding shall state such exemption pursuant to R.S. 37:2163(A)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§111. Correction without Complaint**

A. If a possible violation is known to the board, the board may correct it or take appropriate action without formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§113. Maintenance of Skills**

A. As provided by R.S. 37:2150 after granting said license, the licensee shall at all times show its ability to serve the public economically, expediently and properly; shall possess the necessary qualifications of responsibility, skill, experience and integrity so that the licensee will not tear down standards of construction established within the industry, and shall continue to maintain the qualifications established in R.S. 37:2156.1.

B. The refusal by any licensed contractor, residential building contractor, home improvement contractor, subcontractor, mechanical contractor, or electrical contractor to honor a bid price may be grounds for a finding of a violation of the Contractors Licensing Law.

C. A residential building contractor shall be required to complete a minimum of six hours of continuing education annually by a board approved provider. Proof of compliance with this requirement shall be filed with the board annually in the format required by the board, as a condition for the maintenance and/or renewal of the license. A contractor who holds a valid, current commercial license in the major classifications of: building construction; highway, street and bridge construction; heavy construction; or municipal and public works construction, shall be deemed to have fulfilled this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§115. Bankruptcy**

A. It shall be the responsibility of any licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor who, voluntarily or involuntarily, is subjected to

any provision of the laws of bankruptcy, to notify this board immediately and to make available to this board any and all information pertinent thereto.

B. Any licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor who is ordered by a competent court to cease operations or whose operations are closed due to operation of any law, shall notify this board immediately and make available to this board any and all information pertinent thereto.

C. If any licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor is ordered by a competent court to pay a final and executory judgment awarded against him in the operation of his business, for charges for labor, material, breach of contract, etc., and fails to pay said judgment immediately upon its becoming final and executory, a hearing may be scheduled by the board for the purpose of disciplining the licensee in accordance with La. R.S. 37:2150, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§117. Major Classification**

A. Any contractor possessing a major classification is permitted to bid or perform any of the specialty type work listed under its respective major classification in R.S. 37:2156.2 or any other work that might not be listed which is directly related to the major classification it may hold as long as it is not prohibited by any rule, except as provided in R.S. 37:2156.2(A)(IX)(B), (C), and (D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 11:341 (April 1985), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **Chapter 3. License**

#### **§301. Requirements**

A. All applications for a license or registration shall contain the information required on the forms which are available at the offices of the State Licensing Board for Contractors, 2525 Quail Drive, Baton Rouge, LA 70808. Each application shall be time dated when received. Licensure may occur once the following minimum conditions are met:

1. the application is complete, including the required financial statement, references, and federal employer identification number;

2. all applicable fees, fines, or other sums due to the board are paid in full;

3. all examination requirements have been met; and

4. approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974,

amended LR 1:401 (September 1975), LR 3:11 (January 1977), LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§307. Ownership of License**

A. The license for which a person becomes the qualifying party belongs to the licensee, as: a corporate license belongs to the corporation; a partnership license belongs to the partnership; a limited liability company license belongs to the limited liability company, etc.; and an individual license belongs to the individual, regardless of the status of the qualifying party of the entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§309. Application of Subsidiary**

A. Any application for a license for a subsidiary shall be considered as a new application and subject to all laws and rules and regulations governing same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2154.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§311. Reciprocity**

A. Any applicant applying for a license who desires that any portion of the law regarding time limitations or trade examinations be waived shall cause the applicable licensing board of its domiciliary state to certify in writing that such board shall grant a Louisiana domiciliary that same waiver of such laws in that state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), amended LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§315. License Revocation and Suspension**

A. Any person, firm or corporation duly licensed under the provision of R.S. 37:2150 et seq., who violates any provisions of the said Louisiana Contractors Licensing Law or any rule or regulation of the board may, after due and proper hearing, have its license suspended or revoked by this board. Prior to the board's action on suspension or revocation of licenses as aforesaid, the licensee shall be given a hearing in accordance with §701 of these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§317. Approval Withheld**

A. In any instance where approval of an application has been withheld under the terms of R.S. 37:2156(D), the applicant shall have the right to apply to the board for a

hearing following which the board may continue to withhold approval or grant its approval at its discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153 and R.S. 37:2157(D).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended LR 11:341 (April 1985), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

## **Chapter 5. Examination**

### **§501. Qualifying Party**

A. Any licensee may have more than one qualifying party. Nothing in the law is to be construed so as to prohibit a licensee from having more than one qualifying party per trade.

B. If a qualifying party for a particular trade discontinues employment with a licensee, the licensee will still have a valid license and may bid on jobs in that trade classification, but the licensee must have a qualifying party before commencing work on a new job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§503. Authorized to Take Examination**

A.1. The qualifying party or parties authorized to take the examination are:

- a. a sole proprietor or spouse of a sole proprietor (individual);
- b. any partner (partnership);
- c. any original stockholder or incorporator (corporation);
- d. any original member (limited liability company);
- e. any employee of said applicant who has been in full-time employment for 120 consecutive days immediately preceding the examination.

2. The employee shall be prepared to execute an affidavit furnished by the board at the time he takes the examination giving his length of employment and social security number. The employee shall be prepared to show evidence of eligibility by furnishing evidence of employment for the four preceding months. The evidence of employment should demonstrate that the employee received an average gross income for the preceding 120 consecutive days at least equal to the federal minimum wage for the number of hours worked, that the employee worked an average of at least 32 hours per week for the preceding 120-day period, and that each payroll check in said period was negotiated within 30 days of the end of the pay period. Further, the employee must demonstrate that he meets the criteria to be classified as an *employee* as defined by the Internal Revenue Service. All such evidence must be submitted in a verifiable format, through records acceptable to the board.

B. No person qualifying as an employee shall be allowed to be the qualifying party for more than one company and two subsidiaries. If more than two subsidiaries are formed or acquired by a parent company, a separate qualifying party shall be registered with the board for each two additional subsidiary companies. Under no circumstances may an individual qualifying as an employee be the qualifying party

for more than three such related entities, or for more than one unrelated entity.

C. An employee who has not been in full-time employment for 120 consecutive days immediately preceding the application due to an absence resulting from deployment in active military service may be considered as a full-time employee if the employee has been re-employed in accordance with R.S. 29:410 and, considering the employee's period of employment immediately preceding the absence resulting from deployment in active military service, the employee otherwise satisfies the requirement of full-time employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), LR 23:1495 (November 1997), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§505. Additional Classifications**

A. A licensed contractor may add additional classifications to his license at any time provided:

1. the request for additional classification(s) is in writing;
2. a completed and notarized qualifying party application form is submitted pursuant to R.S. 37:2156.1(D)(1);
3. the required additional fees are paid and the qualifying party successfully passes the examination;
4. additions or changes to an existing license shall become effective after completion of the above requirements and upon board approval at the next regularly scheduled board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), LR 11:341 (April 1985), LR 12:760 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§507. Applicants**

A. Except as otherwise provided by law, all initial applicants shall be required to take and successfully pass the business and law portion of the board's examination and the trade portion where there exists an examination for same.

B. The qualifying party shall submit his application, with all supporting documentation, for approval at least 10 days prior to taking the examination. The qualifying party shall list all prior affiliations with a licensed contractor(s) and shall disclose whether or not any sanctions have been levied against such contractor(s). The qualifying party shall also state his and/or the contractor's involvement in such sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§509. Exemption from Examination**

A. A contractor, residential building contractor, mechanical contractor, or electrical contractor who is a subsidiary of a currently licensed contractor, residential building contractor, mechanical contractor or electrical contractor and who is making application for a license in the same classification(s) as that of the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor shall not be required to take an examination on the subject for which said subsidiary contractor, residential building contractor, mechanical contractor, or electrical contractor is seeking a license, with the approval of the board, provided that the holders of a majority of the stock in the subsidiary contractor, residential building contractor, mechanical contractor, or electrical contractor are the same as the holders of the majority of stock in the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor, and further provided that the individual who was designated as the qualifying party at the time a license was originally issued to the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor remains in the employ of the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor at the time of application for license by the subsidiary contractor, residential building contractor, mechanical contractor, or electrical contractor.

B. A qualifying party may be exempt from taking another examination for the same classification for which he has previously taken and passed, subject to approval by the board.

C. Pursuant to R.S. 37:2156.1(M), any applicant seeking an exemption from the examination required for a mechanical contractor or electrical contractor license on the basis that it has worked in the mechanical or electrical construction industry must submit the following documentation:

1. proof that it holds either a mechanical or an electrical contractor's license issued prior to July 1, 2008 by a local municipality, after having passed an examination administered or written by a national testing company approved by the board; or

2. five original building permits, issued within the last three years, proving that it has actually been engaged in either the mechanical or electrical construction building industry prior to July 1, 2008. If the permit does not specify the entity or person performing the mechanical or electrical work, then additional documentation will be required to verify that the applicant actually performed the mechanical or electrical work under the permit, including but not limited to: a job proposal, contract, invoice or receipts, a signed punch list, certification of completion by the owner, and proof of payment by the owner or general contractor; or

3. proof that it has completed six mechanical or electrical construction projects within the ten-year period prior to July 1, 2008, or has constructed one such project for another person within the five-year period prior to July 1, 2008. Evidence for each job shall include, but not be limited to, a combination of at least three of the following:

a. a job proposal, contract, invoice or receipts, a signed punch list, certification of completion by the owner,

proof of payment by the owner or general contractor, permit applications; and

b. evidence that the applicant operated as a business at the time of each job, including but not limited to, copies of such items as tax documents showing business income from such work, a local occupational license, a local mechanical license, receipts from material supply dealers showing that the applicant purchased sufficient materials for the work performed, state and/or federal tax identification numbers, certificates of good standing from the Secretary of State, and similar business documentation;

c. at least one project for which sufficient proof is provided must have been in the amount of \$10,000 or more.

D. No applicant may be exempted from the required examinations pursuant to R.S. 37:2156.1(M) for more than three parishes.

E. Proof of plumbing work, including a plumbing license or permit, will be insufficient to exempt an applicant from the examination required for a mechanical contractor's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§511. No Written Examination Given**

A. Applicants requesting a specialty class where there is no written examination shall be examined by the board on the experience shown on his application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§513. Cheating**

A. Anyone found using unauthorized code books, text books, pagers, beepers, cellular telephones, tape recorders, radio transmitters, portable scanning devices, cameras, portable photocopy machines, reference materials, notes, blank writing or note paper, or any other aid or electronic device not specifically provided by the Examination Section for the purpose of examination administration shall have his or her examination confiscated, the exam results invalidated, and shall have his or her name placed on the agenda for the board's next regularly scheduled meeting for consideration and appropriate action. Failure to appear before the board shall result in the imposition of a one year waiting period before the applicant may retake the examination(s).

B. It is the policy of the board that the specific contents of its examinations are considered to be proprietary and confidential. Anyone found in possession of examination questions, answers, or drawings in whole or in part shall have his or her examination confiscated, the exam results invalidated, shall be barred from taking any other examination, and shall not be eligible to become a qualifying party for the licensee for a period of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR



21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

**§515. Examination Scheduling and Rescheduling**

A. A candidate may request three dates upon which he or she will be available to take the examination. An attempt will be made to accommodate the candidate. New applicants for licensure will be given priority in scheduling.

B. A candidate shall have until five working days prior to the scheduled examination date in which to cancel the examination. A candidate who fails to make notification before the five-day period or a candidate who fails to appear on the scheduled examination date shall forfeit his or her examination fee and be required to submit a new examination fee before a new examination date will be scheduled. Valid explanations for failing to meet this requirement must be submitted in writing and will be evaluated on a case-by-case basis.

C. All requests for rescheduling examinations must be submitted in writing.

D. A candidate who fails an examination may schedule a second attempt 30 days or more after the date on which he or she failed the first examination.

E. A candidate who fails an examination a second or successive time may schedule an additional attempt 60 days or more after the date on which he or she failed the last examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, State Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

**§517. Examination Administration Procedures**

A. Administrative check-in procedures begin one-half hour before the examinations begin. Candidates must report to the board office for processing at least 15 minutes prior to the examination's starting time. Any candidate reporting after the 15-minute reporting time may not be allowed admittance to the examination room. Every candidate must present acceptable government-issued photographic identification to be admitted to the examination room.

B. Personal items (e.g., telephones, pagers, calculators, purses, briefcases, etc.) shall not be allowed in the testing room or in the waiting room of the testing room. A candidate shall not have access to these items during examination administration.

C. A candidate wearing bulky clothing or attire which would facilitate concealment of prohibited materials shall be requested to leave said clothing or attire outside the examination room or to remove it and place it in the front of the examination room. Failure to remove the article shall constitute permission to search for contraband materials, or a cancellation of his or her scheduled examination, at the option of the candidate.

D. All examination activities are subject to being filmed, recorded, or monitored.

E. A candidate taking an examination shall not be allowed access to telephones or other communication devices during the course of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR

21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

**§519. Test Item Challenges**

A. A candidate who believes that an individual test item may not have a correct answer or may have more than one correct answer shall be afforded an opportunity to challenge the test item. The candidate shall record his or her comments in writing on a form prepared by the test monitor immediately after the examination. Comments will not be accepted at any other time. Comments should provide a detailed explanation as to why the candidate feels the item is incorrect. General comments (e.g., "This item is wrong.") will not be investigated.

B. Examination comments shall be reviewed.

C. If a test item comment is deemed to be valid, the director of the Examinations and Assessment Section shall have the authority to change a grade based upon test item comment(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

**§521. Examination Reviews Prohibited**

A. Examinations may not be reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 21:1215 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

**Chapter 7. Hearings; Meetings**

**§701. Hearings**

A. Hearings may be conducted by the board's legal counsel at regular or special meetings whenever deemed necessary and special hearing officers may be hired at the board's discretion. Hearings shall be conducted in accordance with the Administrative Procedure Act.

B. Written notice shall be given to all parties at least five days prior to such hearings or special meetings. The board members shall be notified at least three days prior to such hearings or special meetings. The notice shall include the time, place and purpose of the hearing or special meeting and may be held at any place within the state.

C. Confirmation of the written notice required by this Section may be proved by any one of the following:

1. a signed return receipt of certified or registered mail, confirming delivery and receipt of the required notice;

2. a signed confirmation by a board employee that actual physical delivery was made to the contractor, or left at the address on file with the board for that contractor;

3. a confirmation of facsimile transmission, if the contractor has provided the board with a facsimile number in documents on file with the board;

4. a copy of notice by electronic transmission, if the contractor has provided the board with an electronic address in documents on file with the board;

5. a printed electronic confirmation of delivery and/or confirmation of signature from the U.S. Postal Service;

6. a written, electronic, or facsimile response to the notice or subpoena provided therewith, from the contractor or its representative; or

7. appearance by the contractor or its authorized representative at the hearing.

D. As authorized by R.S. 49:962, the board may hear and decide petitions for declaratory orders and rulings as to the applicability of any statutory authority or of any rule or order of the board. Such orders and rulings shall have the same status as board decisions or orders in adjudicated cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 4:69 (March 1978), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§703. Disqualification or Debarment by Any Public Entity**

A. Pursuant to the requirements of R.S. 37:2158(B), a public entity which disqualifies any person or licensee pursuant to R.S. 38:2212(J) must provide the board with written notification thereof within 30 days of the date of such disqualification. The notice required by this Section shall include the basis for the disqualification, the terms and provisions thereof, and copies of the evidence or basis upon which the disqualification was imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 23:1495 (November 1997), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

## **Chapter 9. Subcontractors**

### **§901. Subcontractors**

A. It shall be the responsibility of a licensed contractor, residential building contractor, mechanical contractor, or electrical contractor to secure the current valid license number of any subcontractor who submits a bid to it or performs work for which a license is required. If any licensed contractor, residential building contractor, mechanical contractor, or electrical contractor awards a contract for which a license is required to any unlicensed subcontractor, the license of the awarding contractor, residential building contractor, mechanical contractor, or electrical contractor may be suspended, revoked or rescinded after a hearing is conducted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§903. Subcontractor License; Default**

A. It shall be a violation for any general contractor, contractor, owner, awarding authority, subcontractor, or any other person to contract or subcontract all or any portion of work to any other contractor or subcontractor unless said contractor or subcontractor was duly licensed by the board as of the final date fixed for the submission of bids on said work from the primary contractor to the owner or awarding authority. This rule shall be subject to the provisions and limitations established by R.S. 37:2156(B) and (D).

B. If work is subcontracted as per this rule, and the subcontractor should default for any reason, the awarding

authority shall have the right to take bids from any subcontractor that is properly licensed at the time of this default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

## **Chapter 11. Bidding**

### **§1103. Proper Classification**

A. All licensed contractors bidding in the amount for which a license is required shall be required to have qualified for the classification in which they bid.

B. When two or more contractors bid as a joint venture on any project in the amount for which a license is required with R.S. 37:2150 et seq., all parties are required to be licensed at the time the bid is submitted. Each party to the joint venture may only perform within the applicable classifications of the work of which it is properly classified to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§1109. Division of Contract**

A. Any division of a contract into parts which would avoid the necessity of a license to bid for, contract for, or perform the work, will be disregarded, and the parts of the contract will be treated as one contract totaling the amount of these parts when combined.

B. For the purpose of determining a scope of work, the board should review whether the contract or contracts in question constitute a single scope of work or whether they constitute separate scopes of work. The board may be guided in this interpretation by a review of the drawings, plot plans, blueprints, architectural plans, site maps, technical drawings, engineering designs, sketches, diagrams, black lines, blue lines, drafts or other renderings depicting the total scope of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§1111. Failure to Insure or Bond**

A. Whenever a licensed contractor, residential building contractor, home improvement contractor, mechanical contractor or electrical contractor bids a project within the scope of this act and is awarded the contract, the refusal or inability of the contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor to provide bonding and insurance coverage as required by the bid proposal, may be grounds for a finding of a violation of §113.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of

Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§1113. Electrical or Mechanical Work**

A. Any person, firm, partnership, co-partnership, association, corporation, or other organization bidding on or performing a job for which a license is required, the majority of which job is classified as V. Electrical Work or VI. Mechanical Work, the licensee shall hold the major classification or subdivision thereunder of electrical work or mechanical work as the case may be.

B. On all jobs involving mechanical or electrical work, the board shall consider the monetary value of the electrical or mechanical material and/or equipment furnished by the owner or builder, if any, in determining the amount of electrical or mechanical work involved.

C. The board takes cognizance of all local ordinances and codes regulating the licensing of electrical and mechanical contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2159 and 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

## **Chapter 13. Fees**

### **§1301. Fee for Licenses**

A. The annual fee for licenses for the following year may be set by the board at its July meeting each year. If a new fee is not set, the fee(s) for the prior year shall continue to be in full force and effect until changed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 2:271 (September 1967), LR 8:136 (March 1982), LR 10:199 (March 1984), LR 11:341 (April 1985), LR 12:761 (February 1986), amended Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

## **Chapter 15. Residential**

### **§1501. Definitions**

A. Anyone bidding or performing the work of a general contractor on a residential project in the amount for which a license is required must be licensed under the classification *residential construction*. This requirement shall not include individuals who build no more than one residence for their own personal use as their principal residence per year.

B. A subcontractor, architect or engineer who acts as a residential building contractor as defined in R.S. 37:2150.1(11) must possess a residential construction license.

C. "Cost of a project" includes the value of all labor, materials, subcontractors, general overhead and supervision. With respect to modular housing, "cost of the project" shall not include the cost of the component parts of the modular home in the condition each part leaves the factory, in accordance with R.S. 40:1730.71.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:4 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§1503. Requirements**

A. All residential building contractors shall work in the name which appears on the official records of the State Licensing Board for Contractors for the current license.

B. If a licensed general residential contractor assigns a contract, or any portion of a contract, in the amount for which a license is required to another general residential contractor, the person or firm to which it is assigned and/or who performs the work must possess the proper current license. No unlicensed contractor shall be permitted to assign a contract, or any portion of a contract, in the amount for which a license is required to a licensed contractor in circumvention of the laws of the state of Louisiana.

C. All applications for a residential contractors license shall contain the information required on the forms which are available at the offices of the State Licensing Board for Contractors, 2525 Quail Drive, Baton Rouge, Louisiana 70808. The application shall be time dated when received and shall be reviewed by the Residential Contractors Licensing Board Subcommittee prior to being submitted to the Contractors Licensing Board at the next regularly scheduled meeting of the board, provided that:

1. the application is complete, including the required financial statement, references, federal identification number, certificate of workers compensation insurance, certificate of general liability insurance in the minimum amount of \$100,000, and properly notarized;

2. all applicable fees, fines, or other sums due to the board are paid in full;

3. the complete application is received and verified by the board in time to comply with all notice requirements; and

4. all examination requirements have been met.

D. Workers compensation and general liability insurance, obtained from an insurer authorized to sell those forms of insurance coverage in the state, shall be maintained continuously by residential building contractors. Insurance certificates evidencing current workers compensation and general liability insurance shall be submitted with each new application, every renewal application, and upon the renewal date of coverage. In the event of a lapse of insurance coverage, a cease and desist order shall be issued and such lapse shall be grounds for suspension or revocation of the license after proper hearing.

E. The qualifying party for each applicant must pass any examinations required and administered by the state Licensing Board for Contractors.

F. The qualifying party shall be an individual owner, an original incorporator, partner, member or shareholder, or an employee of the applicant who has been in full-time employment for 120 consecutive days immediately preceding the application. Any licensed residential building contractor may have more than one qualifying party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

### **§1505. Exceptions**

A. An applicant for a residential building contractor's license who can show written proof that it possessed a contractor's license for Building Construction as required by

R.S. 37:2150-2164 prior to February 1, 1996 shall not be required to take the examinations required by the State Licensing Board for Contractors, but shall meet all other requirements for such license.

B. An applicant who can show written proof that he holds a residential construction license issued by a local municipality issued prior to February 1, 1996 that administered a test written by a national testing company, approved by the state Licensing Board for Contractors, shall be exempt from taking the examinations required by the board, but shall meet all other requirements for such license.

C. An applicant seeking an exemption from the examinations required by the state Licensing Board for Contractors for having been actively engaged in residential building construction prior to February 1, 1996 as stated in R. S. 37:2167(D)(3) and (4) shall, in addition to all other requirements for licensure:

1. submit copies of the required building permits to the state Licensing Board for Contractors with the application, and

2. submit requests for any exceptions or other special requests in writing to the state Licensing Board for Contractors Residential Subcommittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§1507. Violations**

A. The Licensing Board for Contractors Residential Subcommittee has the authority to conduct hearings on alleged violations by residential building contractors in accordance with the provisions of R.S. 37:2158.

B. The Licensing Board for Contractors Residential Subcommittee shall make recommendations to the Contractors Board regarding their findings and determinations as a result of the hearings on said alleged violations.

C. Residential building contractors whose alleged violations were heard by the subcommittee and a recommendation rendered, may request to appear at the next regularly scheduled board meeting or at any other board meeting where their alleged violations are brought before the board for final action, and may be given an opportunity to address the board regarding the subcommittee's recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **§1509. Penalties**

A. The Subcommittee has the authority to issue, suspend, modify or revoke residential contractors licenses, subject to the final approval of the state Licensing Board for Contractors.

B. In accordance with the provisions of R.S. 37:2172, the subcommittee shall have the authority to issue a fine not to exceed \$500.00 for each violation, for the causes listed in R.S. 37:2158, subject to final approval by the state Contractors Licensing Board.

C. In addition to or in lieu of any of the penalties provided in this Chapter, the subcommittee is empowered to issue a cease and desist order. Further, the subcommittee may seek the other civil remedies provided in R.S. 37:2162 for violations of this Chapter, subject to the final approval of the state Licensing Board for Contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:

#### **Family Impact Statement**

There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

1. What effect will this Rule have on the stability of the family? These proposed Rule changes will not affect the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule changes will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? These Rule changes will not affect the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? These Rule changes will not affect the family earnings or family budget.

5. What effect will this Rule have on the behavior and personal responsibility of children? These proposed Rule changes will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action is strictly a state administrative and enforcement function of the LSLBC.

#### **Public Comments**

Interested persons may submit written comments until 4:30 p.m., November 3, 2011 to the Louisiana State Licensing Board for Contractors, attention Judy Dupuy, Board Administrator, 2525 Quail Drive, Baton Rouge, LA 70808 or to fax (225) 765-2431.

#### **Public Hearing**

A hearing on the proposed Rule changes will be held on December 1, 2011 at 9:30 a.m. at the Louisiana State Licensing Board for Contractors at 2525 Quail Drive, Baton Rouge, LA 70808.

Michael McDuff  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Contractors**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation of the proposed rule will be carried out using existing staff and funding level. The proposed rule change will have no impact on state or local governmental expenditures. The revisions make technical changes, clarify different types of license holders, streamline hearing and

notification procedures, strengthen testing procedures currently in place, and clarify documentation procedures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed rule change will not impact revenue collections of state or local governmental units. The proposed rule change does not include any fee increases by the Louisiana State Licensing Board for Contractors.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Contractors will benefit from clarification of Board procedures and requirements, thus resulting in increased efficiency, faster licensing approval and renewal, and satisfactory resolution of issues regarding regulatory requirements. In addition, contractors will have the right to seek declaratory rulings from the Board, rather than having to wait until a potential violation was to occur before determining the Board's interpretation regarding such activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no impact on competition or employment in the public or private sectors.

Judy Dupuy  
Board Administrator  
1110#037

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Examiners of Nursing Facility Administrators**

**Administrator-in-Training (AIT) Waiver  
(LAC 46:XLIX.713)**

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.713 relative to the administration of nursing facility administrators and their licensure to provide and specify an additional educational waiver option, thereby increasing administrator training choices consistent with existing requirements.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLIX. Nursing Facility Administrators**

**Chapter 7. Administrator-in-Training (AIT)**

**§713. Waivers**

**A. – B. ...**

1. education. Full waiver may be granted if applicant has a Bachelor or Masters degree in health care administration or a Bachelor or Masters degree with a concentration in eldercare studies which includes a clinical internship;

a. the internship shall be consistent with all board regulations and applicable required hours and in areas of concentration. The internship requirements shall be completed within a 24 months period after acquiring 48 credit hours;

b. the applicant shall successfully pass the national exam, state exam, and the exit interview;

**2. ...**

a. examination. All applicants for a full waiver undergo an exit interview conducted by a board member or an authorized representative. Applicants for partial waiver may be required to undergo an exit interview in those areas for which waiver is requested;

b. non-participating facility experience. No full waiver will be granted for experience gained in a facility that is not certified for and does not participate in Medicare and/or Medicaid. All applicants applying for waiver based on experience in a non-participating facility must undergo an exit interview.

**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 37:593 (February 2011), repromulgated LR 37:887 (March 2011), amended LR 38:

**Family Impact Statement**

The proposed amendments, to LAC 46:XLIX.713 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 November 10, 2011 to Mark A. Hebert, Board of Examiners of Nursing Facility Administrators, 5647 Superior Drive, LA 70816.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Administrator-in-Training (AIT) Waiver**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule amendment is designed to provide and specify an additional educational waiver option, thereby increasing administrator training choices consistent with existing requirements. Other than the rule publication costs (\$165), there will be no costs or savings to the Board of Examiners or local government units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

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)

There will be no costs or economic benefits to any persons or non-governmental groups. However, the Rule change will allow for applicants seeking a waiver from the Board's Administrator in Training Program to apply a Bachelor or Masters degree in health care administration or eldercare studies with a specific clinical internship for the board's training program. As such, the applicants' educational

experience will be increased. This is an alternate educational waiver option.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Mark A. Hebert  
Executive Director  
1110#017

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Alternative Therapy and Collaborative Treatment, Preceptorship Program, and Certified Animal Euthanasia Technician (LAC 46:LXXXV.712, 1103, 1105, 1200, 1201, 1209, and 1211)

The Louisiana Board of Veterinary Medicine proposes to amend and adopt LAC 46:LXXXV.712, 1103, 1105, 1200, 1201, 1209, and 1211 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518A(9). The proposed rules are being amended and adopted to provide alternative therapy and collaborative treatment on animals by a qualified layperson and the parameters within which services may be provided under the direct supervision of the veterinarian; amend the week in training for preceptorship program to more closely follow actual hours of veterinary medical practice hours, and outline parameters for repeal of week(s) in training for non-compliant weeks(s) in training; repeal the temporary certification for the certified animal euthanasia technician due to the annual certification training program which is now being provided at dedicated, periodic intervals during the year at various sites throughout the state; and clarify pre-euthanasia restraint of animals.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 7. Veterinary Practice**

**§712. Alternative Therapy and Collaborative Treatment**

A. Alternative therapy and/or collaborative treatment may be performed by a layperson (a person not licensed, registered, or certified by the board) only with an order or prescription from a Louisiana licensed, supervising veterinarian who has first established the veterinarian-client-patient relationship, and can be performed only under such supervising veterinarian's direct supervision and with the written informed consent of the owner of the animal (client) or his duly authorized agent. The layperson must possess a license, registration, or certification issued by another Louisiana regulatory authority, or he must possess verification of an educational level acceptable by the board, in the subject matter of the alternative therapy and/or collaborative treatment at issue.

B. Direct supervision as used in this section means the supervising veterinarian must be on the premises where the

alternative therapy and/or collaborative treatment are being performed and is directly responsible for the on-going evaluation and/or diagnosis. A lay person (a person not licensed, registered, or certified by the board) cannot perform surgery, on-going evaluation and/or diagnosis, prognosis, or prescribe treatment, medicines, or appliances as set forth in §702.A.2.

C. The supervising veterinarian will be held accountable for the proper diagnosis and treatment of the animal, including the work delegated to the layperson, as well as compliance with proper documentation in the patient's medical record as set forth in Section 701, including the written informed consent for the alternative therapy and/or collaborative treatment obtained from the client or his duly authorized agent. The supervising veterinarian will also be held accountable for the maintenance of the confidential relationship with the client and patient.

D. Alternative therapy as used in this section includes, but is not limited to, ultrasonography, magnetic field therapy, holistic medicine, homeopathy, animal chiropractic treatment, animal acupuncture, animal physical therapy, animal massage therapy, and laser therapy.

E. Collaborative treatment as used in this section includes, but is not limited to, ophthalmology, cardiology, neurology, radiology, and oncology.

F. Written informed consent as used in this section means the supervising veterinarian has informed the client or his duly authorized agent, in a manner that would be understood by a reasonable person, of the diagnostic and treatment options, risk assessment, and prognosis, and the client or his duly authorized agent has consented in writing to the recommended alternative therapy and/or collaborative treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 23:970 (August 1997), amended, LR 38:

**Chapter 11. Preceptorship Program  
§1103. Definitions**

\* \* \*

*Week in Training*—a week in training shall consist of a minimum of 40 hours earned during a maximum of six calendar days. A calendar day shall not exceed twelve hours in duration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 19:208 (February 1993), LR 23:968 (August 1997), LR 24:1293 (July 1998), LR 27:543 (April 2001), LR 28:1208 (June 2002), LR 38:

**§1105. Applicants**

A. - F. ....

G. The failure to comply with the time and duration requirements for any week(s) in training shall result in the preceptee having to successfully repeat the non-compliant week(s) in training at the same approved preceptorship site, or a successive board approved site, conditioned on submitting a revised Preceptorship Agreement to the board at least two weeks prior to the commencement of the make up week(s) in training at issue. An applicant for a license to practice veterinary medicine must successfully complete the

preceptorship requirement, or be granted a waiver pursuant to §1105.E, prior to being issued a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:1686 (December 1997), LR 24:942 (May 1998), LR 27:543 (April 2001), LR 38:

**Chapter 12. Certified Animal Euthanasia Technician**  
**§1200. Definitions**

A. ...

\* \* \*

*Temporary Certification*—repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1424 (November 1993), amended LR 26:317 (February 2000), LR 38:

**§1201. Applications for Certificates of Approval**

A. - B. ...

C. The board shall reject the application of an applicant who has practiced veterinary medicine, veterinary technology, or euthanasia technology with sodium pentobarbital in this state without a certificate of approval during the two year period immediately prior to application

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1424 (November 1993), amended LR 23:963 (August 1997), LR 26:317 (February 2000), LR 29:1479 (August 2003), LR 38:

**§1209. Pre-Euthanasia Restraint**

A. Euthanasia by intracardiac injection on cats and dogs shall be prohibited unless the animal is unconscious or rendered completely unconscious and insensitive to pain through the injection of an anesthetic. Such prohibition is applicable to animal control shelters and their animals located on site as well as their animals which may be transported to a veterinary clinic for euthanasia. Temporary transfer of ownership of the animal to the veterinarian by the animal control shelter for euthanasia by cardiac injection is a violation of the law. The performance of euthanasia by intracardiac injection in violation of this section by a CAET and/or veterinarian is sanctionable.

B. A CAET (Lead status or otherwise) shall not use any drug for purposes of sedation, or any form of anesthesia, since sedation is beyond the permissible scope of euthanasia practice for this certificate holder. However, Acepromazine, Rompun (xylazine), or Domitor (medetomidine) which are non-controlled drugs, may be legally used by CAETs for pre-euthanasia restraint of feral/fractious animals. If an animal control shelter’s animal must be sedated/anesthetized pursuant to Subsection A above, then a LA licensed veterinarian must perform this service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 38:

**§1211. Fees**

A. The board hereby adopts and establishes the following fees for the CAET program:

Application Fee	\$25
Course Fee	\$80

Annual Renewal of Certificate	\$50
Examination Fee	\$50
Late Renewal Fee	\$25
Original Fee-Full Certification	\$50

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1425 (November 1993), amended LR 26:318 (February 2000), LR 38:

**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 Wendy D. Parrish, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on Friday, November 18, 2011.

**Public Hearing**

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Monday, November 28, 2011, at 10 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Wendy D. Parrish  
 Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
 FOR ADMINISTRATIVE RULES**

**RULE TITLE: Alternative Therapy and Collaborative Treatment, Preceptorship Program, and Certified Animal Euthanasia Technician**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Except for those costs associated with publishing the amendment (estimated at \$400 in FY 2012), there will be no costs to state or local governmental units regarding alternative therapy and collaborative treatment; week in training under the preceptorship program; repeal of the temporary certification for Certified Animal Euthanasia Technician; and pre-euthanasia restraint of animals. However, depending on the number of participants, the Board may have up to \$2,000 in estimated additional costs for the provision of the Board's certification training program for Certified Animal Euthanasia Technicians. These potential costs will be paid for with the anticipated revenue collected for the provision of the program. Any potential costs to the governmental agency (animal control facility) which sponsors the travel and expenses for its employee applicant to attend the Board's certification training program are anticipated to be less than previous years due to the provision of the program in its local area, as well as the new one-day format of the program, thereby reducing travel and eliminating overnight housing expenses. Licensees and certificate holders will be informed of this rule change via the Board’s regular newsletter or other direct mailings, and the Board’s website, which result in minimal costs to the Board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units with regards to alternative therapy and collaborative treatment; week in training under the preceptorship program; or pre-euthanasia restraint of animals. The Board anticipates losing approximately \$250-\$300 annually from the repeal of the temporary certification for Certified Animal Euthanasia Technician due to the availability of multiple courses provided to obtain permanent certification (historically, the Board has issued an average of 5-6 temporary certifications per year). The board estimates up to \$2,400 in additional annual revenue collected regarding the provision of the Board's certification training program for Certified Animal Euthanasia Technicians due to the potential for more participants. These revenues will be offset by the anticipated costs for the additional dates per year, the additional training sites, additional materials/supplies, and any travel costs as per state regulations for instructor Board member and staff.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated costs and/or economic benefits to directly affected persons or non-governmental groups regarding alternative therapy and collaborative treatment on animals are anticipated to be minimal, if any, since such services are currently provided by veterinarians and with the proposed rules will be more readily available to recipients by qualified laypersons under the direct supervision of the veterinarians.

The estimated costs and/or economic benefits to directly affected persons or non-governmental groups regarding the amended definition of week in training under the preceptorship program, and the repeat of non-compliant week(s) in training for the participant are anticipated to be minimal, if any, since the new week of training will more closely follow actual hours of veterinary medical practice hours which were previously capped at 9 hours per day. In addition, a participant may complete a week of training for each non-compliant week without the current requirement for a repeat of the full eight week program.

The estimated costs and/or economic benefits to directly affected persons or non-governmental groups regarding the repeal of the temporary certification for Certified Animal Euthanasia Technician are anticipated to be minimal, if any, since the Board's certification training program will now be given at dedicated, periodic intervals during the year at various sites throughout the state to meet the growing need to train a larger number of applicants. The program was previously conducted only once per year in Baton Rouge. The additional dates and sites of training will eliminate the need for temporary certification. Savings may also be realized by the applicant and/or government agencies that sponsors the travel and expenses for the applicant to attend the off-site training program as the programs may be provided in the local area, and in a one-day format eliminating overnight housing expense. The rules are also being amended to repeal the fee for the issuance of a temporary certification as such will no longer be applicable.

The estimated costs and/or economic benefits to directly affected persons or non-governmental groups regarding pre-euthanasia restraint of animals are anticipated to be minimal, if any, since it is a restatement of the law that only veterinarians can perform sedation or anesthesia, and a Certified Animal Euthanasia Technician can use certain stated non-controlled drugs for pre-euthanasia restraint. The proposed rule is

reflective of the effects of Act 764 of the 2010 LA Regular Legislative Session.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The estimated effect on competition and employment regarding alternative therapy and collaborative treatment on animals is anticipated to occur since such services are currently provided by veterinarians and with the proposed rules will be more readily available to recipients by qualified laypersons under the direct supervision of the veterinarians. Accordingly, there may exist a slight increase in competition and employment of such qualified laypersons.

The estimated effect on competition and employment regarding the amended definition of week in training under the preceptorship program, and the repeat of non-compliant week(s) in training for the participant is anticipated to be minimal, if any, since the new week of training will more closely follow actual hours of veterinary medical practice hours which were previously capped at 9 hours per day. In addition, a participant may complete a week of training for each non-compliant week without the current required repeat of the full eight week program. It is hoped that all participants properly complete the full eight week program with no repeat of any non-compliant week thereby insuring timely employment.

The estimated effect on competition and employment regarding the repeal of the temporary certification for Certified Animal Euthanasia Technician is anticipated to be minimal, if any, since the Board's certification training program will be conducted on multiple dates per year (rather than the current once annual program) and additional training sites (rather than the current single site) will eliminate the need for temporary certification of the same employed persons obtaining full certification.

The estimated effect on competition and employment regarding pre-euthanasia restraint of animals is anticipated to be minimal, if any, since it is a restatement of the law that only veterinarians can perform sedation or anesthesia, and a Certified Animal Euthanasia Technician can use certain stated non-controlled drugs for pre-euthanasia restraint. The proposed rule is reflective of the effects of Act 764 of the 2010 LA Regular Legislative Session.

Wendy D. Parrish  
Executive Director  
1110#042

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

Marine and Fresh Water Animal Food Products  
(LAC 51:IX.325, 327, 330, 331 and 333)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(1), R.S. 40:5(2),(3), (5), (15), (17), (19), (20) and (21), and R.S. 56:437, intends to amend and revise Title 51 (Public Health—Sanitary Code), Part IX (Marine and Fresh Water Animal Food Products), by effecting substantive changes as outlined below. The proposed changes are due to Act 1 of the 2011 Regular Session of the Louisiana Legislature.



**Title 51**  
**PUBLIC HEALTH—SANITARY CODE**  
**Part IX. Marine and Fresh Water Animal Food**  
**Products**

**Chapter 3. Preparation and Handling of Seafood for Market**

**§325. Penalties Relative to Shellstock Container Tagging**

**[formerly paragraph 9:051-2]**

A. Shellstock containers which are not tagged or labeled in accordance with the tagging or labeling requirements of this Part shall subject the contents thereof to seizure and destruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21), and R.S. 56:437.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 38:

**§327. Refrigeration of Shellstock Oysters, Clams and Mussels**

**[formerly paragraph 9:052]**

A. Shellstock shall be placed under mechanical refrigeration at an air temperature (measured 12 inches from the blower) not to exceed 45°F within the time period prescribed herein; and shall be maintained at or below that temperature through out all levels of commerce. Shellstock harvested for raw consumption during the months January through December shall be subject to the time to refrigeration requirements outlined in Subsection A of §329 of this Part.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

B. All shellstock harvested for raw consumption shall be placed under temperature control in accordance with the requirements specified under Subsection A of §329 of this Part. Any shellstock harvested which exceeds the time-temperature matrix requirements of Subsection A of §329 of this Part shall not be provided to or served to anyone for the purpose of raw consumption, but shall only be provided to a certified dealer for the express purposes of shucking or post-harvest processing only.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

C. Once shellstock is off-loaded from the harvest vessel onto the dock it must be placed under mechanical refrigeration within 2.0 hours; but the total harvest to refrigeration time shall not exceed the time-temperature matrix specified under Subsection A of §329 of this Part.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within

the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

D. Once shellstock is off-loaded from a harvest vessel to an oyster cargo vessel, oysters must be placed under mechanical refrigeration at a time not to exceed the original harvester's time-temperature matrix specified under Subsection A of §329 of this Part.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008), LR 36:1016 (May 2010), LR 38:

**§330. Refrigeration Requirements for Shellstock Harvested during the months of May through October for Raw Consumption only by persons located within the State of Louisiana**

A. Any shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins and such shellstock shall not be sold for use outside of the state of Louisiana.

B. The Department of Health and Hospitals and the Department of Wildlife and Fisheries have cooperatively developed a single tag which purpose is to immediately and specifically indicate by its fuchsia (pinkish-purple) color that the oysters contained in the sack or box have been harvested following the requirements of this Section. Language shall be printed on the tag which shall explicitly state "oysters contained herein must not be sold for use outside of the state of Louisiana" and the oysters contained in the sack or box (excluding post-harvest process product) shall not be sold for use outside of the state of Louisiana. This tag shall be in addition to any tag(s) required under §323 of this Part.

C. Oysters being processed (shucked or frozen) under this Section must identify on the packing container that this product cannot be sold for use outside of the state of Louisiana.

D. When harvesting for oysters which will be harvested and tagged under the requirements of this Section (i.e., oysters to be sold for raw consumption only by persons located within the state of Louisiana), each harvester shall contact and notify the Department of Wildlife and Fisheries prior to leaving port. The Department of Wildlife and Fisheries shall be notified by calling 1-800-442-2511.

E. Records relating to oysters which will only be sold for raw consumption within the state of Louisiana shall be

completed by both the harvester and dealer(s), and shall be kept separate from records for shellstock product intended for interstate shipment. These records shall be maintained for a period of one year (two years if frozen) and be made readily available for examination by agents of the Department of Health and Hospitals and the Department of Wildlife and Fisheries. Approved log sheets, properly completed and maintained, for the current and previous 15 days harvest shall be kept aboard the harvest vessel for immediate examination. A copy of the log sheet form required to be kept and maintained is shown below in §345 of this Part.

F. All oysters on board any vessel actively being utilized for the purpose of intrastate shipments under the conditions of this Section shall be restricted to the use of intrastate [fuchsia (pinkish purple) color] tags for all oysters contained on that vessel from the time harvesting begins until all oysters are offloaded dockside.

G. In addition to all other required notifications/entries by harvesters prior to the taking of oysters under this Section, the harvester shall legibly document on the required harvester-dealer time temperature log sheet "For Intrastate Shipments Only."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21), and R.S. 56:437.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

**§331. Refrigeration Requirements for Shellstock Harvested for Shucking or Post-Harvest Processing by a Certified Dealer during the Months January through December [formerly paragraph 9:052-2]**

A. Time to refrigeration requirements for shellstock harvested for shucking or post-harvest processing by a certified dealer during the months January through December shall be as follows.

1. All shellstock shall be placed under mechanical refrigeration at an air temperature not to exceed 45°F no later than 12 midnight each day, except for the months of December, January, and February.

2. Dealer/harvester tags utilized to identify shellstock harvested for shucking or post-harvest processing by a certified dealer must be identified with a green tag or label placed on the outside of the shellstock container which states: "FOR SHUCKING BY A CERTIFIED DEALER OR POST-HARVEST PROCESSING ONLY".

AUTHORITY NOTE: Promulgated in accordance with R.S.40:4(A)(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008), LR 35:1239 (July 2009), LR 36:1017 (May 2010), LR 38:

**§333. General Provisions [formerly paragraph 9:052-3]**

A. - G.2. ...

H. A Hazard Analysis Critical Control Point (HACCP) plan for oyster harvesters shall be required for all oyster harvesters dredging for product intended for the half-shell market.

1. The oyster harvester must demonstrate through record keeping that oysters harvested have met the refrigeration time and temperature requirements of §329.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1) and R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1310 (June 2002), amended LR 38:

**Family Impact Statement**

1. The effect on the stability of the family. The Rule is not anticipated to have any effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. The Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. The Rule is not anticipated to have any effect on the functioning of the family.

4. The effect on the family earnings and family budget. The Rule is not anticipated to have any effect on most family's earnings or budget. If the family is supported by an oyster harvester, dealer or seller, this Rule will allow the family earnings and family budget to improve and be more stable during the summer months.

5. The effect on the behavior and personal responsibility of children. The Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. The Rule will have no effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than Thursday, November 10, 2011 at 4:30 p.m. to David Guilbeau, Commercial Seafood Program Administrator, Office of Public Health, 628 North Fourth Street, P.O. Box 4489, Baton Rouge, LA 70821. Comments may be faxed to (225) 342-7552.

**Public Hearing**

A public hearing is scheduled for Tuesday, November 29, 2011 at 2:30 p.m. in room 893 at the DHH Bienville Building, 628 North Fourth Street, Baton Rouge, LA 70802. Please call (225) 342-7653 in advance to confirm the time and place of the public hearing, as the public hearing will be cancelled if the requisite number of comments is not received.

Bruce D. Greenstein  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES  
RULE TITLE: Marine and Fresh Water  
Animal Food Products**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule implements Act 1 of the 2011 Regular Session that allows oysters harvested from Louisiana waters to be sold for raw consumption within the state at all times throughout the year, even during summer months, and requires refrigeration within 5 hours of being harvested. Oysters harvested for raw consumption during the summer months (May-October) under the provisions of this proposed rule are to be identified by a fuchsia (pinkish-purple color) tag. Oysters identified with a fuchsia tag are to be sold and consumed only by persons located within the state of Louisiana (intrastate commerce only). Oysters having a fuchsia tag are not allowed to be sold for use outside of the State of Louisiana. This proposed rule change results in code provisions that are inconsistent with the National Shellfish Sanitation Program (NSSP) Model Ordinance. The NSSP is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. Since the fuchsia tag oyster products will not be sold via interstate commerce, the department does not anticipate any negative impact from inconsistent code provisions with NSSP.

This rule change will cause an increase in time spent by the sanitarian to review the additional paperwork required to be maintained by the establishments, and may ultimately result in the need for additional sanitarians depending on the number vendors who participate in summer oyster harvest. The proposed change will result in an estimated cost of \$861 to publish the notice of intent and the final rule in the Louisiana Register. This is a one-time cost to DHH/Office of Public Health. The cost is routinely included in the agency's annual budget. In addition, the Department of Wildlife and Fisheries (DWF) is estimated to incur a total cost of \$1,371.60 to purchase 36,000 fuchsia tags. This will be an ongoing cost, as tags will be purchased as needed.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Wildlife and Fisheries (DWF) will sell the fuchsia tags to oyster harvesters for \$0.15 per tag. The DWF is expected to increase Self-Generated Revenues by \$5,400 to reimburse the operating costs of supplying the fuchsia tags.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule change will result in additional records to be kept by the harvester, certified dealers, and retail establishments in order to ensure the product does not enter interstate commerce. The department cannot determine the cost of additional recordkeeping.

Also, there will be an economic benefit to oyster harvesters by not being required to have a refrigerated cooler on oyster harvesting vessels during the summer months. However, the product must be refrigerated within 5 hours of harvest. Potentially, this regulation could benefit the in-state consumer by having more oyster products readily available during all times of the year within the State of Louisiana. However, this proposed rule could potentially result in an additional increase in costs to the out-of-state oyster consumers and/or retailers due to having oyster products being sold during the summer months via intrastate commerce thus reducing the number of oysters available. The department cannot determine the increase in costs to out-of-state consumer and/or retailers.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment anticipated as a result of promulgation of this regulation.

Clayton Williams  
Assistant Secretary  
1110#046

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Office of Public Health

#### Use of Vital Records in Program Administration (LAC 48:V.11710)

The Department of Health and Hospitals, Office of Public Health proposes to amend LAC 48 to provide for the Use of Vital Records in Program Administration as authorized by R.S. 40:41(D)(1). This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Louisiana Department of Health and Hospitals, Office of Public Health has adopted Emergency Rule provisions to implement a plan for increased coordination of resources that can make a positive impact on program administration.

The department now proposes to add a Section (Availability of Records) under Chapter 117 in order to establish provisions that will allow for the use of data contained in vital records for administration of the department's programs, in particular, to communicate to providers on the quality and effectiveness of care given.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part V. Preventative Health Services

#### Chapter 117. Availability of Records

#### §11710. Use of Vital Records in Program Administration

A. Data contained in vital records shall be made available upon written request by the Department of Health and Hospitals for use in the administration of the programs of the department, provided that such access and use of data shall be solely for that purpose.

B. A panel of public health officials, which shall include the state health officer, or his designee, the state registrar, and the tumor registry administrator, shall review each proposal for use of vital records in the administration of the programs of the department. The panel shall determine and ensure as follows:

1. that the proposal is in the best interest of the state or the public health of its citizens; and

2. that those persons having access to vital records are either involved in the administration of the programs of the department or are well qualified to conduct research.

C. Only those proposals which are certified by the panel as meeting these two standards shall be approved by the panel for use in the administration of programs of the department.

D. The panel shall respond to each proposal within three business days of receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:41(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on quality of healthcare by enabling the department to streamline access to data between offices within the department and vital records for effective program administration, including quality assurance measures.

1. The effect on the stability of the family. None.
2. The effect on the authority and rights of parents regarding the education and supervision of their children. None.
3. The effect on the functioning of the family. None.
4. The effect on the family earnings and family budget. None.
5. The effect on the behavior and personal responsibility of children. None.
6. The ability of the family or local government to perform the function as contained in the proposed Rule. None.

#### **Public Comments**

Interested persons may submit written comments to Lucas Tramontozzi, P.O. Box 2870, Baton Rouge, LA 70821-2870. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearings**

A public hearing on this proposed Rule is scheduled for 1 p.m. Tuesday, November 29, 2011, in Room 371, Bienville Building, 628 North Fourth Street, Baton Rouge, Louisiana. At that time all interested individuals will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce Greenstein  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Use of Vital Records in Program Administration**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule amends Part V, Chapter 117 (Availability of Records), of the Public Health-General Code (LAC 48). The purpose of the proposed rule is to add a new Section, 11710. This proposed rule change permits the Office of Public Health to make available access to vital records data to all program offices in the Department of Health and Hospitals for administration of preventative health services in additional department's programs. In addition, data contained in the Vital Records will be used to communicate to providers on the quality and effectiveness of care given.

This proposed rule will allow the department to improve the Vital Records information shared within the Department as well as with health care providers by increasing transparency and feedback regarding the quality of care given. The Department will be able to supply detailed information on the quality of care provided by the health care professional listed in a particular vital event, such as a birth.

It is not anticipated that this proposed rule will add any additional cost to the state or local government units. However, the proposed rule will result in an estimated cost of \$287 to publish the notice of intent and the final rule in the Louisiana Register. This is a one-time cost that will be absorbed by the agency's annual budget.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local governmental units anticipated as a result of promulgation of this regulation.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

In particular, the Department will be able to now share vital event data with the health care providers of record for that vital event and indicate where opportunities exist to improve care delivery. The healthcare provider will be better informed about the quality of their care and thus will be better suited to compete in the healthcare market that continually emphasizes better results. This rule will improve the overall quality and effectiveness of care administered by providers in the State as more data and information is shared with them about their care delivery outcomes. There is no way to quantify the long-term impact of this improvement initiative at this point in time, such as the percent decrease of pre-term births.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no effect on competition and employment anticipated as a result of promulgation of this regulation.

Clayton Williams  
Assistant Secretary  
1110#047

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Revenue Office of Alcohol and Tobacco Control**

Good Standing (LAC 55:VII.315 and 3109)

Under the authority of R.S. 26:76, 276 and 904, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55.VII.315 and 3101 to provide the requirements, qualifications, and conduct which constitutes "good standing" for the purposes of qualifying for a two-year permit.

This proposed amendment to the above-referenced Rule is offered under the authority delegated and/or mandated by Act 259 of the 2011 Regular Session of the Louisiana Legislature and at the direction thereof in its amendment and re-enactment of R.S. 76, 276 and 904 to promulgate Rules to provide the requirements, qualifications, and conduct which constitutes "good standing" for the purposes of qualifying for a two-year permit.

**Title 55  
PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control  
Subpart 1. Beer and Liquor**

**Chapter 3. Liquor Credit Regulations**

**§315. Regulation VII—Procedures Determined for Issuing Permits**

A. - A.3. ...

B. Except as otherwise provided for by law and these regulations, all alcoholic beverage permits shall be issued for a period of no more than one year.

C. Notwithstanding Subsection A of this Section, the commissioner may issue alcoholic beverage permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control. Obtaining a two year permit shall not be mandatory for qualified applicants. Qualified applicants electing not to obtain a two year permit shall make application under the provisions of Subsection B of this Section.

D. For purposes of this Section, *good standing* shall mean any original or renewal applicant for a retail, wholesale, or manufacturer/brewer alcoholic beverage permit who has not been issued a warning, pled or been found guilty of any violations of Title 26 and/or the regulations promulgated thereunder more than once during the two year period preceding the original or renewal application date.

E. Permit fees for the entire permit period shall be due upon submission of an original or renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:71.1(1)(h) and 271.2(1)(h).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcoholic Beverage Control, LR 28:346 (February 2002), amended LR 38:

**Subpart 2. Tobacco**

**Chapter 31. Tobacco Permits**

**§3109. Initial Application and Related Fees**

A. Retail Dealer Registration Certificate

1. Except as otherwise provided by law and these regulations, certificates shall be issued for a period of no more than one year. The initial \$25 annual fee for a retail dealer registration certificate shall be prorated over the appropriate number of months.

2. The annual renewal fee will be \$25 as established in Title 26 of the Revised Statutes. Certificate renewal fees for the entire certificate period shall be due upon submission of an original or renewal application.

3. Notwithstanding Paragraph A.1 of this Section, the commissioner may issue certificates which are valid for two years to applicants in good standing with the office of alcohol and tobacco control. Obtaining a two year certificate shall not be mandatory for qualified applicants. Qualified applicants electing not to obtain a two year certificate shall make application under the provisions of Paragraph A.1 of this Section.

4. For purposes of this Section, *good standing* shall mean any original or renewal applicant for a retail dealer registration certificate who has not been issued a warning, pled or been found guilty of any violations of Title 26 and/or the regulations promulgated thereunder more than once during the two year period preceding the original or renewal application date.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 76, 276 and 904 and Act 259 of the 2011 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1321 (July 1998), amended LR 38:

**Family Impact Statement**

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to the legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule and/or amendment will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule and/or amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule and/or amendment will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Budget. Implementation of this proposed Rule and/or amendment will have no effect on family earnings and budget.

5. The Effect on Behavior and Personal Responsibility of Children. Implementation of this proposed Rule and/or amendment will have no effect on behavior and responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule and/or amendment will have no effect on the ability of the family or local government to perform this function.

**Public Comments**

Interested persons may submit data, views, or arguments in writing to Commissioner Troy M. Hebert, Office of Alcohol and Tobacco Control, 8585 Archives Ave, Suite 220, Baton Rouge, LA 70809; or via facsimile to (225) 925-3975. All comments must be submitted by 4:30 p.m. on Wednesday, November 30, 2011.

**Public Hearing**

A public hearing will be held on Monday, November 28, 2011 at 4:00 p.m. in the Office of Alcohol and Tobacco Control at 8585 Archives Avenue, 2nd floor in Baton Rouge, LA.

Troy Hebert  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Good Standing**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Promulgation of this proposed rule will not result in any costs or savings to state or local governmental units. Rather, this proposed rule is adopted pursuant to mandate(s) contained in Act 259 of the 2011 Regular Session of the Louisiana Legislature. The statute allows for a 2-year permit for tobacco and alcohol dealers in good standing with the Department of Revenue without a change in fees. The applicant will pay

double the current fees and not be required to renew the permit for two years instead of the annual renewal now required. Through language in the general appropriation bill, Alcohol and Tobacco Control (ATC) is allowed to retain fees and self-generated revenue for use in subsequent years so will continue to have access to the funds in the same manner as is currently available, even though collections may occur in different fiscal years. Since certain ATC employees will no longer have to issue permits for almost 2/3 of applicants every other year, they will be able to put more emphasis on vetting new business permits, conducting additional audits, and helping adapt the agency to more efficient procedures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of this proposed rule will not affect revenue collections of state or local governmental units over the long run. However, collections related to 2-year permit fees will be higher in years in which the 2-year permits are issued since the fee collected is doubled in year 1 and lower in the second year since the fees are not due. The department estimates that 75% of applicants will be eligible for the 2-year permit and 90% of those eligible will take advantage of the permit. Thus, as a simplified estimate, it is expected that 67.5% of fees will be subject to the 2-year permit fee. Historically, permit fees total about \$3.7M annually. If 67.5% of those fees are doubled in the first year, the ATC will collect about \$2.5M more than is currently expected. However, in year 2, the ATC will collect \$2.5M less than currently expected with unspent Year 1 fees carrying forward into year 2. The net collections over numerous fiscal years are not expected change due to the proposed rule, but the pattern of collection in each fiscal year will oscillate.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Promulgation of this proposed rule will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups. However, those electing to utilize the 2-year permitting process may experience a reduction in paperwork and administrative obligations as the process is only undertaken every two years in exchange for paying the year 2 fee a year sooner than is currently required.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no impact on competition and employment.

Troy M. Hebert  
Commissioner  
1110#036

Gregory Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Office of Alcohol and Tobacco Control**

Tobacconist Permits (LAC 55:VII.3101, 3103, and 3109)

Under the authority of R.S. 26:903, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.3101, 3103, and 3109 relative to application for and issuance of state tobacconist permits.

This proposed amendment to the above-referenced Rule is offered under authority delegated and/or mandated by Act 412 of the 2010 Regular Session of the Louisiana Legislature and at the direction thereof in its amendment and

re-enactment of R.S. 26:903(6) to promulgate Rules relative to application for and issuance of state tobacconist permits and the fees related thereto.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 2. Tobacco**

**Chapter 31. Tobacco Permits**

**§3101. Definitions**

A. For purposes of this Chapter, the following terms are defined.

\* \* \*

*Retail Dealer*—every dealer, other than a wholesale dealer, tobacconist, or manufacturer, who sells or offers for sale cigars, cigarettes, or other tobacco products, irrespective of quantity or number of sales.

*Tobacconist*—any bona fide tobacco retailer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular outlet where 50 percent or more of the total purchases for the preceding twelve months were purchases of tobacco products, excluding cigarettes.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:901.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1320 (July 1998), amended LR 38:

**§3103. Identifying Information for Certificates and Permits**

A. Certificates and Permits

1. A retail dealer registration certificate shall be issued to any dealer, not otherwise required by Title 26 to obtain a permit, other than a wholesale dealer, tobacconist, or vending machine operator.

2. A retail dealer permit shall be issued to a dealer other than a wholesale dealer, tobacconist, or vending machine operator for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine.

3. A tobacconist permit shall be issued to a dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular outlet where 50 percent or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes, for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine.

4. A vending machine operator permit shall be issued to a vending machine operator operating one or more vending machines. Licensed wholesale dealers who operate vending machines shall not be required to obtain a vending machine operator permit.

5. A vending machine permit shall be issued to the vending machine operator or wholesale dealer for each vending machine he operates and such permit shall be affixed to the upper front surface of the vending machine.

6. A wholesale dealer permit shall be issued to a wholesale dealer for each wholesale place of business operated by the wholesale dealer.

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:902.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1320 (July 1998), amended LR 38:

**§3109. Initial Application and Related Fees**

A. - E. ...

F. Pursuant to Title 26 of the Revised Statutes, the fee for a tobacco permit shall be \$150 per year or any portion thereof based on the effective rate as of August 15, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:903.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1321 (July 1998), amended LR 38:

**Family Impact Statement**

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the notice of intent in the *Louisiana Register*. A copy of this statement will also be provided to the legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule and/or amendment will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule and/or amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule and/or amendment will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Budget. Implementation of this proposed Rule and/or amendment will have no effect on family earnings and budget.

5. The Effect on Behavior and Personal Responsibility of Children. Implementation of this proposed Rule and/or amendment will have no effect on behavior and responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule and/or amendment will have no effect on the ability of the family or local government to perform this function.

**Public Comments**

Interested persons may submit data, views, or arguments in writing to Commissioner Troy M. Hebert, Office of Alcohol and Tobacco Control, 8585 Archives Ave, Suite 220, Baton Rouge, Louisiana 70809; or via facsimile to (225) 925-3975. All comments must be submitted by 4:30 p.m. on Wednesday, November 30, 2011.

**Public Hearing**

A public hearing will be held on Monday, November 28, 2011 at 4:00 p.m. in the Office of Alcohol and Tobacco Control at 8585 Archives Avenue, 2nd floor in Baton Rouge, LA.

Troy Hebert  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Tobaccoist Permits**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of this proposed rule will not result in any costs to state or local governmental units. Nor is it likely to result in any savings to any such units. Rather, this proposed rule is adopted in compliance with and/or pursuant to mandate(s) contained in Act 412 of the 2010 Regular Session of the Louisiana Legislature and provides for the definition of a tobaccoist with a single tobaccoist permit to be issued annually for a fee of \$150.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Promulgation of this proposed rule will not affect revenue collections of state or local governmental units. Prior to Act 412, a tobaccoist was required to purchase both a retail and wholesale permit at \$75 each. This rule allows for a single permit of \$150, which will not change fee collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule will streamline the current tobaccoist permit application and/or renewal process by condensing the current wholesale and retail tobaccoist permitting process into a single permit application and fee. Promulgation of this proposed rule will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups. However, administrative requirements may be eased somewhat by allowing tobaccoists to qualify for a single permit in place of two permits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment since all tobaccoists will be eligible for the new permit.

Troy M. Hebert  
Commissioner  
1110#035

Gregory Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Income Tax Credits for Wind or Solar Energy Systems  
(LAC 61:I.1907)**

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

Act 371 of the 2007 Regular Session of the Louisiana Legislature authorized a credit against income tax for the cost of purchase and installation of a wind energy system or solar energy system, or both. Under the current version of the wind and solar energy system credit regulation, in order

to be eligible for the credit all electrical components must be "UL" listed. This amendment to the Rule updates the "UL" listed requirement and makes eligible for the wind and solar energy tax credit systems that use electrical components tested by all OSHA Nationally Recognized Testing Laboratories.

#### **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered**

#### **By the Secretary of Revenue**

### **Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions**

#### **§1907. Income Tax Credits for Wind or Solar Energy Systems**

A. - D.3....

E. Wind and Solar Energy Systems Eligible for the Tax Credit

1. - 5. ...

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be tested and certified by a federal Occupational Safety and Health Administration (OSHA) nationally recognized testing laboratory and must be installed in compliance with manufacturer specifications and all applicable building and electrical codes.

E.7. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 38:

#### **Family Impact Statement**

The proposed amendment of LAC 61:I.1907, regarding income tax credits for wind or solar energy systems, 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, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

#### **Public Comments**

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Elroy A. James, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 5 p.m., Tuesday, November 23, 2011.

#### **Public Hearing**

A public hearing will be held on Tuesday, November 29, 2011, at 10:30 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Income Tax Credits for Wind or Solar Energy Systems**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed amendment to this rule changes the certification requirements for equipment qualifying for the wind or solar energy systems income tax credits. The adoption of this amendment should not result in any implementation costs or savings to state or local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Taxpayers claimed approximately \$13 million on 1,100 returns for fiscal year 2010-2011, and approximately \$8 million on 730 returns in the prior year for the wind or solar energy systems state income tax credit. This proposed amendment expands the criteria for equipment qualifying for the wind or solar energy systems income tax credit from being tested and certified by Underwriters Laboratory (UL) to being tested and certified by any federal Occupational Safety and Health Association (OSHA) recognized laboratory. This change mainly addresses a backlog in the UL approval process and allows vendors to offer the most updated equipment as tax credit eligible. UL certification will also continue to meet the criteria. The new criteria may reduce state revenue collections to the extent that additional credits are claimed due to product purchases now becoming eligible for the credit that were not eligible previously because they were not specifically UL approved. This will increase the total number of units eligible for the credit. However, any changes in revenue from this proposed amendment will be impacted by consumers shifting from UL listed equipment to equipment certified by other OSHA Nationally Recognized Testing Laboratories. The total number of units sold and claiming the credit is not expected to materially change from historical expectations. However, should units be purchased and receive credits that otherwise would not have been issued due to lack of other certification, state general fund revenue will decline. Since this rule is concerned with a state income tax credit, the amendment should have no impact on the revenue collections of local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Photovoltaic panels, wind turbines, inverters and other electrical apparatus for wind or solar energy systems which are tested and certified by a federal OSHA Nationally Recognized Testing Laboratory other than Underwriters Laboratories could experience an increase in sales. Similarly, UL approved units could experience a decrease in sales, but overall sales figures are not expected to materially change due to this proposed rule. The anticipated amount of the offsetting sales cannot be determined without empirical evidence.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed amendment will expand the criteria for equipment qualifying for the wind or solar energy systems income tax credit and make eligibility equal across similar product lines. The resulting increase in equipment eligible for the credit should increase competition among manufacturers and retailers of solar energy systems and offer more options for consumers.

Cynthia Bridges  
Secretary  
1110#068

Greg Albrecht  
Chief Economist  
Legislative Fiscal Office



## NOTICE OF INTENT

### Department of Treasury Louisiana Housing Finance Agency

#### Turnkey Mortgage Origination Program (LAC 16:II.Chapter 7)

Editor's Note: This Notice of Intent is being repromulgated to correct a submission error. The original submission may be viewed on pages 2889-2890 of the September 20, 2011 *Louisiana Register*.

Under the authority of R.S. 40:600.6(4)(a), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Housing Finance Agency hereby proposes to adopt the Turnkey Mortgage Origination Program. The proposed program will allow the Louisiana Housing Finance Agency to extend down payment and closing cost assistance to a broad spectrum homebuyers in the state.

#### Title 16

#### COMMUNITY AFFAIRS

#### Part II. Housing Programs

#### Chapter 7. Turnkey Mortgage Origination Program

#### §701. Introduction

A. The Turnkey Mortgage Origination Program is designed to provide citizens of the state of Louisiana additional opportunities to obtain funds for down payment and closing costs toward the purchase of single family homes in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 38:

#### §703. Definitions

A. Notwithstanding the definitions set forth in LAC 16:I.301, the following terms, when used in this Chapter, are defined as follows.

*Annual Family Income*—the gross annual income, from all sources and before taxes or withholding, of all members of a family living in a housing unit.

*Borrower*—an individual or family applying to receive down payment assistance under the Turnkey Mortgage Origination Program.

*Housing Unit*—living accommodations intended for occupancy by a single family, consisting of one to four units, and which will be owned by the occupant thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 38:

#### §705. Eligible Borrowers

A. Borrowers will be determined to be eligible for assistance if they meet the following criteria.

1. The applicant is seeking assistance towards the purchase of a housing unit in the state, whether purchasing as a first time homebuyer or a non-first time homebuyer.

2. The applicant will occupy the property as his primary residence. Applicants seeking to purchase properties for use as recreational homes, second homes, vacation homes, and/or investment properties are not eligible to receive assistance.

3. The applicant's annual household income must not exceed established income limits as defined by the provisions set forth in the LAC 16:I.303.B, which limit is currently a maximum of \$99,000 per year.

4. The applicant meets the minimum credit score determined by the lender as based upon the product selected for assistance, but in no instance shall be lower than 620.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 38:

#### §707. Processing and Qualifications of Borrowers Applications

A. An application for a mortgage loan shall be processed by a lending institution on behalf of the agency on the basis of the agency's evaluation criteria. The lending institution shall undertake its own due diligence and other matters as may be determined to be appropriate to insure that the proposed loan is consistent in all respects with the agency's evaluation factors.

B. When processing mortgage loan applications lenders must adhere to the published acquisition cost limits and or maximum loan sizes as defined by the Federal Housing Administration, Veterans Administration, Rural Development.

C. Upon completion of the processing and approval of the application, the lending institution shall initiate a loan closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 38:

#### §709. Interest Rates

A. The interest rates charged by the lending institution for a borrowers mortgage loan shall be monitored and adjusted as needed based on the current market rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 38:

#### §711. Types of Assistance and Proscribed Use

A. Down payment assistance will be available at loan closing by the mortgage lender.

1. The maximum down payment assistance is 5 percent.

2. Borrowers will pay a 1 percent origination fee and 1 percent discount point.

B. The assistance will be in the form of a non-repayable grant with no cash back to the borrower.

C. Assistance may be applied toward down payment, closing costs and pre-paid items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 38:

#### 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

Any interested person may submit written comments regarding the contents of the proposed Rule to Brenda Evans, Single Family Program Administrator, Louisiana

Housing Finance Agency, 2415 Quail Drive, Baton Rouge, LA 70808, or to fax (225) 763-8710, or via e-mail at bevans@lhfa.state.la.us. All comments must be received by 4:30 p.m., November 10, 2011.

Alesia Y. Wilkins-Braxton  
Vice President

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Turnkey Mortgage Origination Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed administrative rules will result in minimal implementation costs and the Louisiana Housing Finance Agency (LHFA) anticipates utilizing existing resources and three existing staff members for program management. Self-generated revenues (fees) from the program will be utilized to pay a portion (\$38,078) of the staff's personal services in FY 12 and beyond. The proposed administrative rule changes places the Turnkey Mortgage Origination Program in the Louisiana Housing Finance Agency's administrative rules. This will allow the agency to extend down payment and closing cost assistance to non first-time homebuyers and those with income limits that may exceed the income limits required for homebuyers served by tax-exempt bonds.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The estimated effect of the proposed rule on revenue collections, based upon previous production from similar programs, may result in an approximately \$250,000 increase in gross revenue each year.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The program will provide approximately \$3,750 in assistance to each qualifying family for down payment and closing costs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no measurable effect on competition and employment.

Alesia Y. Wilkins-Braxton  
Vice-President  
1110#081

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Office of the Treasurer**

Permissible Investments (LAC 71:I.501)

Under the authority of R.S. 49:327 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Treasurer of the Louisiana Department of the Treasury hereby gives notice of the department's intent to amend LAC 71:I.501.

**Title 71**

**TREASURY—PUBLIC FUNDS**

**Part I. Public Funds**

**Chapter 5. Permissible Investments**

**§501. U.S. Government Agency Obligations**

A. Pursuant to R.S. 49:327(B)(1)(a) and (b), obligations of or obligations guaranteed by, any of the following agencies, instrumentalities, or government-sponsored entities of the United States Government, or their successor agencies, universally referred to in the investment community as "agency securities," shall be eligible for investment by the treasurer:

1. Government National Mortgage Association (GinnieMae, GNMA);
2. Federal Agriculture Mortgage Corporation (FAMC);
3. Farm Credit Financial Assistance Corporation (FCFAC);
4. Farm Credit System Banks (FFCB);
5. Farmers Home Administration (FmHA);
6. Federal Home Loan Banks (FHLB);
7. Federal Home Loan Mortgage (FreddieMac, FHLMC);
8. Financing Corporation (FICO);
9. Federal Land Bank Bonds (FLBB);
10. Federal National Mortgage Corporation (FannieMae, FNMA);
11. Resolution Funding Corporation (REFCO);
12. Small Business Administration (SBA);
13. Federal Deposit Insurance Corporation (FDIC)
14. Tennessee Valley Authority (TVA);
15. U.S. Postal Service (USPS).

B. The named agencies may issue such securities as discount notes, notes, debentures, bonds, participation certificates, mortgage-backed securities, collateralized mortgage obligations, adjustable rate mortgages, floating rate notes, and step-up notes of various maturity, call and put features. These securities issued by a named agency are illustrative only. Since agencies periodically issue a new form of security with similar guarantees, any such guaranteed security issued by a referenced agency shall be eligible for investment by the treasurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:327(B)(1)(a) and (b).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Office of the Treasurer, LR 15:751 (September 1989), repromulgated LR 29:192 (February 2003), amended LR 38:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This Rule will not impact the stability of the family.
2. What effect will this have on the authority and rights of the persons regarding the education and supervision of their children? This Rule will not impact the authority and rights of the persons regarding the education and supervision of their children/

3. What effect will this have on the functioning of the family? This Rule will not impact the function of the family.

4. What effect will this have on family earnings and family budget? This Rule will not impact the family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed will have no impact upon the ability of the family or local government to perform the function as contained in the Rule.

#### Public Comments

Interest Persons may submit written comments until 4:30 p.m., November 10, 2011, to Beth Morton, Department of the Treasury, P.O. Box 44154, Baton Rouge, LA 70804-9064.

John Kennedy  
State Treasurer

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Permissible Investments

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated costs or savings to state or local governmental units as a result of the proposed administrative rule change. The proposed rule change amends the Treasury Investment Rule by upgrading the list of permissible investments as it pertains to U.S. Government securities.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed administrative rule will increase the number of investment options. The revenue impact of such diversification is indeterminable.

#### 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 affect persons or non-governmental groups as a result of the proposed administrative rule change.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment as a result of the proposed administrative rule change.

Ron J. Henderson  
First Assistant State Treasurer  
1110#032

Evan Brasseaux  
Staff Director  
Legislative Fiscal Officer

#### NOTICE OF INTENT

#### Workforce Commission Office of Rehabilitation Services

Community Rehabilitation Program  
(LAC 67:VII.Chapter 2)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, Louisiana Workforce Commission, Louisiana Rehabilitation Services (LRS)

proposes to amend two Sections of its Community Rehabilitation Program (CRP) Policy Manual and to add two new Sections. In §203, Organization and Management, the agency is removing the reference to *licenses* from policy, as this is not a required standard for CRPs. In §219, Vocational Modules, the agency is amending the Section to align with the federal minimum standards as identified in Federal Performance Indicator 1.2 of 34 CFR Part 361.84. Section 221, Monitoring and Quality Assurances, and §223, Denial or Revocation of Vendorship are being added to provide vendors with additional guidance and to reflect current agency practices.

#### Title 67

#### SOCIAL SERVICES

#### Part VII. Rehabilitation Services

#### Chapter 2. Community Rehabilitation Program

#### §203. Organization and Management

##### A. General Requirements

1. The CRP shall allow representatives of LRS and the appropriate program office in the performance of their mandated duties to monitor all aspects of a programs' functioning which impact on clients and to interview staff members, and clients.

2. The CRP shall make any information which the program is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to LRS and the appropriate program office.

a. The client's rights shall not be considered abridged by this requirement.

b. A CRP shall promptly provide all necessary and needed information for review.

c. A CRP shall provide adequate space and privacy for the surveyor to review records uninterrupted.

##### B. A CRP shall have an administrative file including:

1. documents identifying the governing body and/or ownership of the agency;

2. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

3. by-laws of the governing body and minutes of formal meetings, if applicable;

4. a written statement of the program's mission and philosophy;

5. documentation of the agency's incorporation in the state;

6. organizational chart of the agency;

7. all leases, contracts and purchase-of-service agreements to which the center is a party;

8. insurance policies;

9. annual budgets;

10. master list of all consultants used by the center.

C. Organization and Administration. The CRP should engage in short-range and long-range planning, and develop or modify its services according to identified community needs and other LRS identified needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 24:1954 (October 1998), amended by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:

## §219. Vocational Modules

A. - B. ...

C. Employment Preparation (Job Opportunities Workshop, Job Readiness, Job Retention Training, etc.)

1. - 3. ...

D. Job Development/Placement

1. Job development and placement of LRS clients should meet the employment goal cited in the IPE.

2. The CRP shall provide documentation of the job development efforts, which are consistent with the employment goal on the client's IPE.

3. Client shall be placed into an integrated competitive employment position and be compensated at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled.

4. Individuals should be followed in their employment progress for at least 90 days and should be contacted at 6 month and 12 month intervals to ascertain progress.

5. The CRP shall comply with the federal minimum standards as identified in Federal Performance Indicator 1.2 of 34 CFR Part 361.84 in regards to the percentage of closed cases with a successful employment outcome.

6. The CRP shall maintain and disseminate client employment performance information to LRS staff.

E. Job Retention

1. The CRP is required to provide either on-site or off-site job supports which will enable the client to adjust to the demands of the integrated work environment and to retain employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 24:1957 (October 1998), amended by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:

## §221. Monitoring and Quality Assurance

A. The CRP will be subject to site reviews by appropriate program and fiscal staff to validate compliance with CRP Standards. A review may be conducted at any point in the vendorship process.

B. The CRP will be subject to an annual renewal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:

## §223. Denial or Revocation of Vendorship

A. Initial approval or renewal of vendorship can be denied or revoked for the following reasons, but is not limited to:

1. failure to meet any of the standards;
2. failure to provide required documents for the annual renewal process or formal request for documents by LRS;
3. cruelty or indifference to the welfare of consumers, and validated instance of abuse;
4. failure of the provider to hire or maintain qualified staff;
5. any act of fraud such as falsifying or altering documents;
6. unresolved findings from previous audits.

B. If a Community Rehabilitation Program vendorship is denied or revoked, the CRP has the right to appeal this decision. Appeals procedures are as follows.

1. Louisiana Rehabilitation Services will notify the Community Rehabilitation Program of the reason(s) for denial or revocation and its right to appeal in writing to be sent by certified mail.

2. The CRP may appeal the decision by submitting a written request to the LRS Director. The appeal shall clearly identify all issues in dispute; contain a full statement of the CRP's position with respect to each issue, pertinent facts and reasons to support the CRP's position, and specify the actions requested. This written request must be post marked within 30 days of the CRP's receipt of the LRS' notification of denial or revocation.

3. The LRS Director shall make a decision on the appeal and notify the CRP in writing within 30 days of the date the appeal was received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:

### Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule should have no impact on family stability.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This Rule should have no impact on family functioning.

4. What effect will this Rule have on family earnings and family budget? Implementation of this Rule will have no effect on family earnings.

5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

### Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

### Public Comments

Interested persons may submit written comments through, Friday, November 25, 2011 to Mark S. Martin, Director, Louisiana Rehabilitation Services at the address below. Copies of the of the revised policy may be obtained at Louisiana Rehabilitation Services, P.O. Box 91297, Baton Rouge, LA 70821-9297 or at each of its eight regional

offices, and at the Office of the State Register, 1051 North Third Street, First Floor, Baton Rouge, LA.

**Public Hearing**

Public hearings on the proposed Rule will be conducted on Tuesday, November 22, 2011 beginning at 9 a.m. at the following locations: Baton Rouge, LRS Regional Office, 3651 Cedarcrest Avenue; Alexandria, LRS Regional Office, 900 Murray Street; Shreveport, LRS Regional Office, 1525 Fairfield Avenue; Thibodaux, LRS Regional Office, 1442 Tiger Drive.

Individuals with disabilities who require special services should contact Judy Trahan, Program Coordinator, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For information or assistance, call 225-219-2225 or 1-800-737-2958 (V/TDD).

Curt Eysink  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Community Rehabilitation Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the promulgation cost for FY 11-12. It is anticipated that \$1,230 (\$262 SGF, \$968 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule, which will be absorbed within current agency budget.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule removes the licensing requirement for a Community Rehabilitation Program vendor and more closely aligns the state with federal guidelines concerning the percentage of closed cases that achieve a successful employment outcome. Current state guidelines are more restrictive than the federal guidelines by requiring 80% successful employment outcome, while federal guidelines require 55.8 percent. The rule also allows for situations in which a vendorship may be revoked. According to the agency, the change to licensing requirements is not expected to draw more vendors into the program because the agency certification process is as binding as the previous licensing requirements. Though none are expected, to the extent that new vendors may become eligible for the program due to the proposed rule changes, additional funding through the state budget could be required. Funding for this program is a 21.3 percent state match in state general fund and 78.7 percent federal paid through the Louisiana Workforce Commission Budget.

There is no expected impact to revenues at the local level.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

It is expected that vendors who were subject to two sets of guidelines in place through the federal government and the state government will now have a more uniform and more clearly defined set of guidelines to follow in order to participate in the program.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Curt Eysink  
Executive Director  
1110#043

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

# Administrative Code Update

CUMULATIVE: JANUARY-SEPTEMBER 2011

LAC Title	Part.Section	Effect	Location LR 37 Month Page	LAC Title	Part.Section	Effect	Location LR 37 Month Page
4	III.901	Adopted	May 1404	28	XLV.921,1101,1301	Amended	Feb. 560
	VII.961,963,965,967,969,971,973,975,977	Adopted	June 1606		XLIX.351,503,505,513,737,2503,2519,2521	Amended	Feb. 566
	VII.979,981,983,985,987	Adopted	June 1606		XLIX.507,509,511,515,517,2502	Adopted	Feb. 566
	VII.1301,1303,1305	Amended	Jan. 319		XLIX.513	Amended	Apr. 1141
7	I.103	Amended	Mar. 809	XLIX.741,1503,1509,1511,1517	Amended	July 2137	
	V.1901	Amended	Jan. 270	XLIX.3313,3403,3405,3407,3410,3415,3501	Amended	Feb. 566	
	V.1903,1921,1923,1931,1933,1935	Adopted	Jan. 270	XLIX.3417,3419	Repealed	Feb. 566	
	V.1905,1907,1909,1911,1913	Repealed	Jan. 270	LIX.101,105,107,301,303,307,309,501,523	Amended	July 2094	
	VII.Chapter 3	Repealed	Feb. 494	LIX.103,303,305	Repromulgated	July 2094	
	XI.101	Amended	Mar. 809	LIX.109	Repealed	July 2094	
	XIII.101,121	Amended	Jan. 270	LIX.503,505,507,509,511,513,515,517,519	Adopted	July 2094	
	XXIII.113	Amended	May 1373	LIX.521	Adopted	July 2094	
	XV.303,319,321	Amended	Sept. 2583	LXXVII.101,103,105,301,303,317,319,329	Amended	Feb. 518	
	XXIII.143	Amended	Jan. 269	LXXVII.325,305,307,309,311,313,315,321	Adopted	Feb. 518	
	XXIII.143	Amended	Mar. 809	LXXVII.323,327,333,335,337,339,343,345	Adopted	Feb. 518	
	XXV.101,103,105,107,109,111,113,115	Amended	Jan. 272	LXXVII.331,339,341,351,353,361,363,371	Amended	Feb. 518	
	XXV.117,119,121,123,125,127,129,131	Amended	Jan. 272	LXXVII.347,349,355,357,359,365,367,369	Adopted	Feb. 518	
	XXV.133,135,137,139,141,143,145,147	Amended	Jan. 272	LXXVII.373,375,377,387,505,507,509,511	Amended	Feb. 518	
	XXV.149,151,153,155,157,159,163	Amended	Jan. 272	LXXVII.379,381,383,385,389,391,393,395	Adopted	Feb. 518	
	XXV.161,165,167,169,171,173	Repealed	Jan. 272	LXXVII.397,501,503,515,701,901,903	Adopted	Feb. 518	
	XXVII.101,103,105,107,109,111,113,115	Amended	Feb. 494	LXXVII.513	Amended	Feb. 518	
	XXVII.117,119	Amended	Feb. 494	LXXIX.107	Amended	July 2145	
	XXVII.123,125,127,128,129,131,133,135	Amended	Feb. 494	LXXIX.2109	Repromulgated	Aug. 2390	
	XXVII.134	Adopted	Feb. 494	LXXIX.2109,2305,2309,2325,2337	Amended	July 2142	
	XXVII.136,137,141,143,145,147,149,151	Amended	Feb. 494	LXXIX.2109,2331,2335	Amended	July 2144	
	XXVII.153,155,191,193,195,197,199,201	Amended	Feb. 494	LXXIX.2324	Adopted	July 2143	
	XXVII.203,205,207,209,211,213,215,217	Amended	Feb. 494	LXXIX.2109,2331,2335	Amended	Sept. 2597	
10	XII.Chapter 1	Repealed	Feb. 589	LXXXIII.302	Amended	Mar. 857	
	XIII.1701,1703,1705	Adopted	June 1611	LXXXIII.302,409,515,703,3501,4301,4313	Amended	July 2118	
	XIII.1701,1703,1705	Amended	July 2148	LXXXIII.409	Amended	Aug. 2382	
	XIII.1901	Adopted	July 2149	LXXXIII.708,709	Amended	Apr. 1122	
	13	I.501,539,541,543,545,547,549,551,553,555	Repealed	Aug. 2376	LXXXIII.1101,1102,1103	Adopted	July 2120
		I.503,505,507,509,511,513,515,517,519	Amended	Aug. 2376	LXXXIII.1601	Amended	July 2120
		I.521,523,525,527,529,531,533,535,537	Amended	Aug. 2376	LXXXIII.2401	Amended	Sept. 2595
		I.557,559,561,563,565	Repealed	Aug. 2376	LXXXIII.2403	Adopted	Sept. 2595
I.701,703,707,709,711,713,715,717,721,723		Amended	Aug. 2368	LXXXIII.4503,4509	Amended	July 2118	
I.705		Repealed	Aug. 2368	LXXXIII.4302	Repealed	July 2118	
I.729,731,732,739		Adopted	Aug. 2368	LXXXIII.4311	Adopted	July 2118	
I.725,727,733,735,737,743,745,749		Amended	Aug. 2368	LXXXIII.4312	Adopted	July 2118	
I.1101,1103,1105,1107,1109,1111,1115,1117		Amended	Sept. 2587	LXXXIII.4313	Adopted	July 2118	
I.1119,1121,1123,1125,1127,1129,1131		Amended	Sept. 2587	XCVII.105,117,505	Amended	Mar. 885	
I.3503,3513	Amended	Feb. 514	CXI.305,315,701,1813,1817,1823,1829,3307	Amended	Mar. 858		
22	I.305	Repealed	May 1415	CXI.305,1813,1817	Repromulgated	Apr. 1123	
	I.315	Amended	Feb. 599	CXI.3501	Amended	Mar. 858	
	I.316	Amended	July 2177	CXI.1700,1810,1831,1900,2000,3511	Adopted	Mar. 858	
	I.323	Amended	July 2184	CXIII.303,307,501,503,701,903,905,911	Amended	July 2122	
	I.340	Amended	Apr. 1174	CXIII.1303,1305,1307,1501,1903,2101,2103	Amended	July 2122	
	I.403	Amended	Apr. 1176	CXIII.2107,2303,2305,2503,2515,2701,2901	Amended	July 2122	
	I.1301	Amended	May 1408	CXIII.2505	Repromulgated	July 2122	
	I.1303	Adopted	May 1408	CXIII.2903,3101	Amended	July 2122	
	I.1305,1307,1309,1311,1313,1315,1317	Repealed	May 1408	CXV.303	Amended	Apr. 1136	
	I.1319,1321,	Repealed	May 1408	CXV.337	Amended	Apr. 1141	
	III.4703	Amended	June 1606	CXV.337	Amended	May 1380	
	III.4705,4709	Amended	Jan. 319	CXV.337	Amended	July 2134	
	III.4750	Adopted	June 1606	CXV.502	Amended	Apr. 1138	
	XIII.103,301,503	Amended	June 1605	CXV.515	Amended	Apr. 1140	
	XV.Chapter 11	Adopted	Jan. 321	CXV.521	Adopted	Apr. 1138	
	XV.Chapter 13 and 15	Adopted	Sept. 2599	CXV.1103	Amended	July 2132	
	28	I.309	Amended	Mar. 886	CXV.1103,1105	Amended	Apr. 1126
		I.501,503,701,703,705,709,713,719	Amended	July 2139	CXV.1109	Amended	Apr. 1125
		I.1107	Amended	Apr. 1142	CXV.1118	Amended	Mar. 879
		IV.301	Amended	June 1561	CXV.1121	Amended	July 2134
		IV.301	Amended	June 1562	CXV.1141	Amended	Apr. 1134
IV.505		Amended	Feb. 588	CXV.1149	Adopted	Apr. 1139	
IV.1205		Amended	May 1388	CXV.1301	Amended	Apr. 1132	
IV.1401		Amended	May 1386	CXV.1301	Amended	Apr. 1133	
IV.2001,2003,2005,2007,2009,2011,2013		Adopted	May 1387	CXV.1302	Adopted	Apr. 1133	
V.221		Amended	Sept. 2598	CXV.1302	Adopted	May 1380	
XXXI.507		Amended	July 2136	CXV.1501	Amended	Apr. 1128	
XLI.301,701,901,903,1101,1105,1301		Amended	May 1382	CXV.1703	Amended	Apr. 1141	
XLI.509		Repealed	May 1382	CXV.2302	Adopted	Aug. 2390	
XLV.301,303,305,307,309,701,901,903,		Amended	Feb. 560	CXV.2313,2347	Amended	Apr. 1134	
XLV.501,503,505,507,509		Adopted	Feb. 560	CXV.2317	Amended	Apr. 1137	
XLV.905,907,909,911,913,915,917,919		Amended	Feb. 560	CXV.2318,2319	Amended	Feb. 547	
				CXV.2318,2319	Amended	July 2129	
				CXV.2318,2319,2363	Amended	Apr. 1128	
				CXV.2318,2333,2337,2355,2369	Amended	July 2132	
				CXV.2321	Amended	July 2128	
			CXV.2354	Adopted	July 2132		
			CXV.2367	Amended	July 2134		
			CXV.2379	Amended	Mar. 880		

LAC Title	Part.Section	Effect	Location LR 37 Month Page	LAC Title	Part.Section	Effect	Location LR 37 Month Page		
28	CXV.2903	Amended	July 2128	42	III.2737	Adopted	May 1415		
	CXV.2907	Amended	July 2131		XIII.1701	Amended	Aug. 2410		
	CXV.3309,3311	Amended	Apr. 1137		43	VI.701	Amended	Aug. 2410	
	CXV.3319	Adopted	Apr. 1135			XV.105,2305,2307,3113,3115,3127,3129	Amended	Sept. 2729	
	CXXXI.233,235,237,241,243,625,627,629	Amended	Feb. 549			XV.2304,2913,3114,3131,3133,3135,3137	Adopted	Sept. 2729	
	CXXXI.233,303,305,307,309,315,1003	Amended	Feb. 558			XV.3521,3523,5414,8509	Adopted	Sept. 2729	
	CXXXI.243	Repromulgated	Feb. 556			XV.3517,5601	Amended	Sept. 2729	
	CXXXI.309	Amended	Mar. 882			46	I.1501,1505,1507,1509,1511,1513,1515	Amended	Aug. 2402
	CXXXI.411	Amended	Mar. 883				I.1517,1521,1523,1525,1531,1533	Amended	Aug. 2402
	CXXXI.414	Adopted	Mar. 880				I.1535,1537	Adopted	Aug. 2402
	CXXXI.421	Amended	Mar. 884				III.1103,1105,1109,1111,1113,1117,1503	Amended	July 2147
	CXXXI.421	Amended	July 2135				III.1203,2701,2703,2705,2709,2711	Repealed	July 2147
	CXXXI.601	Amended	May 1381		III.1706		Adopted	July 2147	
	CXXXI.605	Amended	Mar. 883		V.2905,2907		Amended	May 1405	
	CXXXI.605	Repromulgated	June 1561		V.2905,2907		Repromulgated	June 1612	
	CXXXI.609	Amended	Mar. 881		XXI.101,317,501,511,609,901,1103,1301		Amended	Jan. 317	
	CXXXI.625	Amended	May 1381		XXI.105		Adopted	Jan. 317	
	CXXXI.630	Amended	Feb. 549		XXV.111,301,303,305,307,309,311,313,317	Amended	Sept. 2615		
	CXXXI.631,633	Amended	Feb. 549		XXV.319,501,503,505,703,901,903,905,907	Amended	Sept. 2615		
	CXXXI.666	Adopted	July 2135		XXV.919,925,945	Amended	Sept. 2615		
	CXXXI.723	Amended	Mar. 882		XXXI.310	Adopted	Apr. 1150		
	CXXXI.787	Amended	July 2136		XXXI.1107	Amended	Apr. 1150		
	CXXXVII.101,301,303,305,307,309,311	Repromulgated	Mar. 861		XXXIII.301,415,419,1509,1611,1709,1711	Amended	July 2150		
	CXXXVII.313	Repromulgated	Mar. 861		XXXIII.306,313,701,1511,1709,1711	Amended	May 1405		
	CXXXIX.103,303,307,503,507,513,515	Amended	Mar. 867		XXXIII.419,701,1509	Amended	Feb. 590		
	CXXXIX.103,305,509,515,518,701,901	Amended	Aug. 2382		XXXIII.712,714	Adopted	May 1405		
	CXXXIX.109,519	Repealed	Mar. 867		XXXIII.720	Repealed	May 1405		
	CXXXIX.517	Amended	Mar. 867		XL.115,121,325,501	Amended	Aug. 2404		
	CXXXIX.519	Adopted	Aug. 2382		XLV.231,233,235,3901,3903,3905,3907	Adopted	Mar. 888		
	CXXXIX.306,512,518,1801,3101	Adopted	Mar. 867		XLV.311,353	Amended	Jan. 337		
	CXXXIX.901,1101,1305,1501,1502,1503	Amended	Mar. 867		XLV.3509	Amended	Feb. 596		
	CXXXIX.1101	Repromulgated	Apr. 1124		XLV.3509	Amended	Aug. 2401		
	CXXXIX.1101,1303,1501,1503,1801,1903	Amended	Aug. 2382		XLV.3903	Repromulgated	Apr. 1150		
	CXXXIX.1305	Repealed	Aug. 2382		XLV.3909	Adopted	Mar. 888		
	CXXXIX.1701,1703,1903,1905,1907,2101	Amended	Mar. 867		XLV.3911,3913,3915,3917,3919,3921,3923	Adopted	Mar. 888		
	CXXXIX.2101	Amended	May 1376		XLV.3925,3927,3929,3931,3933,3935,3937	Adopted	Mar. 888		
	CXXXIX.2103,2105,2107,2301,2505,2701	Amended	Mar. 867		XLV.3939,3941,3943,3945,3947,3949,3951	Adopted	Mar. 888		
	CXXXIX.2701	Amended	Aug. 2382		XLV.3953,3955,3957,3959,3961,6101,6103	Adopted	Mar. 888		
	CXXXIX.2705,2711,2713,2905,2907	Amended	Mar. 867		XLV.6105,6107,6109,6111,6113,6115,6117	Adopted	Mar. 888		
	CXLV.Chapters 1 and 11	Adopted	Jan. 310		XLV.6119,6121	Adopted	Mar. 888		
	CXLV.301,303,305,307,309,311,501,503	Adopted	Mar. 876		XLV.7203,7207,7215	Amended	Mar. 897		
	CXLV.505	Adopted	Mar. 876		XLV.7601,7603,7605	Adopted	Jan. 336		
	CXLV.701,703,705	Adopted	Apr. 1125		XLVII.3705	Amended	Mar. 898		
	CXLV.901,903,905,1301,1303,1305,1307	Adopted	May 1377		XLIX.103,105,301,303,305,501,503,505,507	Amended	Feb. 590		
	CXLV.1501,1503,1507,1701,1703,1705	Adopted	May 1377		XLIX.504,908,1201	Adopted	Feb. 590		
	CXLIX.101,301,501,701,901,1101,1301	Amended	July 2126		XLIX.509,701,703,709,711,713,903,905,907	Amended	Feb. 590		
	CXLIX.1501,1701,1901	Amended	July 2126		XLIX.713,1103	Repromulgated	Mar. 887		
	32	VII.101,301,305,317,709,721,723,1107	Amended		June 1617	XLIX.909,1101,1103,1105,1107,1109,1111	Amended	Feb. 590	
		VII.323	Adopted		June 1617	XLIX.1603	Amended	Feb. 590	
	33	III.111,211,223,501,503,523,537,2132	Amended		Apr. 1144	LV.1001,1003,1005	Amended	Aug. 2440	
		III.501,502	Amended		May 1391	LV.1003,1005	Amended	Mar. 905	
		III.501,502,509	Amended		Apr. 1147	LX.2301,2303,2305,2307,2309,2311,2313	Adopted	Jan. 344	
		III.504,509	Amended		June 1568	LX.2315	Adopted	Jan. 344	
		III.509	Repromulgated		May 1389	LX.3303,3305,3309	Amended	June 1601	
		III.509	Repromulgated		July 2145	LX.3303,3305,3309,3311	Amended	July 2162	
III.1101,1107,1111		Amended	Apr. 1143	LX.3311	Adopted	June 1601			
III.1106		Adopted	Apr. 1143	LXI.701,707,709,715,717,901,903,905,907	Amended	Aug. 2411			
III.2123		Amended	Apr. 1150	LXI.727,2909,2911	Adopted	Aug. 2411			
V.10303		Amended	June 1613	LXI.909,1301,1509,1701,2301,2901,2903	Amended	Aug. 2411			
V.10305		Amended	July 2187	LXI.1301	Repromulgated	Sept. 2752			
VII.115,513,521,711,713,715,717,721,723		Amended	June 1563	LXI.2905,2907,3105,3111,3113	Amended	Aug. 2411			
VII.725		Amended	June 1563	LXVII.10301,10303,10307,10308,10309	Amended	Jan. 332			
IX.2315		Amended	Feb. 588	LXVII.10311,10313,10315,10403,10407	Amended	Jan. 332			
35		I.1304	Amended	May 1393	LXVII.10409,10411,10413,10507	Amended	Jan. 332		
		I.1727,1743	Amended	May 1393	LXVII.10415	Repealed	Jan. 332		
37		XI.501,503,505,507,509,511,513,515,517	Adopted	July 2168	LXVII.30101,30301,30303,30501,30701	Adopted	Aug. 2406		
		XI.519,521,523,525,527,529	Adopted	July 2168	LXVII.30703,30901,30903,30905,30907	Adopted	Aug. 2406		
		XI.701,703,705,707,709,711,713,715,717	Adopted	July 2172	LXIX.101,103,105,109,111,115,119,503	Amended	July 2152		
	XI.719,721,723,725,727,729,731	Adopted	July 2172	LXIX.112,301,701	Adopted	July 2152			
	XIII.2111	Amended	Feb. 598	LXIX.703,901,1101,1301	Repealed	July 2152			
	40	I.Chapters 20-23	Adopted	June 1631	LXXV.103,107,109,113,115,117,119,121	Amended	Aug. 2392		
I.5501,5507,5511,5515,5525,5533,5539		Amended	June 1625	LXXV.109,131	Repromulgated	Sept. 2622			
I.5529,5815,6003		Repealed	June 1625	LXXV.123,125,127,131,301,501,503,507	Amended	Aug. 2392			
I.5541,5701,5705,5709,5805,5809,5813		Amended	June 1625	LXXV.701	Amended	Aug. 2392			
I.5817,5819,5925,6001,6005,6103,6507		Amended	June 1625	LXXXV.400,403,409,413,811,1227	Amended	Apr. 1152			
I.6104		Adopted	June 1625	LXXXV.705,1105	Amended	June 1571			
I.6509,6605		Amended	June 1625	XCI.105	Amended	Mar. 899			
IX.101,103,105,107,109,301,303,305,309		Amended	July 2209	48	I.201,203,205,207,209,211	Adopted	June 1603		
IX.311,313,315,317,501,503,505,507,509		Amended	July 2209		I.4101,4103,4105,4107,4109,4111,4113	Repealed	Mar. 816		
IX.511,513,515,517,519,521,523,525,527		Amended	July 2209		I.4115,4117	Repealed	Mar. 816		
IX.529,531,533,535		Amended	July 2209		I.Chapter 72	Adopted	Apr. 1154		
					I.9707	Amended	Sept. 2630		
					I.16101,16103,16105,16107,16109,16111	Amended	Sept. 2584		
					I.16113,16115,16117,16119	Amended	Sept. 2584		

LAC Title	Part.Section	Effect	Location		LAC Title	Part.Section	Effect	Location	
			LR 37	Month Page				LR 37	Month Page
48	I.16121	Repealed	Sept.	2584	55	VI.301	Repromulgated	Sept.	2736
	I.17105	Amended	Mar.	904		IX.181	Amended	Mar.	913
50	I.1101	Amended	Jan.	341	56	I.101,105,107,113,117,119,301,305,311	Amended	Mar.	905
	I.Chapters 31-40	Adopted	June	1573		I.319,323	Amended	Mar.	905
	I.2911	Amended	Jan.	338		I.327,331,333,501,505,511,513,515,516	Amended	Mar.	905
	I.8101,8103,8105	Amended	Jan.	339		I.521,523,525,531,701	Amended	Mar.	905
	II.10154	Amended	Jan.	341	58	I.301,303,305,307,401,405,407,411,501,505	Amended	June	1614
	II.10156	Adopted	Jan.	341		I.403,409,503	Adopted	June	1614
	II.1305	Amended	Apr.	1174		V.2001	Adopted	May	1392
	II.20005	Amended	Mar.	902	61	I.1607,1613	Amended	Feb.	514
	II.20005	Amended	Sept.	2630		I.1615,1616,1617,1619,1621,1623,1625	Adopted	Feb.	515
	II.20023	Adopted	Mar.	903		I.1627,1629	Adopted	Feb.	515
	V.701,703	Adopted	July	2159		I.1637	Amended	Jan.	309
	V.909	Adopted	Feb.	597		I.1911	Adopted	Mar.	914
	V.953,955,959,967	Amended	July	2159		III.1527	Adopted	Mar.	914
	V.5107	Amended	June	1600		III.1525	Amended	June	1613
	IX.15113	Amended	Mar.	904		V.101,703,907,1103,1305,1307,1503,2503	Amended	May	1394
	XI.3501	Amended	June	1600		V.3101,3501	Amended	May	1394
	XI.6901,6903	Amended	June	1599		67	III.1975	Amended	Aug.
	XI.7503	Amended	June	1572	III.2527		Amended	Mar.	810
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	XV.7107	Amended	June	1599	V.6529,6531,6533,6535,6537,6539,6541		Repealed	Mar.	816
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# Potpourri

## POTPOURRI

### Department of Environmental Quality Office of the Secretary

The Louisiana Pollutant  
Discharge Elimination System

Discharges from Oil and Gas Exploration, Development, and Production Facilities Located within the Territorial Seas of Louisiana

On June 10, 2011 the Louisiana Court of Appeal, First Circuit, remanded the LAG260000 General Permit to LDEQ. As a result of this ruling, the LDEQ will modify the general permit to remove the outfall for produced water. The LDEQ will continue to grant authorizations to discharge under this permit for those facilities who do not discharge produced water.

Facilities wishing to discharge produced water must seek authorization under an individual permit by submitting the O and G-IND permit application. Facilities currently discharging produced water under the authority of the LAG260000 permit must submit an O and G-IND permit application no later than April 1, 2012.

The individual permit will require an evaluation of the effects of produced water discharges on the environment and human health. The regulated community will be responsible for providing information that will be utilized to determine whether authorization to discharge produced water in the territorial seas will be granted.

Questions may be directed to Mr. Melvin C. Mitchell at (225) 219-3197, Mr. Bruce Fielding at (225) 219-3231 or Jennifer Sheppard at (225) 219-3499.

Herman Robinson, CPM  
Executive Counsel

1110#008

## POTPOURRI

### Department of Health and Hospitals Office of Public Health

Public Hearing-Preventive Health  
and Health Services Block Grant

The Department of Health and Hospitals, Office of Public Health, will hold a public hearing to receive input from the public on the Louisiana Preventive Health Services Block Grant as administered by the agency. The public hearing will take place on Tuesday, October 18, 2011 beginning at 8:30 a.m. at 628 North Fourth Street (Bienville Building), third floor, Room 371, Baton Rouge, LA 70802. Copies of the grant may be obtained from Avis Richard-Griffin, Policy and

Planning Section, Office of Public Health. Ms. Richard-Griffin can be contacted by email at Avis.Richard-Griffin or by telephone at (225) 342-9355 for additional information.

Bruce D. Greenstein  
Secretary

1110#045

## 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
Davis Oil Company	Fort Jackson	L	John Sumich	001	149138
Warrior Oil And Gas Co.	Lake Palourde, East	L	Cris I. Su 8	001	88296
New Frontier Oil Company, L.L.C.	Beckwith Creek, North	L	Leroy H. Addison Jr et al	001	172863
New Frontier Oil Company, L.L.C.	Beckwith Creek, North	L	Leroy H. Addison Jr et al	002	180807
New Frontier Oil Company, L.L.C.	Beckwith Creek, North	L	6600 R.A. Sua; Conaco-Phillips	001	235225
New Frontier Oil Company, L.L.C.	Tulla, East	L	W.R. Smith et al	001	148565
Caddo Oil Co., Inc.	Caddo Pine Island	S	Muslow A.	024	38759

James H. Welsh  
Commissioner

1110#023

**POTPOURRI**  
**Department of Natural Resources**  
**Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 8 claims in the amount of \$34,833.75 were received for payment during the period September 1, 2011-September 30, 2011

There were 6 paid and 2 denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2118.925	9034.381	Terrebonne
2908.450	9056.280	Terrebonne
2910.095	9004.883	Jefferson
2915.970	8956.830	Jefferson
2922.581	8945.730	Plaquemines
2936.331	8939.400	Plaquemines
2940.354	8939.735	Plaquemines
2950.039	9320.996	Cameron

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-9388.

Scott A. Angelle  
Secretary

1110#034

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