

I. EXECUTIVE ORDER

BJ 10-15 Offender Labor..... 1920

BJ 10-16 Small Purchase Procedures 1920

BJ 10-17 Governor's Military Advisory Board—Amends and Supercedes Executive Order 1923

BJ 10-18 In Memoriam..... 1924

II. EMERGENCY RULES

Agriculture and Forestry

Board of Animal Health—Trichomoniasis (LAC 7:XXI.339) 1925

Office of Agriculture and Environmental Sciences—Giant Salvinia—Herbicide Application (LAC 7:XXIII.143).... 1927

Economic Development

Office of Entertainment Industry Development, Office of Entertainment Industry Development—Motion Picture Investor Tax Credit Program (LAC 61:I.1607 and 1913)..... 1928

Governor

Board of Examiners of Certified Digital Reporters—Certified Digital Reporter (LAC 46:XXI.101, 105, 317, 501, 511, 1103, and 1301)..... 1929

Division of Administration, Racing Commission—Mandatory Health Screening (LAC 35:I.1304) 1931

Motor Vehicle Commission—Manufacturer Termination of Franchise; Liquidation of New Vehicle Inventory; Warranty Work; Exception (LAC 46:V.107) 1932

Health and Hospitals

Board of Veterinary Medicine—Temporary Registration during Declared Emergency (LAC 46:LXXXV.312)..... 1932

Bureau of Health and Hospitals—Ambulatory Surgical Centers—Reimbursement Rate Reduction (LAC 50:XI.7503)..... 1933

Family Planning Waiver—Reimbursement Rate Reduction (LAC 50:XXII.2701) 1934

Forensic Supervised Transitional Residential and Aftercare Facilities Minimum Licensing Standards (LAC 48:I.Chapter 72) 1935

Home and Community-Based Services Waivers—Children's Choice—Allocation of Waiver Opportunities (LAC 50:XXI.11107) 1954

Home and Community-Based Services Waivers—Children's Choice—Service Cap and Reimbursement Rate Reduction (LAC 50:XXI.11301)..... 1955

Home and Community-Based Services Waivers—Supports Waiver—Reimbursement Rate Reduction (LAC 50:XXI.6101) 1956

Home Health Program—Nursing and Home Health Aide Services—Reimbursement Rate Reduction (LAC 50:XIII.701) 1957

Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Reimbursement Rate Reduction (LAC 50:V.953, 955, 959 and 967) 1958

Inpatient Hospital Services—Pre-Admission Certification (LAC 50:V.301)..... 1960

Laboratory and Radiology Services—Reimbursement Rate Reduction (LAC 50:XIX.4329 and 4334-4337) .. 1960

Medical Transportation Program—Emergency Ambulance Services—Reimbursement Rate Reduction (LAC 50:XXVII.325 and 353) 1961

Medical Transportation Program—Non-Emergency Ambulance Services—Reimbursement Rate Reduction (LAC 50:XXVII.571) 1962

Medical Transportation Program—Non-Emergency Medical Transportation—Reimbursement Rate Reduction (LAC 50:XXVII.573) 1963

Mental Health Rehabilitation Program—Reimbursement Rate Reduction (LAC 50:XV.901)..... 1963

Multi-Systemic Therapy—Prior Authorization and Reimbursement Rate Reduction (LAC 50:XV.25305 and 25701) 1964

Nursing Facility Minimum Licensing Standards—Nurse Aide Training and Competency Evaluation Program (LAC 48:I.Chapter 100) 1965

Nursing Facilities—Reimbursement Rate Reduction (LAC 50:VII.1305) 1970

Professional Services Program—Family Planning Services—Reimbursement Rate Reduction (LAC 50:IX.15141-15143)..... 1971

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Office for Citizens with Developmental Disabilities—Home and Community-Based Services Waivers—Children’s Choice—Allocation of Waiver Opportunities (LAC 50:XXI.11107).....	1954
Home and Community-Based Services Waivers—Children’s Choice—Service Cap and Reimbursement Rate Reduction (LAC 50:XXI.11301).....	1955
Home and Community-Based Services Waivers—Supports Waiver—Reimbursement Rate Reduction (LAC 50:XXI.6101).....	1956
Public Safety and Corrections	
Corrections Services—Board of Parole (LAC 22:XI.103, 503, 511, and 1301).....	1972
Disciplinary Rules and Procedures for Adult Offenders (LAC 22:I.341-363).....	1973
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Commercial Crab Fishing Opening—East of the Mississippi River Plaquemines, St. Bernard, and Orleans Parish.....	1974
Commercial Crab Fishing Opening—West of the Mississippi River.....	1975
Recreational and Commercial Fisheries Closure.....	1976
Recreational Angling and Charter Boat Angling—Fisheries Opening.....	1977
Recreational Fisheries Closure and Commercial Fisheries Opening.....	1978

III. RULES

Agriculture and Forestry

Office of Agriculture and Environmental Sciences—2, 4-D and ULV Malathion/Pyrethroid (LAC 7:XXIII.143).....	1980
---	------

Economic Development

Office of Business Development—Entertainment Industry Tax Credit Programs—Digital Media Act (LAC 61:I.1661-1673).....	1981
--	------

Education

Board of Elementary and Secondary Education—Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.Chapters 3 - 9, 33, and 37 - 45).....	1987
Bulletin 111—The Louisiana School, District, and State Accountability System—Calculating a Graduation Index (LAC 28:LXXXIII.613, 1101, 1601, 4311, 5101, and 5103).....	1994
Bulletin 741—Louisiana Handbook for School Administrators—Agricultural Education (LAC 28:CXV.2373)..	1995
Bulletin 741—Louisiana Handbook for School Administrators—Career Options (LAC 28:CXV.2397).....	1995
Bulletin 741—Louisiana Handbook for School Administrators—Foreign Languages (LAC 28:CXV.2345).....	1996
Bulletin 741—Louisiana Handbook for School Administrators—General Career and Technical Education (LAC 28:CXV.2377).....	1996
Bulletin 741—Louisiana Handbook for School Administrators—Technology Education (LAC 28:CXV.2385)..	1997
Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Nurse (LAC 28:CXXXI.411).....	1998
Bulletin 746—Louisiana Standards for State Certification of School Personnel—Teaching Certificate (LAC 28:CXXXI.906 and 911).....	1998
Bulletin 746—Louisiana Standards for State Certification of School Personnel—VTIE, CTTIE, and CTTIE-1 Certificates (LAC 28:CXXXI.507 and 511).....	2000
Bulletin 1566—Pupil Progression Policies and Procedures (LAC 28:XXXIX.Chapters 1-11).....	2001
Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Gifted/Talented Students (LAC 28:XLIII.Chapters 11-20).....	2011
Student Financial Assistance Commission, Office of Student Financial Assistance—Scholarship/Grant Programs (LAC 28:IV.1009, 1011, 1013, 1015, and 1017).....	2029
Tuition Trust Authority, Office of Student Financial Assistance—START Savings Program—Miscellaneous Provisions (LAC 28:VI.315).....	2030

Environmental Quality

Office of the Secretary, Legal Affairs Division—Organic Solvents and Solvent Degreasers (LAC 33:III.111 and 2123)(AQ307).....	2030
--	------

Health and Hospitals

Board of Dentistry—Mobile Dentistry; Relicensure of Dentists, Hygienists (LAC 46:XXXIII.312, 313, 314, 1611, 1613 and 1713).....	2035
Bureau of Health Services Financing—Adult Dentures Program—Denture Replacement and Reline Limits (LAC 50:XXV.503).....	2039
Early and Periodic Screening, Diagnosis and Treatment Dental Program Reimbursement Rate Reduction (LAC 50:XV.6905).....	2040
End Stage Renal Disease Facilities—Reimbursement Rate Reduction (LAC 50:XI.6901 and 6903).....	2040
Home Health Program—Durable Medical Equipment—Reimbursement Reduction (LAC 50:XIII.10301).....	2041
Outpatient Hospital Services—Non-Rural, Non-State Hospitals and Children’s Specialty Hospitals Reimbursement Rate Reduction (LAC 50:V.5313, 5317, 5513, 5517, 5713, 5719, 5913, 5917, 6115 and 6119).....	2041
Pregnant Women Extended Services—Dental Services—Reimbursement Rate Reduction (LAC 50:XV.16107).....	2044

Public Safety and Corrections	
Gaming Control Board—Video Draw Poker (LAC 42:XI.2403, 2405, 2407, and 2415)	2045
Revenue	
Policy Services Division—Income Tax Credits for Wind or Solar Energy Systems (LAC 61:I.1907)	2047
Treasury	
State Employees' Retirement System—DROP Excess Benefit Arrangement (LAC 58:I.3117)	2050
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Physically Challenged Hunters Permit (LAC 76:XIX.105).....	2051
IV. NOTICES OF INTENT	
Agriculture and Forestry	
Office of Agricultural and Environmental Sciences—Giant Salvinia (LAC 7:XXIII.143)	2056
Office of the Commissioner—Louisiana Strawberries (LAC 7:V.1901-1935)	2057
Structural Pest Control Commission—Structural Pest Control Commission (LAC 7:XXV.Chapter 1).....	2060
Economic Development	
Office of Entertainment Industry Development—Sound Recording Production and Infrastructure Tax Credit Programs (LAC 61:I.1637).....	2084
Education	
Board of Elementary and Secondary Education—Bulletin 129—The Recovery School District (LAC 28:CXLV.Chapters 1 and 11)	2085
Board of Regents—Registration and Licensure (LAC 28:IX.101, 103, 105, 302, 303, 305, 317, 319, and 501)..	2092
Environmental Quality	
Office of the Secretary, Legal Affairs Division—Removal of Pesticide Application Exemption from LPDES Permitting Requirements (LAC 33:IX.2315)(WQ082).....	2095
Governor	
Board of Home Inspectors—Training, Testing, and Licensure (LAC 46:XL.103, 105, 109, 115, 117, 119, 120, 121, 125, 303, 309, 313, 315, 319, 321, 501, 707, and 709)	2096
Health and Hospitals	
Board of Medical Examiners—Enforcement Terms; Unprofessional Conduct (LAC 46:XLV.7601-7605).....	2103
Licensure and Certification; Reciprocity (LAC 46:XLV.311 and 353)	2105
Board of Veterinary Medicine—Temporary Registration during Oil Spill; License Procedures (LAC 46:LXXXV.312).....	2106
Bureau of Health Services Financing—Electronic Health Records Incentive Payments (LAC 50:I.Chapter 125)	2108
Medicaid Eligibility—Medicare Savings Programs (LAC 50:III.2325, 10703, and 10705)	2110
Outpatient Hospital Services—Non-Rural, Non-State Hospitals—Supplemental Payments (LAC 50:V.5315, 5515, 5717, 5915 and 6117)	2111
Insurance	
Office of the Commissioner—Regulation 99—Certificates of Insurance (LAC 37:XIII.Chapter 139)	2114
Natural Resources	
Office of Conservation—Statewide Order No. 29-B (LAC 43:XIX.301, 303, 501, 519 and 565)	2117
Public Safety and Corrections	
Board of Parole (LAC 22:XI.103, 503, 511, and 1301).....	2119
Corrections Services— Death Penalty (LAC 22:I.103).....	2121
Disciplinary Rules and Procedures for Adult Offenders (LAC 22:I.351 and 363).....	2121
Revenue	
Policy Services Division—Income Tax Withholding on Gaming Winnings (LAC 61:I.1525).....	2122
Transportation and Development	
Access Connection Permits and Driveway Permits (LAC 70:I.Chapter 15 and II.503).....	2123
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Use of Yo-yo's and Trotlines in Lake Lafourche (LAC 76:VII.116)	2131
Spotted Seatrout Management Measures (LAC 76:VII.341)	2132
V. POTPOURRI	
Agriculture and Forestry	
Horticulture Commission—Landscape Architect Registration Exam	2134
Governor	
Division of Administration—Office of Information Technology—OIT Bulletins Published.....	2134
Natural Resources	
Office of Conservation—Advanced Notice of Rulemaking and Solicitation of Comments on Water Well Registration, Construction and Closure (LAC 56:I)	2134
Office of Conservation, Environmental Division—Hearing—US Liquids of La, Docket No. ENV 2010-04.....	2135
Office of the Secretary, Fishermen's Gear Compensation Fund—Loran Coordinates	2135

Public Safety and Corrections

Oil Spill Coordinator’s Office—Mosquito Bay Natural Gas Condensate Discharge Final—Settlement Agreement 2136

Revenue

Office of the Secretary—September Meeting of Act 442—Collaborative Working Group..... 2136

VI. INDEX 2138

Executive Orders

EXECUTIVE ORDER MJF 10-15

Offender Labor

WHEREAS, during the 1988 Regular Session of the Louisiana Legislature, Act No. 933 was enacted relative to correctional facilities offender labor;

WHEREAS, Act No. 933, among other things, authorizes the governor to use offender labor in certain projects or maintenance or repair work; and

WHEREAS, The Act further provides that the governor, upon determining that it is appropriate and in furtherance of the rehabilitation and training of offenders, may, by executive order, authorize the use of offenders of a penal or correctional facility owned by the State of Louisiana for necessary labor in connection with a particular project;

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: In furtherance of goals of the State of Louisiana of rehabilitating offenders, reducing recidivism, and reintegrating offenders into society, offender labor is hereby authorized to renovate the St. Augustine Chapel at Louisiana State Penitentiary, Angola, Louisiana; and to complete the construction of non-denominational chapels at Allen Correctional Center, Kinder, Louisiana; and Winn Correctional Center, Winnfield, Louisiana.

SECTION 2: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on the 12th day of August, 2010.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
1009#090

EXECUTIVE ORDER MJF 10-16

Small Purchase Procedures

WHEREAS, the Louisiana Procurement Code, in R.S. 39:1596, authorizes the governor to establish procedures for the procurement of small purchases with the caveat that "procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section";

WHEREAS, the Louisiana Procurement Code exempts small purchases from the competitive sealed bidding requirements of the Code;

WHEREAS, Louisiana businesses are a driving force in the Louisiana economy;

WHEREAS, Executive Order No. BJ 08-67 signed on August 22, 2008, established the procedure for the procurement of small purchases in accordance with the statutory guidelines of the Louisiana Procurement Code; and

WHEREAS, it is necessary to update Executive Order No. BJ 08-67 through the issuance of a replacement executive order;

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

SECTION 1: All departments, institutions, boards, commissions, budget units, and agencies of the executive branch of state government, and the officers and employees thereof, (hereafter "agency") shall observe, be guided by, and implement the specific directives on small purchase procedures set forth in this Order. This Order in no way affects or changes the purchasing authority delegated to an agency by the chief procurement officer as defined in R.S. 39:1556(3). No provision of this Order shall be construed as a limitation on the number of quotations to be solicited prior to making a purchase or procurement. Louisiana businesses, especially small and emerging businesses, small entrepreneurship, and veterans or service-connected disabled veteran-owned small entrepreneurship should be utilized to the greatest extent possible when soliciting prices.

SECTION 2: Unless the context clearly indicates otherwise, the words and terms used in this Order shall be defined as follows:

A. "Small purchases" means (1) any procurement not exceeding twentyfive thousand dollars (\$25,000), or (2) any procurement of those items listed in Section 5 of this Order, regardless of price, except as noted in Paragraphs 5(A)(14), 5(A)(24), 5(A)(26), and 5(A)(30) which are exempt from the competitive sealed bidding requirements of the Louisiana Procurement Code;

B. "Certified small and emerging business" means a business certified as a small and emerging business by the Division of Small and Emerging Business Development, Department of Economic Development, in accordance with the Provisions of the Small and Emerging Business Development Program, R.S. 51:941, *et seq.*, and included on the most recent list of certified small and emerging businesses issued by the Division of Certified Small and Emerging Business Development;

C. "Small Entrepreneurship" means a business certified as a small entrepreneurship by the Department of Economic Development, in accordance with the provisions of the Louisiana Initiative for Small Entrepreneurships (Hudson Initiative), R.S. 39:2006;

D. "Veteran and Service-Connected disabled Veteran-Owned Small Entrepreneurship" means a business certified as a veteran and serviceconnected disabled veteran-owned small entrepreneurship by the Department of Economic Development, in accordance with the provisions of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), R.S. 39:2176; and

E. "Louisiana authorized dealer" means a company that satisfies the requirements of a resident business as defined in R.S. 39:1591(6), and is authorized by the manufacturer to sell and/or provide service for their products.

SECTION 3: The following items are not subject to the procedures set forth in this Order:

A. Those items covered by an existing state contract; and

B. Public works contracts which exceed five thousand dollars (\$5,000) and are governed by the provisions of R.S. 38:2241.

SECTION 4: Except as otherwise provided in this Order, all small purchases shall be made in accordance with the following minimum procedures:

A. No competitive process is required for purchases not exceeding five thousand dollars (\$5,000) per single purchase transaction.

B. Price quotations shall be solicited from three (3) or more bona fide, qualified vendors for purchases exceeding five thousand dollars (\$5,000) but not exceeding fifteen thousand dollars (\$15,000).

1. Quotations may be made by telephone, facsimile, or other means and shall be awarded on the basis of the lowest responsive quotation. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship. Agency files shall document and list all solicited vendors and each vendor's contact person, summarize quotations received, indicate the successful vendor and state the reason why any lower quotation was rejected. Agency files should also contain written confirmation of the quotation from the successful vendor.

2. When the price is determined to be reasonable, the requirement to solicit three (3) quotations may be waived when making purchases from a small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship that is currently certified by the Louisiana Department of Economic Development. Reasonable is a best value determination based on price, delivery, service, and/or any other related factors. This determination is to be maintained in the file.

3. Soliciting three (3) quotations may be waived when purchasing from a business registered with the Secretary of State as domiciled in Louisiana. A business analysis must determine that in-state prices are equal or better than two other current price comparisons. Comparisons may include, but are not limited to, state contract prices, General Services Administration (GSA)

prices, or similar resources. Comparison documents are to be maintained in the file.

C. Price quotations shall be solicited from five (5) or more bona fide, qualified vendors for purchases exceeding fifteen thousand (\$15,000) but not exceeding twenty-five thousand dollars (\$25,000).

1. Quotations may be made by facsimile or written means and shall be awarded on the basis of the lowest responsive price quotation received. Whenever possible, at least two (2) of the bona fide, qualified vendors shall be certified small and emerging businesses, small entrepreneurships, or veteran or service-connected disabled veteran-owned small entrepreneurships. Agency files shall document and list all solicited vendors and each vendor's response, summarize quotations received, indicate the awarded quotation, and state the reason why any lower quotation was rejected.

2. The requirement to solicit certified small and emerging businesses, small entrepreneurships, or veteran or serviceconnected disabled veteran-owned small entrepreneurships is waived for those agencies that post on LaPAC, Louisiana's internet based system for posting vendor opportunities and award information.

3. A minimum of three (3) working days shall be allowed for receipt of quotations.

4. All written or facsimile solicitations shall include the closing date, time, and all pertinent competitive specifications, including quantities, units of measure, packaging, delivery requirements, ship-to location, terms and conditions, and other information sufficient for a supplier to make an acceptable quotation. Precautionary measures shall be taken to safeguard the confidentiality of vendor responses prior to the closing time for receipt of quotations. No quotation shall be evaluated using criteria not disclosed in the solicitation.

SECTION 5: Except as provided in subsection A(14), A(24), A(26), or A(30) of this section, the following items are considered small purchases regardless of price and may be procured in the following manner:

A. No competitive process is required for the following items:

1. Repair parts for equipment obtained from a Louisiana authorized dealer shall be used if available. This provision does not apply to the stocking of parts;

2. Equipment repairs obtained from a Louisiana authorized dealer shall be used if available;

3. Vehicle repairs not covered by a competitive state contract or the state fleet maintenance repair contract obtained from a Louisiana authorized dealer shall be used if available;

4. Vehicle body repairs covered by insurance recovery and in accordance with insurance requirements;

5. Livestock purchased at public auction;

6. Purchasing or selling transactions between state budget units and other governmental agencies;

7. Publications and/or copyrighted materials purchased directly from the publisher or copyright holder;

8. Publications and/or copyrighted materials purchased by libraries or text rental stores from either subscription services or wholesale dealers which distribute for publishers and/or copyright holders;

9. Public utilities and services provided by local governments;

10. Prosthetic devices, implantable devices, and devices for physical restoration which are not covered by a competitive state contract;

11. Educational training and related resources (except equipment) used to enhance the performance of state employees and good standing of state agencies, including memberships in and accreditations by professional societies and organizations, except for customized training which is covered under R.S. 39:1481, et seq.;

12. Purchases for clients of blind and vocational rehabilitation programs not covered by competitive state contract which are federally funded at a rate of at least 78.7%, regulated by Title 34, Parts 361, 365, 370, and 395 of the Code of Federal Regulations, and in accordance with OMB Circular A-102;

13. Materials, supplies, exhibitor fees, and exhibit booths for conferences, seminars, and workshops, or similar events (business, educational, promotional, cultural, etc.) for participation in promotional activities which enhance economic development or further the department's mission, duties and/or functions, with the approval of the department secretary, or agency equivalent, if not covered by competitive state contract;

14. Wire, related equipment, time and material charges to accomplish repairs, adds, moves, and/or changes to telecommunications systems not exceeding two thousand five hundred dollars (\$2,500);

15. Working class animals trained to perform special tasks, including, but not limited to, narcotics detection, bomb detection, arson investigation, and rescue techniques;

16. Food, materials, and supplies for teaching and training where the purchasing, preparing, and serving of food are part of the regularly prescribed course;

17. Shipping charges and associated overseas screening and broker fees between international and domestic origins and destinations;

18. Parcel services, including but not limited to Federal Express, United Parcel Service, Airborne Express, and Express Mail;

19. Renewal of termite service contracts;

20. Purchase of supplies, operating services, or equipment for Louisiana Rehabilitation Services, Traumatic Head and Spinal Cord Injury Trust Fund Program. Although competitive bidding is not required under this paragraph, whenever practicable, three (3) quotations from bona fide, qualified vendors should be obtained. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship;

21. Purchasing of clothing at retail necessary to individualize clients at state developmental centers in compliance with Federal Regulations for ICF/MR facilities;

22. Health insurance for the managers of Randolph-Sheppard programs, as defined by 20 U.S.C. § 107, et seq., and paid from income generated by unmanned vending locations;

23. Purchases made to resell as part of a merchandising program with the written approval on file from the secretary of the department, or agency equivalent, when it is not practical or feasible to obtain competitive price quotations;

24. Commercial Internet service not exceeding one thousand five hundred dollars (\$1,500) per subscription per year;

25. Advertising, where permitted by law and after the head of an agency or designee certifies that specific media is required to reach targeted audiences;

26. Scientific and laboratory supplies and equipment when procured by colleges and universities for laboratory or scientific research not to exceed twenty-five thousand dollars (\$25,000) per transaction;

27. Publication of articles, manuscripts, etc. in professional scientific, research, or educational journals/media, and/or the purchase of reprints;

28. Livestock sperm and ova;

29. Royalties and license fees for use rights to intellectual property, such as, but not limited to: patents, trademarks, service marks, copyrights, music, artistic works, trade secrets, industrial designs, domain names, etc.;

30. Equipment moves by the original equipment manufacturer or authorized dealer to ensure equipment operation to original equipment manufacturer specifications, calibration, warranty, etc. not to exceed twenty-five thousand dollars (\$25,000) per transaction;

31. Mailing list rentals or purchases; and

32. Art Exhibition rentals and/or loan agreements and associated costs of curatorial fees, transportation, and installation.

B. For the following items, telephone or facsimile price quotations shall be solicited, where feasible, to at least three (3) bona fide, qualified vendors. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship.

1. Farm products including, but not limited to, fresh vegetables, milk, eggs, fish, or other perishable foods, when it is determined that market conditions are unstable and the competitive sealed bidding process is not conducive for obtaining the lowest prices.

2. Food, materials, and supplies needed for:

a. Operation of boats and/or facilities in isolated localities where only limited outlets of such supplies are available; and/or

b. Juvenile detention homes and rehabilitation facilities/homes where the number of inmates, students, or clients is unstable and unpredictable.

3. Convention and meeting facilities, provided that any associated food or lodging must be in accordance with Policy and Procedure Memorandum No. 49—General Travel Regulations.

4. Gasoline and fuel purchases not covered by competitive state contract.

5. Equipment for blind operated facilities not covered by competitive state contract.

6. Feed commodities, including but not limited to soybean meal, cottonseed meal, and oats.

7. FAA PMA approved aircraft parts and/or repairs, inspections, and modifications performed by an FAA certified mechanic and/or at an FAA certified repair station in accordance with FAA requirements with approval by the head of the agency or head of the Office of Aircraft Services, Division of Administration.

8. Air and bus charters in accordance with PPM 49, including group travel that does not qualify for commercial rates available to individual travelers.

SECTION 6: In the absence of a good faith business basis, no purchase or procurement shall be artificially divided within a cost center, or its equivalent, to avoid the competitive process or the solicitation of competitive sealed bids.

SECTION 7: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of this Order.

SECTION 8: Executive Order No. BJ 08-67 is superceded by this Order.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 27th day of August, 2010.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
1009#091

EXECUTIVE ORDER BJ 10-17

Governor's Military Advisory Board—Amends and
Supercedes Executive Order No. BJ 09-4

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

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

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

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

SECTION 1: The Governor's Military Advisory Board (hereafter "Board") is reestablished within the executive department, Office of the Governor.

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

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

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

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

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

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

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

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

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

1. The adjutant general of Louisiana, or the adjutant general's designee;

2. The president of the Louisiana State Senate, or the president's designee;

3. The speaker of the Louisiana House of Representatives, or the speaker's designee;

4. The secretary of the Department of Economic Development, or the secretary's designee;

5. The secretary of the Department of Veterans Affairs, or the secretary's designee;

6. The chair of the Louisiana Employer Support of the Guard and reserve, or the chair's designee;

7. One (1) representative each from the Greater New Orleans, Ft. Polk-Central Louisiana, Barksdale/Bossier/Shreveport, and the Lake Charles area that have established ongoing relationships with the military from their community;

8. One (1) representative for Louisiana businesses and industries from the areas described in subsection 4(A)(7); and

9. One (1) representative of local governments from the areas described in subsection 4(A)(7).

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

1. The commander, Joint Readiness Training Center (JRTC) and Ft. Polk, or the commander's designee;

2. The commander, Eighth Air Force, or the commander's designee;

3. The commander, Naval Forces Reserve, or the commander's designee;

4. The commander, Marine Forces Reserve, or the commander's designee;

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

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

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

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

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

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

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

SECTION 8:

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

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

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

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

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the city of Baton Rouge, on this 3rd day of September, 2010.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
1009#092

EXECUTIVE ORDER BJ 10-18

In Memoriam

WHEREAS, since September 11, 2001, the people of Louisiana have lost 124 brave men and women in connection with ongoing overseas combat operations and more are currently risking their lives in defense of our freedom;

WHEREAS, these service members represent all branches of the armed forces, the Marines, Army, Airforce, Navy, National Guard and Reserves;

WHEREAS, these courageous and ambitious Louisianians loved their country and the military and devoted their lives to serving their state and country;

WHEREAS, all tragically lost their lives giving their last full measure of devotion in defense of our country and all that we as Americans represent;

WHEREAS, the memory of these dedicated men and women will live on in the hearts of their family, friends, and fellow service members forever; and

WHEREAS, their patriotism, service and ultimate sacrifice makes it proper and fitting for us to remember them and their families, to mark their passing and to honor their 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 Louisiana's fallen service members, 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 buildings and institutions of the State of Louisiana from sunrise September 6, 2010, until sunset September 11, 2010.

SECTION 2: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded.

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 September, 2010.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
1009#093

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Board of Animal Health

Trichomoniasis (LAC 7:XXI.339)

In accordance with the emergency provisions of the Administrative Procedure Act, specifically R.S. 49:953 (B), and under the authority of R.S. 3:2093, 3:2095, and 3:2097 the Louisiana Board of Animal Health declared an emergency to exist and on May 24, 2010 adopted by emergency process the attached amendments to provide for the testing and reporting of cattle for trichomoniasis, movement and disposition of bulls and cows that test positive for trichomoniasis, the quarantine of cattle relative to trichomoniasis, and to provide for related matters.

Trichomoniasis is a venereal disease of cattle brought about by *Tritrichomonas foetus*, a protozoal parasite, which may cause early embryonic death of the fetus or late term abortion. Bulls carry the parasite and pass it on to cows during breeding. The parasite is almost impossible to detect in cows and is difficult to detect in bulls. The parasite may be transmitted from the cow to her calf during birthing. The financial losses caused by trichomoniasis are substantial. Infected herds have a decrease in the number of calves being born, sometimes as much as a 55% decrease. The Louisiana cattle industry has approximately 420,000 breeding age cows and 25,600 bulls. Based on this number of cows the calving rate is approximately eighty-five percent, for a total of 544,000 calves a year. A breeding cow will sell, on average, for approximately \$1,200 and a breeding bull will sell, on average for approximately \$2,000. A calf will sell, on average, for \$500. A cow or bull sold for slaughter will bring, on average, \$500. If Louisiana's cattle become infected statewide with trichomoniasis it is conservatively estimated that 50% of the cows and bulls will be infected and that the calving rate will decrease to a 50% birthing rate. Based on this estimate the Louisiana cattle industry would lose \$112,000,000 from unborn calves, \$22,400,000 from the sale of infected breeding cows for slaughter rather than as a breeder, and \$19,200,000 from the sale of infected bulls for slaughter, rather than as a breeding bull. The cost for replacing the infected cows and bulls with cows and bulls capable of breeding immediately would be \$38,400,000 for replacement cows and \$25,600,000 for replacement bulls. The threat posed by trichomoniasis creates an imminent peril to the public welfare of the citizens of this state, the viability of Louisiana's cattle industry and to the health of the cattle in this state, thereby requiring promulgation of these emergency regulations.

The initial emergency rules will expire on September 20, 2010 before the permanent rules can be adopted and published; thereby requiring this renewal of the emergency rules. This renewal of the emergency rules currently in place shall become effective on September 20, 2010 and shall

remain in effect for 120 days or until permanent rules and regulations become effective.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

§339. Trichomoniasis Testing and Movement Requirements for Cattle

A. Every bull moved into this state and every bull within this state which is sold, exchanged, leased, rented, sold, or otherwise transferred in ownership or possession (hereafter collectively referred to as "transferred") from one person to another shall be accompanied by a test result showing that the bull is free from Trichomoniasis (hereafter referred to as "negative test result" or "testing negative") except for the following bulls:

1. exhibition and rodeo bulls that are temporarily in the state only for the purpose of the event and will be leaving the state immediately after the event;
2. bulls going direct to slaughter or being sold to go direct to slaughter;
3. virgin bulls accompanied by a certification of virgin status signed by the owner of the bull, or the owner's representative or an accredited veterinarian and including the bull's individual identification; and
4. bulls being transported through this state in interstate commerce unless offloaded and comingled with female cattle already in this state that are not going direct to slaughter.

B. Every bull required to be accompanied by a negative test result shall be tested no later than 30 days prior to being moved into the state or the date of transfer, except for bulls that are in a trichomoniasis-free certification program or a semen certification program, recognized by the state veterinarian.

C. Every bull moved into this state and every bull within this state which is transferred from one person to another, except for the bulls listed in Subparagraph 1-4 of Subsection A of this Section, shall be identified by one or more of the following means:

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

D. The requirements for testing a bull for trichomoniasis are as follows.

1. All test samples shall be drawn by an accredited veterinarian.
2. The testing of samples shall be through the use of a test approved by the state veterinarian or by USDA APHIS VS that is performed at an official laboratory or by an accredited veterinarian qualified to test for trichomoniasis.
3. Test results that show that the tested animal has trichomoniasis (hereafter referred to as "positive test results" or "testing positive") shall immediately cause the tested

animal to be classified as trichomoniasis infected and subject to the restrictions set out in this Section.

4. An additional test to confirm the presence of trichomoniasis may be requested in the event of an initial positive test result, but the request for the confirmatory test must be made to the state veterinarian within 5 business days of notification of the positive test result.

a. If the confirming test comes back negative then the tested animal is considered negative for trichomoniasis and may be moved as such.

b. If the confirming test comes back positive then the tested animal shall be subject to the restrictions set out in this Section.

5. A bull being tested for trichomoniasis shall be kept separate from female cattle at all times during the entire test period from the taking of samples until receipt of the results of the initial test results. A bull testing negative on the initial test may be comingled with female cattle upon receipt of the test results while a bull testing positive shall be immediately subject to the restriction on trichomoniasis infected bulls set out in this Section.

6. All test results for trichomoniasis, whether negative or positive, shall be reported to the state veterinarian within 24 hours after receipt of the results.

7. When a positive test result is received the treating veterinarian shall consult with the state veterinarian on the first business day after receipt of the test results to determine a plan of action regarding the animal testing positive.

E. Bulls that are required to be tested for trichomoniasis prior to being moved into this state or prior to being transferred from one person to another but which have not been tested shall be kept separate from breedable-type cattle until tested and a negative result is obtained.

F. Bulls, except for virgin bulls, that are not required to be tested for trichomoniasis prior to being moved into this state or prior to being transferred from one person to another shall, at all times, be kept separate from female cattle until tested and a negative result is obtained. However, a bull being moved direct to slaughter or sold to go direct to slaughter may be comingled with breedable-type cattle also being moved direct to slaughter or being sold to go direct to slaughter.

G. Bulls testing positive for trichomoniasis are subject to the following restrictions.

1. No known trichomoniasis infected bull shall be moved into or within this state or transferred within this state from one person to another, unless the bull is going direct to slaughter or being sold to go direct to slaughter.

2. No known trichomoniasis infected bull, whether being moved into or within this state, shall be used for breeding purposes and shall be kept separate from female cattle, from the time the first positive test result is received.

3. A trichomoniasis infected bull shall be moved direct to slaughter, or sold to go direct to slaughter within 30 days from receipt of the positive results of the original test or the results of the confirming test, whichever is later.

4. A trichomoniasis infected bull may be moved only after a VS 1-27 permit is issued by the testing veterinarian or the state veterinarian or his representative. The VS 1-27 permit shall accompany the bull upon movement of the animal.

H. If a trichomoniasis infected bull has been in a herd with female cattle then the infected bull and the other bulls in the herd are subject to the following requirements.

1. The trichomoniasis infected bull shall be immediately separated from the herd and all other bulls in the herd and shall be moved or transferred only as allowed by this Section.

2. If there is any other bull or bulls in the herd then all other such bulls shall be immediately separated from, and kept separate from all female cattle.

3. Each such bull shall be tested for trichomoniasis as soon as possible. Test samples shall not be pooled.

4. A bull testing negative shall be immediately removed from all other bulls that have not been tested or for which the test results have not been received and shall be considered to be a negative bull for all purposes.

5. A bull testing positive shall immediately be classified as a Trichomoniasis infected bull and shall be subject to the restrictions imposed in this Section on such bulls.

6. An additional test to confirm the presence of trichomoniasis may be requested in the event of an initial positive test result, but the request for the confirmatory test must be made to the state veterinarian within 5 business days of notification of the positive test result.

a. If the confirming test comes back negative then the bull shall be considered negative for trichomoniasis.

b. If the confirming test comes back positive then the bull shall be considered to be infected with trichomoniasis and subject to the restrictions imposed in this Section on such bulls.

I. A trichomoniasis infected herd is a herd known to contain or have contained a trichomoniasis infected bull or cow. If a virgin bull or bull that has tested negative for trichomoniasis is comingled with female cattle from a trichomoniasis infected herd then the virgin bull or bull with negative test results shall be tested for and found to be free of trichomoniasis before being moved, placed into another herd, or transferred from one person to another.

J. A cow is not required to be tested for trichomoniasis before being moved into this state or transferred from one person to another but if a cow is tested then the same procedure set out in this Section for testing a bull shall apply to the testing of a cow.

K. A cow testing positive for trichomoniasis shall be subject to the following restrictions.

1. A cow testing positive for trichomoniasis shall not be moved into this state, except to go direct to slaughter or to be sold to go direct to slaughter.

2. A cow within this state that has tested positive for trichomoniasis shall be immediately separated from, and kept separate from all bulls.

a. The cow shall be moved direct to slaughter or sold to go direct to slaughter within 30 days from receipt of the positive result of the original test or the confirming test, whichever is later, unless placed under a quarantine program approved by the state veterinarian.

b. If the cow is quarantined then it may not be moved from quarantine until the quarantine is released in writing by the state veterinarian. The cow may be released from quarantine only if the cow is subsequently tested and found to be free from trichomoniasis or if the cow is to be

moved direct to slaughter or to be sold to go direct to slaughter.

3. A trichomoniasis infected cow may be moved only after a VS 1-27 permit is issued by the testing veterinarian or the state veterinarian or his representative. The VS 1-27 permit shall accompany the cow upon movement of the animal.

L. Quarantine Facilities

1. A livestock owner or lessor, livestock dealer, and a public livestock market facility may, with the written approval of the state veterinarian, establish a quarantine facility to hold bulls being moved into this state or being sold in this state until they can be tested for trichomoniasis.

2. The quarantine facility shall be inspected and approved by the state veterinarian or his representative prior to being placed into use.

3. The fencing or railing of the quarantine facility must be of material that will keep a bull from being able to breed with a cow located in an adjacent pen or pasture and of sufficient strength to keep a bull from escaping the quarantine facility.

4. A bull in a quarantine facility testing positive for trichomoniasis shall be immediately separated from, and kept separate from, all female cattle and shall be subject to the restrictions imposed by this Section on a trichomoniasis infected bull.

M. The state veterinarian may grant a written exception or variance to the provisions of this Section, with such conditions as the state veterinarian may impose, if such action is necessary to provide for unforeseen situations or circumstances. Any such exception or variance shall balance the need to protect cattle from trichomoniasis with the need to allow cattle to move in commerce.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Board of Animal Health, LR 35:1466 (August 2009), amended LR 36:

Mike Strain DVM
Commissioner

1009#086

DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences**

**Giant Salvinia—Herbicide Application
(LAC 7:XXIII.143)**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:3203, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations for the implementation of a herbicide application program by the Sabine River Authority, State of Louisiana (SRA) to manage the noxious aquatic weed Giant Salvinia in the Toledo Bend Reservoir (Toledo Bend). The SRA's herbicide application program will allow Louisiana property owners whose property adjoins Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property.

The SRA, the Louisiana Department of Wildlife and Fisheries, (LDWF), the LSU Agricultural Center (Ag Center), the Toledo Bend Residents Association, and Bass Unlimited have requested the adoption of these rules at the earliest possible date to begin spraying and controlling Giant Salvinia during the summer prime growing season. Giant Salvinia was first discovered on Toledo Bend in 1998 and has proliferated to the point that it threatens the continued productivity and usefulness of the lake itself.

This threat is not only to the native plants and animals that live in the lake and the biodiversity of that aquatic life, but also to the continued commercial and recreational use of the lake. The threat to the native aquatic life of Toledo Bend to the continued commercial and recreational use of the lake and to the economy of this state is such that it creates an imminent peril to the public health, safety, and welfare of the citizens of this state, thereby requiring the promulgation of these emergency rules and regulations.

This Emergency Rule becomes effective upon the signature of the commissioner and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - L.2. ...

M. The commissioner hereby establishes a herbicide application permitting program for the Sabine River Authority, State of Louisiana (SRA) in, on and around the waters of the Louisiana portion of Toledo Bend Reservoir.

1. Any person who applies or uses any herbicide or incorporates the use of any herbicide, for the management, control, eradication or maintenance of Giant Salvinia in, on or around the waters of the Louisiana portion of Toledo Bend Reservoir, shall comply with all of the following requirements, prior to making any applications to Giant Salvinia in SRA waters.

a. Complete the SRA designated Giant Salvinia Applicator Training Program.

b. Apply for and receive a herbicide application permit from the SRA which shall be good for the remainder of the calendar year in which issued, but may be renewed annually by contacting the SRA.

c. Apply, use, or incorporate herbicides to be applied to or used on or for Giant Salvinia only as prescribed by the SRA herbicide application program.

d. Prepare and maintain records of applications by recording accurate information as required on the "Toledo Bend Application Log Sheet" provided by the SRA.

e. Deliver (mail, hand deliver, e-mail, fax, etc.) to the SRA office at Pendleton Bridge Office, 15091 Texas Highway, Many, LA 71449 a completed copy of each Toledo Bend Application Log Sheet recording the information regarding an application or use of a herbicide on or for Giant Salvinia within 14 days of each application.

f. Keep a completed copy of the application record form for a period of three years after application.

g. Make application records available, during normal business hours, to any authorized person with the department, Department of Wildlife and Fisheries (LDWF), or the SRA.

2. Any person making applications to the Louisiana portion of Toledo Bend Reservoir under contract with the LDWF or SRA, authorized LDWF employees and any person conducting a research project on the Louisiana portion of Toledo Bend Reservoir with the LSU Agricultural Center, LDWF or SRA is exempted from the provisions of this Subsection, but are not excepted from any other provisions of this Part, except as may be provided therein.

N - O.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), LR 35:628 (April 2009). LR 36:

Mike Strain DVM
Commissioner

1009#005

DECLARATION OF EMERGENCY

Department of Economic Development Office of Business Development Office of Entertainment Industry Development

Motion Picture Investor Tax Credit Program (LAC 61:I.1607 and 1913)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industries Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 47:6007, hereby proposes to amend its existing Rules and Regulations relative to its Motion Picture Investor Tax Credit Program.

Whereas the department already has statutory authority to request an additional audit at the applicant's expense, the fee for such services has not been specified. The Department of Economic Development has found an imminent need to address this inconsistency and to clarify when such an audit may be required and what fees may be assessed.

Likewise, whereas the department already has statutory authority to collect a processing fee of "up to two hundred dollars" for receipt of notice of tax credit transfers, the exact fee to be collected has not been specified. The Department of Economic Development has found an imminent need to address this inconsistency and to clarify what fees shall be assessed. Act 633 of the 2010 Regular Session also provides that such processing fees shall be used to support Louisiana's independent filmmakers through the newly created Louisiana Filmmakers Grant Program.

The Emergency Rule is necessary to allow the office to effectively administer the program and to provide certainty and assurance to potential applicants and program investors. Without this Rule, the state of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective September 20 2010, and shall remain in effect for the maximum period allowed under the Act. Permanent Rule promulgation, to include rules for the Louisiana Filmmakers Grant Program, will be published as a Notice of Intent in the *Louisiana Register* in the near future.

Title 61

REVENUE AND TAXATION

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

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter A. Motion Picture Investor Tax Credit Program

§1607. Certification Procedures

A. - D.1.d. ...

2. When requesting final certification of credits, the motion picture production company or infrastructure project applicant shall submit to the office the following:

a. a cost report, certified by a state licensed, independent certified public accountant and complying with the minimum standards as required by R.S. 47:6007(D)(2)(d). The cost report may be subject to additional audit by the department, the division, or the Department of Revenue, at the applicants expense.

i. Incorrect reporting. If an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events, transactions, or other significant information there may be cause for an additional audit.

ii. Related party transactions. If an audit contains related party transactions in excess of 20 percent of the total expenditures reported in the submitted audit there may be cause for an additional audit.

iii. Reimbursement of Audit Costs. The department may undertake additional audit at the applicant's expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the Department's contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

D.2.b. - E.2.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:55 (January 2010), amended by the Department of Economic Development, Office of Business Development and the Office of Entertainment Industry Development, LR 36:

§1613 Application of the Tax Credit

A. - A.1a. ...

2. Transfer. Any motion picture investor tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the office, pursuant to R.S. 47:6007(C)(4).

a. A single transfer or sale may involve one or more transferees. Transferors and transferees shall submit to the office and to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such credits and shall include a processing fee of \$200 per transferee.

b. If the investor tax credits (evidenced by a certification letter) are transferred to the office:

i. on and after January 1, 2007, and prior to December 31, 2008 the state shall make payment to the investor at a value of 72 percent of the face-value of the credits;

ii. on January 1, 2009, and every second year thereafter, the percent of the value of the tax credits paid by the state shall increase 2 percent until the percentage reaches 80 percent;

iii. for state certified productions which receive initial certification on or after July 1, 2009, the state shall make payment to the investor at a value of 85 percent of the face-value of the credits.

A.3. - B.6.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:57 (January 2010), amended by the Department of Economic Development, Office of Business Development and the Office of Entertainment Industry Development, LR 36:

Kristy Mc Kearn
Undersecretary

1009#044

DECLARATION OF EMERGENCY

Office of the Governor

Board of Examiners of Certified Shorthand Reporters

Certified Digital Reporter

(LAC 46:XXI.101, 105, 317, 501, 511, 1103, and 1301)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and under the authority of R.S. 37:2554, 2556(A) and (B), R.S. 37:2555(F) and 2558(A)(4), the Louisiana Board of Examiners of Certified Shorthand Reporters ("CSR Board") declares an emergency to exist and adopts or amends by emergency process the attached rules of (LAC 46:101(B), 105(A), 317(B), 501(A), 511(A)(5), 1103(C), 1301(A)), which sets out procedures governing the issuance, renewal, and expiration of the certified digital reporter certificate in accordance with Act 700 enacted by the 2010 Legislature of Louisiana.

The board is charged with promulgating by rule a procedure to issue the certified digital reporter, or C.D.R. certificate. The board shall recognize and provide by rule a

new method of digital reporting for use by an official or deputy official certified digital reporter, or C.D.R., in court proceedings.

This Emergency Rule becomes effective on September 2, 2010 and shall remain in effect for 120 days or until re-enacted by Emergency Rule or through the normal promulgation process, whichever comes first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 1. Certification

§101. Application for Certification

A. ...

B. An application for a certified digital reporter certificate will be processed according to the following procedure. The board staff will review each application for completeness and will notify the applicant in writing if the application is incomplete or inadequate. The board may request additional information from an applicant at any time during the application process. Each application must be accompanied by the fee to be paid upon issuance and renewal of a certificate as stated in Chapter 9 of these rules. A certified digital reporter certificate authorizes the certificate holder to practice court reporting only as an official or deputy official court reporter performing duties for a court of record. The holder of a C.D.R. certificate is prohibited from engaging in freelance or general reporting. This certificate is only portable to another court if the applicant holds the Electronic Reporters and Transcribers certificate from the American Association of Electronic Reporters and Transcribers (AAERT). If the certificate is allowed to lapse, the seal(s) shall be returned to the board. Each holder of a C.D.R. certificate is subject to the regulatory authority of the board and must satisfy the requirements applicable to court reporters, such as compliance with continuing education requirements, and adherence to the standards of professional conduct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2556.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR16:393 (May 1990), LR 19:1537 (December 1993), LR 36:

§105. Grandfathering Certification

A. On or before December 31, 2010, the board will accept applications for the Certificate of Certified Digital Reporter from any person age 18 years or older who submits due proof that the person is employed as an official or deputy official court reporter by a Louisiana court of record and that the person has utilized electronic, audio, or digital recording equipment as a method of official court reporting. The board will accept as due proof of employment the board approved C.D.R. application and judge or court affidavit. The affidavit shall be executed by the judicial administrator or judge of that court of record attesting, that the applicant is employed by that court as of the date of execution. The board will receive and consider applications for a C.D.R. certificate based on grandfathering at any time on or before December 31, 2010. The board will not consider or approve applications for issuance of a C.D.R. certificate by official or

deputy official court reporters employed by the following courts: Fifteenth, Sixteenth, Seventeenth, Nineteenth, Thirty-Second, Thirty-Fourth, and Fortieth Judicial District Courts, the Orleans Parish Civil District Court, the Orleans Parish Criminal District Court, the Jefferson Parish First and Second Parish Courts, the New Orleans First and Second City Courts, the New Orleans Municipal and Traffic Courts, and on and after the effective date of its creation, the Forty-First Judicial District Court. Following submission of satisfactory proof in accordance with the foregoing requirements, the board will approve issuance of a C.D.R. certificate.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554 and 2556.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 36:

Chapter 3. Examinations

§317. National Examinations

A. ...

B. The board will accept as an examination the electronic reporter and transcriber certificate from the American Association of Electronic Reporters and Transcribers (AAERT). A certificate holder under this chapter is prohibited from engaging in freelance or general reporting.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554 and 2556.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:531 (August 1988), LR 21:931 (September 1995), LR 27:184 (February 2001), LR 36:

Chapter 5. Certificates

§501. Expiration of Certificate

A. ...

B. The certified digital reporter certificate is immediately extinguished by operation of law upon termination of the certificate holder's employment by that court if he or she was grandfathered in as a C.D.R. A C.D.R. shall immediately notify the board of any change in employment status and shall surrender the certificate upon termination of employment by that court of record. If a grandfathered C.D.R. certificate lapses, then the certificate holder must begin anew by obtaining the electronic reporter and transcriber certificate from the American Association of Electronic Reporters and Transcribers (AAERT).

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:531 (August 1988), LR 19:1538 (December 1993), LR 36:

§511. Methods of Reporting

A. Each reporter shall be certified in one of the following five methods of reporting.

1. - 4. ...

5. Digital. A certified digital reporter is anyone who converts an electronic, audio, or digital recording into a verbatim transcript of any oral court proceeding, is prohibited from freelance or general reporting, is restricted

to duties as an official or deputy official court reporter, and has been certified to engage in the practice of digital reporting as a certified electronic reporter and transcriber by the American Association of Electronic Reporters and Transcribers, or anyone who has submitted due proof on or before December 31, 2010 that the person is employed as an official or deputy official court reporter by a Louisiana court of record on or before December 31, 2010 and that the person has performed the duties of an official or deputy official court reporter utilizing electronic, audio, or digital recording equipment as a method of official court reporting.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554, 2555, 2556 and R.S. 37:2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 20:997 (September 1994), LR 36:

Chapter 6. Continuing Education

§609. Continuing Education Guidelines

A. ...

1. The board may approve seminars and workshops sponsored by the National Court Reporters Association (NCRA), the National Verbatim Reporters Association (NVRA) or the American Association of Electronic Reporters and Transcribers (AAERT) at national, regional, state, or local meetings, by public institutions of higher learning, and by judicial organizations, including the following subjects:

A.1.a. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 17:33 (January 1991), amended LR 19:1539 (December 1993), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2420 (November 2007), LR 36:

Chapter 9. Fees

§901. Fees

A. - A.1. ...

2. The fee to be paid upon the issuance and renewal of a certificate is \$125 plus seal fee(s).

3. The fee to be paid for a seal is \$20. A minimum requirement of one seal must be purchased upon the issuance or renewal of a certificate. The maximum number of seals that may be purchased is three per certificate holder.

4. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 2558.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:680 (October 1983), amended LR 10:279 (April 1984), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:531 (August 1988), LR 17:34 (January 1991), LR 17:578 (June 1991), LR 19:1541 (December 1993), amended by the Office of the Governor, Board of Examiners of Shorthand Reporters, LR 34:434 (March 2008), LR 36: 1781 (August 2010), LR 36:

Chapter 11. Court Reporting Procedures

§1103. Certification of Transcript

A. - B. ...

C. Each certified digital reporter (C.D.R.) shall attest to the accuracy of every transcript prepared by that reporter by dating, signing, and sealing a certification page containing substantially the following language.

This certificate is valid only for a transcript accompanied by my original signature and original seal on this page.

I, [reporter's name], Certified Digital Reporter in and for the State of Louisiana, employed as an official or deputy official court reporter by the [court name] for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the digital reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding and that I am not related to counsel or to the parties herein nor am I otherwise interested in the outcome of this matter.

D. No certified digital reporter shall execute the foregoing certification without having first reviewed and approved the accuracy of the transcript to which such certification is attached.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554 and R. S. 37:2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 21:21 (January 1995), LR 36:

Chapter 13. Code of Ethics

§1301. Guidelines for Professional Practice

A. The mandatory Code of Ethics defines the ethical relationship the public, the bench, and the bar have a right to expect from a certificate holder. It sets out the required conduct of the certificate holder when dealing with the user of reporting services, and acquaints the user, as well as the certificate holder, with guidelines established for professional behavior.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2553(A.), 37:2554 and 37:2557(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 25:1215 (July 1999), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 33:2421 (November 2007), LR 36:

Judge Robert M. Murphy,
Chair

1009#032

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Mandatory Health Screening (LAC 35:I.1304)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective September 26, 2010, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds that an imminent peril to the public health, safety and welfare requires adoption of a Rule upon shorter notice than that provided in R.S. 49:953(A) and within five days of adoption states in writing to the Governor of the state of Louisiana, the Attorney General of Louisiana, the Speaker of the House of Representatives, the President of the Senate, and the

Department of the State Register, its reasons for the Declaration Of Emergency, to wit:

1. A number of cases of equine piroplasmiasis have recently been identified throughout the United States. Piroplasmiasis can be caused by either *Babesia cabali* or *Theileri equi*, which are protozoan parasites. The U.S. had previously been considered free of this disease.

2. It is clear from the cases identified that the U.S. is not clear of piroplasmiasis, and it continues to spread due to poor containment. There is no cure for horses testing positive for piroplasmiasis. The only options for owners of horses testing positive for piroplasmiasis are euthanasia, permanent quarantine, or sale to a country that will accept the diseased animal. The racing population is at particular risk because of the migratory nature of the industry and close stabling of horses at racetracks. Containment necessitates insuring and protecting the population of horses which are stabled at the racetrack from each other and from other horses entering the racetrack which may be carriers.

3. Cases of piroplasmiasis have been identified in race horses traveling into and out of Louisiana racetracks licensed by the Commission.

4. Presently, numerous racing jurisdictions have instituted mandatory screening/testing for piroplasmiasis. These jurisdictions include racing states of Oklahoma, Texas, New Mexico, Colorado, Florida and Iowa.

5. Horses will be migrating into Louisiana to participate in the opening of race meets which are impending and horses continue to move within the state from racetrack to racetrack.

6. Failure to institute a program of mandatory screening/testing for piroplasmiasis in Louisiana poses an imminent threat to the Louisiana racehorse population and racing industry.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 13. Health Rules

§1304. Mandatory Health Screening

A. ...

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

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

HISTORICAL NOTE: Promulgated by Department of Commerce, Racing Commission, LR 14:226 (April 1988), amended LR 36:

Charles A. Gardiner III
Executive Director

1009#043

DECLARATION OF EMERGENCY

Office of the Governor Motor Vehicle Commission

Manufacturer Termination of Franchise; Liquidation
of New Vehicle Inventory; Warranty Work; Exception
(LAC 46:V.107)

The Louisiana Motor Vehicle Commission (the "Commission") is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 32:1251 et seq., adopts the following Emergency Rule effective August 16, 2010, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana Motor Vehicle Commission finds it necessary to adopt this Rule 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 in 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.

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 the license issued by the commission may remain in effect or be renewed at the discretion of the commission 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 license under the law 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 36:

Lessie A. House
Executive Director

1009#013

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Veterinary Medicine

Temporary Registration during Declared Emergency
(LAC 46:LXXXV.312)

The Department of Health and Hospitals, Board of Veterinary Medicine (Board) adopts this Emergency Rule, effective September 1, 2010, in accordance with the provisions of the LA Administrative Procedure Act, R.S. 49:950 et seq., and the LA Veterinary Practice Act, R.S. 37:1518A(9). This Emergency Rule shall remain in effect for a period of 120 days (or until such maximum time as allowed by LA law).

The board has developed and adopted this Emergency Rule implementing the regulatory requirements for the issuance of temporary registrations to qualified out of state veterinarians with unique veterinary expertise in the care of free-ranging migratory birds, marine mammal, sea turtles, and other unspecified animals affected by the recent oil spill in Louisiana in keeping with its function as defined by the State Legislature in the Veterinary Practice Act.

The immediate implementation of the requirements for qualified out of state veterinarians who are operating as agents of the US Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration, or their affiliated organizations, under the Federal permits issued by these respective agencies, regarding free-ranging migratory bird rehabilitation, marine mammal, sea turtles, and other unspecified animals, and related matters, are in the continued best interest for the protection of the public health and safety.

An earlier and similar Emergency Rule (which expires September 1, 2010) was adopted by the board to address the subject matter of the exigent circumstances created by the BP oil spill. It is not disputed that an unfortunate and unforeseen delay in capping/stopping the unabated flow of oil existed during the vast majority of time the earlier emergency rule was in effect. There continues to exist the vast cleanup effort and its effect subsequent to the recent capping/plugging of the well. Due to the unanticipated and continuing devastating impact the oil is having on free-ranging migratory birds, marine mammal, sea turtles, and

other unspecified animals, it is necessary to further address the need for qualified specialized veterinarians to be able to continue to assist the people and animals of Louisiana during the cleanup effort.

This Emergency Rule does not allow out of state veterinarians, who do not meet the specific and express qualifications set forth in the Rule, to provide veterinary services in Louisiana at this time.

This Emergency Rule does not limit or adversely impact the practices of Louisiana veterinarians to provide veterinary services pursuant to their licensed authority in this state.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarian

Chapter 3. License Procedures

§312. Temporary Registration during Oil Cleanup.

A. The Governor of Louisiana issued a Declaration of a Public Emergency (effective on or about April 29, 2010) regarding the Deepwater Horizon oil spill in the Gulf of Mexico. The effect of the spill, including the unfortunate and unforeseen delay in capping/stopping the unabated flow of oil, continues to have an adverse impact on the coastal parishes of our state. More specifically, the residual effect of the oil spill, even after the very recent capping/plugging of the well, is an unanticipated and continuing devastating impact on free-ranging migratory birds, marine mammal, sea turtles, and other unspecified animals.

B. This Emergency Rule is necessary to address the needs of the particular declared emergency or disaster at issue.

C. The LBVM exercises its legal authority pursuant to the LA Veterinary Practice Act, R.S. 37:1518A(9), and adopts this Emergency Rule thereby granting temporary registration for a period of time not to exceed a period of 120 days (or until such maximum time as allowed by LA law) to out of state veterinarians who meet the specific and express qualifications set forth in this rule.

D. Accordingly, the following requirements and/or any other requirements required by the Board for temporary registration of qualified out of state veterinarians are imposed which more properly address the needs of the particular declared emergency or disaster as set forth herein.

E. A veterinarian not licensed in Louisiana, but currently licensed, in good standing, in a state jurisdiction of the United States may provide veterinary services needed in response to the oil spill if:

1. the veterinarian has a current permit with the US Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration, or is operating under a Federal permitted affiliated organization, regarding free-ranging migratory bird rehabilitation, marine mammal, sea turtles, and other unspecified animals, affected by the recent oil spill in Louisiana;

2. the veterinarian has photo identification and a license to verify a current license in a state jurisdiction of the United States;

3. the veterinarian properly registers with the LA Board providing the documentation set forth in 1 and 2 above;

4. the veterinarian is engaged in a legitimate relief effort during the emergency period at sites specified by the LA Department of Wildlife and Fisheries, and/or the LA Department of Agriculture, Office of the State Veterinarian (LA Incident Command Central), and provides satisfactory documentation to the Board that he will be providing veterinary services at such sites specified by these State agencies; and

5. the veterinarian shall comply with the LA Veterinary Practice Act, Board's Rules, and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability.

F. All out of state veterinarians licensed, in good standing, in other state jurisdictions of the United States shall submit a copy of their respective license, photograph identification, and current permit issued by the US Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration as required by this Emergency Rule, as well as other requested information, to the LA Board of Veterinary Medicine office for registration with this agency.

G. All temporary registrations issued to qualified out of state veterinarians by the board as per earlier Rule 311 (2010 Deepwater Horizon-ER #1) shall remain in effect during the period of time of this Emergency Rule without the need for re-application to the board.

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 36:

Wendy Parrish
Executive Director

1009#029

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.7503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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 repealed the April 20, 1977 Rule governing ambulatory surgical services and amended the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates as a result of a budgetary shortfall in state fiscal year 2009. These provisions were promulgated in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for ambulatory surgical centers to further reduce the reimbursement rates paid for ambulatory surgical services (*Louisiana Register*, Volume 36, Number 2). The department also determined that it was necessary to repeal the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for ambulatory surgical centers to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 5, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 5, 2010 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for ambulatory surgical centers to adjust the reimbursement rate reduction.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7503. Reimbursement Methodology

A. - C. ...

D. Effective for dates of service on or after February 5, 2010, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 5 percent of the rate in effect on February 4, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1889 (September 2009), amended LR 36:

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.

Anthony Keck
Secretary

1009#064

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXII.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to implement a family planning research and demonstration project under the authority of a Section 1115 waiver (*Louisiana Register*, Volume 32, Number 8). This waiver provides family planning services to women from age 19 through 44 years old with income at or below 200 percent of the federal poverty level.

As a result of a budgetary shortfall in state fiscal year 2010, the department determined that it was necessary to reduce the reimbursement rates paid for family planning waiver services (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective September 21, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the Family Planning Waiver to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. ...

B. Effective for dates of service on or after January 22, 2010, the reimbursement rates for services provided in the Family Planning Waiver shall be reduced by 5 percent of the rates in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

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

Anthony Keck
Secretary

1009#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Forensic Supervised Transitional Residential and Aftercare Facilities Minimum Licensing Standards (LAC 48:I.Chapter 72)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 72 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:31. 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 332 of the 2008 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to adopt provisions governing the licensing standards for forensic supervised transitional residential and aftercare facilities. Forensic supervised transitional residential and aftercare facilities shall provide care and services to clients referred by state forensic hospitals or state forensic inpatient psychiatric units currently operated by the department. In compliance with the directives of Act 332, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing the minimum licensing standards for forensic supervised transitional residential and aftercare facilities (*Louisiana Register*, Volume 36, Number 6). The department now proposes to amend the July 1, 2010 Emergency Rule to clarify the criteria for clients served by these facilities. This action is being taken to ensure continued access to services in a setting that protects the public as well as provides a controlled environment for individuals who are not capable of living independently and need structure in order to function adequately.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the July 1, 2010 Emergency Rule which adopted provisions

governing forensic supervised transitional residential and aftercare facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 72. Forensic Supervised Transitional Residential and Aftercare Facilities Licensing Standards

Subchapter A. General Provisions

§7201. Introduction

A. These rules and regulations contain the minimum licensure standards for forensic supervised transitional residential and aftercare (FSTRA) facilities, pursuant to La. R.S. 28:31 – 28:37. These licensing regulations contain core requirements as well as module specific requirements, depending upon the services provided by the forensic supervised transitional residential and aftercare facility provider. The modules to be licensed under an FSTRA license are:

1. secure community supervised transitional /residential facility; and
2. secure forensic facility.

B. A Forensic Supervised Transitional Residential and Aftercare facility serves clients referred by state forensic hospitals or state forensic inpatient psychiatric units operated by the Department of Health and Hospitals, including persons who are court ordered and persons who are on court ordered conditional release status. An FSTRA facility shall operate seven days per week, 24 hours a day.

C. The care and services to be provided through arrangement or by the FSTRA facility shall include, but are not limited to the following:

1. behavioral health services;
2. nutritional services;
3. medication management;
4. assistance with independent living skills;
5. recreational services; and
6. transportation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7203. Definitions

Administrator—the person responsible for the on-site, daily implementation and supervision of the overall facility's operation commensurate with the authority conferred by the governing body.

Behavior Management—techniques, measures, interventions and procedures applied in a systematic fashion to promote positive behavioral or functional change which fosters the client's self-control, and to prevent or interrupt a client's behavior which threatens harm to the client or others.

Department—the Louisiana Department of Health and Hospitals.

Forensic Clients—persons transitioned from a forensic facility established pursuant to R.S. 28:25.1(A) or (B).

Forensic Supervised Transitional Residential and Aftercare Facility—a facility that provides supervised transitional residential and aftercare services to forensic clients, including persons who are court ordered or who are on court ordered conditional release status. A forensic supervised transitional residential and aftercare facility shall

provide clients, referred by state operated forensic facilities/hospitals and under court order or court ordered forensic conditional release, with individualized services to develop daily living skills and to prepare for vocational adjustment and reentry into the community.

Forensic Psychiatrist—a physician, currently licensed to practice medicine in Louisiana, who:

1. signs the order admitting the individual to the FSTRA facility;
2. maintains overall responsibility for the client's medical management; and
3. is available for consultation and collaboration with the FSTRA facility staff.

Licensee—the person, partnership, company, corporation, association, organization, professional entity, or other entity to whom a license is granted by the licensing agency and upon whom rests the ultimate responsibility and authority for the conduct of and services provided by the FSTRA facility.

Secure Community Supervised Transitional/Residential Facility—a secure residential facility within the community that provides individualized services to persons who are under a court order or court ordered forensic conditional release and who are referred by a state forensic hospital or state forensic psychiatric unit. These services enable such persons to develop daily living skills and to prepare for vocational adjustment and reentry into the community.

Secure Forensic Facility—a secure residential facility located on the grounds of a state hospital that provides individualized services, including personal care services and medication administration, to persons who are under a court order or court ordered forensic conditional release and who are referred by a state forensic hospital or state forensic psychiatric unit. These services prepare such persons for transition to a less restrictive environment before transitioning to the community.

Treatment Plan—a comprehensive plan developed by the FSTRA facility for each client that includes the services each client needs. It shall include the provision of medical/psychiatric, nursing and psychosocial services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7205. Licensing Requirements

A. Any person or entity applying for an FSTRA license shall meet all of the core licensing requirements contained in this Subchapter as well as module specific requirements, unless otherwise specifically noted herein.

B. All facilities providing forensic supervised transitional residential and aftercare services shall be licensed by the department. An FSTRA facility shall not be established, opened, operated, managed, maintained, or conducted in this state without a license issued by the Department of Health and Hospitals. Each facility shall be separately licensed.

C. The Department of Health and Hospitals is the only licensing authority for FSTRA facilities in the State of Louisiana. It shall be unlawful to operate an FSTRA facility without possessing a current, valid license issued by the department.

D. Each FSTRA license shall:

1. be issued only to the person or entity named in the license application;

2. be valid only for the facility to which it is issued and only for the specific geographic address of that facility;

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

4. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the facility;

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

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

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

1. The facility shall provide 24-hour, seven days per week supervision consisting of:

a. at least three direct care staff persons during the day and two awake staff during the night;

b. at least two direct care staff persons in each building and/or unit at all times when clients are present; and

c. a functional security system on all points of ingress and egress with 24-hour, seven days per week monitoring by awake staff.

2. There shall be staff employed and available to be assigned to provide care and services to each client during all operational hours consistent with the behavioral health needs of each client.

3. The FSTRA facility shall have provided services to at least two clients in the preceding 12 month period in order to be eligible to renew its license.

F. The licensed FSTRA facility shall abide by and adhere to any state law, rules, policy, procedure, manual, or memorandums pertaining to such facilities.

G. A separately licensed FSTRA facility shall not use a name which is substantially the same as the name of another such facility licensed by the department, unless the facility is under common ownership with other FSTRA facilities.

H. No branches, satellite locations or offsite campuses will be authorized for an FSTRA facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7207. Initial Licensing Application Process

A. An initial application for licensing as an FSTRA facility shall be obtained from the department. A completed initial license application packet for an FSTRA facility must be submitted to and approved by the department prior to an applicant providing services. An applicant must submit a completed initial licensing packet to the department, which shall include:

1. a completed FSTRA facility licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural facility plans 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;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health;

5. a copy of the statewide criminal background checks on the following persons:

a. all individual owners with a 5 percent or more ownership interest in the FSTRA facility entity;

b. facility administrators; and

c. members of the facility's board of directors, if applicable;

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 \$100,000;

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

c. worker's compensation insurance.

7. if applicable, Clinical Laboratory Improvement Amendments (CLIA) certificate or CLIA certificate of waiver;

8. a letter-sized floor sketch or drawing of the premises to be licensed; and

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

B. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of the notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an FSTRA facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

C. Once the initial licensing application packet has been approved by the department, notification of such approval shall be forwarded to the applicant. Within 90 days of receipt of the approval of the application, the applicant must notify the department that the FSTRA facility is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a licensed FSTRA facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

D. When issued, the initial Forensic Supervised Transitional Residential and Aftercare facility license shall specify the capacity of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7209. Types of Licenses

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 facility when the initial licensing survey finds that the facility 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, or suspended.

2. Provisional Initial License. The department shall issue a provisional initial license to the facility when the initial licensing survey finds that the facility 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 individuals receiving services. The provisional license shall be valid for a period not to exceed six months.

3. Full Renewal License. The department shall issue a full renewal license to an existing licensed FSTRA facility which 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, or suspended.

B. The department, in its sole discretion, may issue a provisional license to an existing licensed FSTRA facility for a period not to exceed six months for the following reasons.

1. The existing facility has more than five deficient practices or deficiencies cited during any one survey.

2. The existing facility has more than three validated complaints in one licensed year period.

3. The existing facility has been issued a deficiency that involved placing a client at risk for serious harm or death.

4. The existing facility 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.

5. The existing facility 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 FSTRA facility, the department shall conduct an on-site follow-up survey at the facility prior to the expiration of the provisional license, and shall issue written notice of the results of the follow-up survey.

1. If the on-site follow-up survey determines that the facility 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 facility license.

2. If the on-site follow-up survey determines that the facility has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional license shall expire and the facility shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee, if no timely informal reconsideration or administrative appeal is filed pursuant to this Chapter.

a. At the sole discretion of the department, the provisional license may be extended for a period, not to exceed 90 days, in order for the FSTRA facility to correct the noncompliance or deficiencies.

D. When the department issues a provisional license as a result of the initial licensing survey, the facility shall submit

a plan of correction to the department for approval, and shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct an on-site follow-up survey at the facility prior to the expiration of the provisional license and shall issue written notice to the provider of the results of the follow-up survey.

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

2. If all such noncompliance or deficiencies are not corrected 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.

a. At the sole discretion of the department, the provisional license may be extended for an additional period, not to exceed 90 days, in order for the FSTRA facility to correct the noncompliance or deficiencies.

E. The license for an FSTRA facility shall be valid for one year from the date of issuance, unless revoked, suspended, or modified prior to that time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7211. Licensing Surveys

A. Prior to the initial license being issued to the FSTRA facility, an initial licensing survey shall be conducted on-site at the facility to assure compliance with licensing standards. The facility shall not provide services until the initial licensing survey has been performed and the facility found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

B. In the event that the initial licensing survey finds that the FSTRA facility 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.

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

D. Once an initial license has been issued, the department shall conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations, and fees. These surveys shall be unannounced.

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

1. An acceptable plan of correction may be required from an FSTRA facility for any survey where deficiencies have been cited.

2. If deficiencies have been cited, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

- a. civil monetary penalties;
- b. directed plans of correction; and
- c. license revocations.

F. DHH surveyors and staff shall be:

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7213. Changes in Licensee Information or Personnel

A. An FSTRA facility 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 FSTRA facility name, “doing business as” name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the occurrence. Any change regarding the facility name or “doing business as” name requires a change to the facility license and requires a \$25 fee for the reissuance of an amended license.

C. Any change regarding the facility’s key administrative personnel shall be reported in writing to the department within five days of the change.

1. Key administrative personnel include the administrator, physician/psychiatrist and the registered nurse supervisor.

2. The facility’s notice to the department shall include the individual’s:

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

D. A change of ownership (CHOW) of the FSTRA facility shall be reported in writing to the department within five days of the change of ownership.

1. The license of an FSTRA facility is not transferable or assignable. The license of an FSTRA facility cannot be sold.

2. In the event of a CHOW, 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.

3. An FSTRA facility that is under license suspension, revocation, or denial of renewal may not undergo a CHOW.

E. Any request for a duplicate license shall be accompanied by a \$25 fee.

F. An FSTRA facility that intends to change the physical address of its geographic location is required to have plan review approval, Office of State Fire Marshall approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation of the facility.

1. Written notice of intent to relocate shall be submitted to the licensing section of the department when plan review request is submitted to the department for approval.

2. The relocation of the facility's physical address results in a new anniversary date and the full licensing fee shall be paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7215. Renewal of License

A. License Renewal Application. The FSTRA facility shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. a copy of the current on-site inspection with approval for occupancy from the Office of the State Fire Marshal;
3. a copy of the current on-site inspection report with approval of occupancy from the Office of Public Health;
4. 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 \$100,000;
 - b. general and professional liability insurance of at least \$300,000; and
 - c. worker's compensation insurance;
5. the license renewal fee; and
6. any other documentation required by the department.

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 Forensic Supervised Transitional Client and Aftercare license.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7217. Denial of License, Revocation of License, Denial of License Renewal

A. In accordance with the provisions of the Administrative Procedure Act, the department may:

1. deny an application for a license;
2. deny a license renewal; or
3. revoke a license

B. Denial of an Initial License

1. The department shall deny an initial license when the initial licensing survey finds that the FSTRA facility is noncompliant with any licensing laws or regulations or with any other required statutes, laws, ordinances, rules or regulations that present a potential threat to the health, safety, or welfare of the clients who will be served by the facility.

2. The department may deny an initial license for any of the reasons in this Chapter that a license may be revoked or non-renewed.

C. Voluntary Non-Renewal of a License

1. 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.

2. If a provider fails to timely renew its license, the facility shall immediately cease and desist providing services, unless the provider is actively treating clients, in which case the provider shall comply with the following:

- a. immediately provide written notice to the department of the number of clients receiving treatment at the FSTRA facility;
- b. immediately provide written notice to the prescribing physician and to the client or legal representative of the following:
 - i. notice of voluntary non-renewal;
 - ii. notice of closure; and
 - iii. plans for orderly transition of the client(s);
- c. discharge and transition of each client within 15 days of voluntary non-renewal; and
- d. notify the department of the location where records will be stored and the contact person for the records.

3. If an FSTRA facility fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning an FSTRA facility for a period of two years.

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

1. failure to be in substantial compliance with the FSTRA facility licensing laws, rules and regulations, or with other required statutes, laws, ordinances, rules, or regulations;
2. failure to comply with the terms and provisions of a settlement agreement or education letter with or from the department, the Attorney General's office, any regulatory agency, or any law enforcement agency;
3. failure to uphold clients' rights whereby deficient practices result in harm, injury, or death of a client;
4. negligent or harmful 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;
5. failure to notify the proper authorities, as required by federal or state law, rules or regulations, of all suspected cases of:
 - 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. 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 facility 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;
7. knowingly making a false statement or providing false, forged, or altered information or documentation to department employees or to law enforcement agencies;
8. the use of false, fraudulent or misleading advertising;
9. fraudulent operation of an FSTRA facility by the owner, administrator, manager, member, officer or director;
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. For purposes of these provisions, conviction of a felony includes a felony relating to any of the following:
- a. violence, abuse, or negligence of a person;
 - b. misappropriation of property belonging to another person;
 - c. cruelty, exploitation, or sexual battery of a person with disabilities;
 - d. a drug offense;
 - e. crimes of sexual nature;
 - f. a firearm or deadly weapon;
 - g. fraud or misappropriation of federal or state funds, including Medicare or Medicaid 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. failure to allow or refusal to allow access to facility or client records by authorized departmental personnel; or
14. cessation of business or non-operational status.

E. If an existing FSTRA facility has been issued a notice of license revocation or suspension and the provider's license is due for annual renewal, the department shall deny the license renewal. The denial of the license renewal does not affect in any manner the license revocation.

F. If an FSTRA facility license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, director, manager, or administrator of such FSTRA facility may be prohibited from opening, managing, directing, operating, or owning another FSTRA facility for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7219. Notice and Appeal of License Denial, License Revocation and License Non-Renewal and Appeal of Provisional License

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

B. An FSTRA facility 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 FSTRA facility shall request the informal reconsideration within 10 calendar 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.

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 the Health Standards Section, an informal reconsideration shall be scheduled and the facility will receive written notification of the date of the informal reconsideration.

4. The facility 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 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 facility will be notified in writing of the results of the informal reconsideration.

C. An FSTRA facility 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 FSTRA facility shall request the administrative appeal within 30 calendar days of the receipt of the notice of the results of the informal reconsideration of the license denial, license revocation, or license non-renewal. The facility may forego its rights to an informal reconsideration, and if so, the facility shall request the administrative appeal within 30 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for administrative appeal shall be in writing and shall be submitted to the DHH Bureau of Appeals.

2. The request for administrative appeal 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 Bureau of Appeals, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the facility 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 facility 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. The facility shall be notified of this determination 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 the administrative appeal.

D. If a timely administrative appeal has been filed by the facility on a license denial, license non-renewal, or license revocation, the Bureau of Appeals shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Bureau of Appeals if good cause is shown.

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

2. If the final agency decision is to affirm the license non-renewal or the license revocation, the facility shall discharge any and all clients receiving services. Within 10 days of the final agency decision, the facility shall notify the department's licensing section in writing of the secure and confidential location of where its records will be stored.

E. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional license to a new FSTRA facility. 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 to an existing FSTRA facility is not considered to be a denial of license, a denial of license renewal, or a license revocation.

F. 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 regarding the deficiencies cited at the follow-up survey.

1. The facility has five calendar days from the receipt of the department's notice of the results of the follow-up survey to submit a written request for informal reconsideration of the follow-up survey findings.

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

3. 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.

4. The facility has five calendar days from the receipt of the department's notice of the result of the informal reconsideration to submit a written request for an administrative appeal. If the facility chooses not to request an informal reconsideration, the facility may submit a written request for an administrative appeal within five calendar days of receipt of the notice of the results of the follow-up survey.

G. A facility with a provisional license that expires under the provisions of this Chapter shall cease providing services

and discharge clients unless the Bureau of Appeals issues a stay of the expiration.

1. A stay may be granted by the Bureau of Appeals upon application by the provider at the time the administrative appeal is filed and only:

a. after a contradictory hearing; and

b. upon a showing that there is no potential harm to the clients being served by the facility.

H. If a timely administrative appeal has been filed by a facility with a provisional license that has expired under the provisions of this Chapter, the Bureau of Appeals shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Bureau of Appeals if good cause is shown.

1. If the final agency decision is to remove all deficiencies, the facility's license will be reinstated upon the payment of any licensing or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final agency decision is to uphold the deficiencies and affirm the expiration of the provisional license, the facility shall discharge all clients receiving services. Within 10 days of the final agency decision, the facility shall notify the department's licensing section in writing of the secure and confidential location of where records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7221. Complaint Surveys

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13 et seq.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction may be required by the department for any complaint survey where deficiencies have been cited.

D. A follow-up survey may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices. If the department determines that other action, such as license revocation, is appropriate, a follow-up survey may not be required. The facility will be notified of any action.

E. The department may issue appropriate sanctions, including but not limited to, civil monetary penalties, directed plans of correction, and license revocations, for deficiencies and non-compliance with any complaint survey.

F. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff, client, or participant, as necessary or required to conduct the survey.

G. An FSTRA facility which has been cited with violations or deficiencies on a complaint survey has the right to request an informal reconsideration of the validity of the violations or deficiencies. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 10 calendar days of the facility's receipt of the notice of the violations or deficiencies.

H. A complainant shall have the right to request an informal reconsideration of the findings of the complaint survey or investigation. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 30 calendar days of the complainant's receipt of the results of the complaint survey or investigation.

I. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as an administrative review. The facility or complainant shall submit all documentation or information for review for the informal reconsideration, and the department shall consider all documentation or information submitted. There is no right to appear in person at the informal reconsideration of a complaint survey or investigation. Correction of the violation or deficiency shall not be the basis for the reconsideration. The facility and/or the complainant shall be notified in writing of the results of the informal reconsideration.

J. Except as provided in paragraph §7221.K, the informal reconsideration shall constitute final action by the department regarding the complaint survey or investigation, and there shall be no right to an administrative appeal.

K. In those complaints in which the department's Health Standards Section determines that the complaint involves issues that have resulted in, or are likely to result in, serious harm or death to the client, the complainant or the provider may appeal the informal reconsideration findings to the Bureau of Appeals.

1. The written request for administrative appeal shall be submitted to the Bureau of Appeals and must be received within 30 calendar days of the receipt of the results of the informal reconsideration.

2. The hearing before the Bureau of Appeals is limited to the evidence presented at the informal reconsideration, unless the complainant or the facility has obtained additional evidence vital to the issues which he could not have with due diligence obtained before or during the informal reconsideration.

3. The administrative law judge shall only make a determination on the administrative appeal, based on the evidence presented, as to whether or not the complaint investigation or survey was conducted properly or improperly. The administrative law judge shall not have the authority to overturn or delete deficiencies or violations, and shall not have the authority to add deficiencies or violations.

4. If the administrative law judge determines that the complaint investigation or survey was not conducted properly, he shall designate in writing and with specificity the methods by which a re-investigation shall be conducted.

5. No appeal shall lie from a re-investigation upon a prima facie showing that the re-investigation was conducted in accordance with the designations of the administrative law judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7223. Statement of Deficiencies

A. The following statements of deficiencies issued by the department to an FSTRA facility 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 FSTRA facility shall be available for disclosure to the public 30 calendar days after the provider submits an acceptable plan of correction of the deficiencies or 90 calendar days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in this Chapter, a facility shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

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

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

3. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section.

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.11 et seq., and as provided in this Chapter for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7225. Cessation of Business

A. A facility that intends to close or cease operations shall comply with the following procedure:

1. give 30 days advance written notice to the:

a. department;

b. forensic physician; and

c. ordering court of any conditional release

client(s);

2. notify the department of the location where records will be stored and the contact person for the records; and

3. provide for an orderly discharge and transition of all clients admitted to the facility.

B. If an FSTRA facility fails to follow these procedures, the owners, managers, officers, directors and administrators may be prohibited from opening, managing, directing, operating or owning an FSTRA facility for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter B. Administration and Organization

§7231. Governing Body

A. Each provider shall have an identifiable governing body with responsibility for, and authority over, the policies and activities of the program/facility.

B. A provider shall have documents identifying the following information regarding the governing body:

1. names and addresses of all members;
2. terms of membership;
3. officers of the governing body; and
4. terms of office of any officers.

C. When the governing body of a provider is comprised of more than one person, the governing body shall hold formal meetings at least twice a year. There shall be written minutes of all formal meetings and bylaws specifying frequency of meetings and quorum requirements.

D. When the governing body is composed of only one person, this person shall assume all responsibilities of the governing body.

E. Responsibilities of a Governing Body. The governing body of a provider shall:

1. ensure the provider's compliance and conformity with the provider's charter or other organizational documents;

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

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

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

5. designate a person to act as Administrator and delegate sufficient authority to this person to manage the provider (a sole owner may be the administrator);

6. 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;

7. annually evaluate the administrator's performance (if a sole owner is not acting as administrator);

8. have the authority to dismiss the administrator (if a sole owner is not acting as administrator);

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

10. inform designated representatives of the department prior to initiating any substantial changes in the services provided by the provider; and

11. notify the Health Standards Section in writing at least 30 days prior to any change in ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7233. Policy and Procedures

A. An FSTRA provider shall establish procedures to assure written communication among staff to provide continuity of services to all clients.

B. Direct care employees shall have access to information concerning clients that is necessary for effective performance of the employee's assigned tasks.

C. Confidentiality and Security of Files. A provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records and to whom records may be released.

D. A provider shall allow designated representatives of the department, in the performance of their mandated duties, to inspect all aspects of a provider's functioning which

impact on clients and to interview any staff member or client.

1. A provider shall make any information or records that the provider is required to have and any information reasonably related to assessment of compliance with these requirements available to the department.

2. The client's rights shall not be considered abridged by this requirement.

E. Procedures shall address the following.

1. Confidentiality of Records

a. A provider shall maintain the confidentiality of all clients' records. Employees of the facility shall not disclose or knowingly permit the disclosure of any information concerning the client or his/her family, directly, or indirectly, to any unauthorized person.

b. A provider may use material from records for teaching and research purposes, if names are deleted and other identifying information is disguised or deleted.

2. Release of Information

a. A provider shall obtain the client's or legal representative's written, informed permission prior to releasing any information from which the client or his/her family might be identified, except to the department.

b. Identifying information may be given to appropriate authorities in cases of an emergency.

c. The provider shall have a procedure by which representatives or family of clients is given an opportunity to receive information about the individual client in care of the facility.

3. Publicity

a. A provider shall have written policies and procedures regarding the photographing and audio or audiovisual recordings of clients.

b. No client shall be photographed or recorded without the client's prior informed, written consent. Such consent cannot be made a condition for admission into, remaining in, or participating fully in the activities of the facility.

i. Consent agreements must clearly notify the client of his/her rights under this regulation, must specify precisely what use is to be made of the photograph or recordings, and are valid for a maximum of one year from the date of execution.

ii. Clients are free to revoke such agreements at any time, either orally or in writing.

c. All photographs and recordings shall be used in a way that respects the dignity and confidentiality of the client.

F. Personnel Policies. A provider shall have written personnel policies 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 which provide for staff, upon offer of employment, to have a health assessment as defined in the provider's policy and procedures.

a. These policies shall, at a minimum, require that the individual has no evidence of active tuberculosis and that staff shall be retested on a time schedule as mandated by the Office of Public Health. Test results dated within one year

prior to the offer of employment are acceptable for initial employment;

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter C. Admissions, Transfers and Discharges

§7235. Admissions

A. The facility shall have a clear and specific written description of admission policies and procedures. This written description shall include, but is not limited to the following:

1. the application process and the possible reasons for the rejection of an application;
2. types of clients suitable to the FSTRA facility;
3. services offered and allowed in the facility; and
4. the facility's house rules.

B. Intake Evaluation

1. An intake evaluation shall take place on the first day of admission and shall include the client's:

- a. demographic data;
- b. family information; and
- c. psychiatric and social background.

2. All of the facility's rules and regulations shall be reviewed with the client. A complete clothing inventory shall be completed and the client shall be assigned to a room.

C. Nursing Assessment

1. The nurse shall complete a nursing assessment and review the client's medication(s). The client's medication administration records shall contain a detailed description of the client's:

- a. medication;
- b. dosage(s) of medication;
- c. frequency medications should be taken; and
- d. ability to self-administer medications.

D. Diagnostic Evaluation

1. The diagnostic evaluation shall include examination of the medical, psychosocial, social, behavioral and developmental aspects of the client's situation and reflect the need for services from an FSTRA facility.

2. Each medical evaluation shall include:

- a. diagnoses;
- b. summary of medical findings;
- c. medical history;
- d. mental and physical functional capacity;
- e. prognosis; and
- f. physician's recommendations.

E. An individualized plan of care for each client shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plan. The plan to be followed in the event of emergency situations shall be specified in the plan of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7237. Mandatory Transfers and Discharges

A. The administrator/director shall, in coordination with the client, forensic aftercare provider, Community Forensic Service, and state level forensic coordinator (as appropriate), assist in planning and implementing the mandatory transfer or discharge of the client when:

1. the treatment plan goals and objectives are substantially met and a crisis relapse/prevention plan is developed and support systems are in place that allow the client to reside safely in a less restrictive environment;

2. the client's physician certifies that the client's physical condition necessitates transfer to a medical facility or psychiatric condition necessitates transfer to a higher level of care; or

a. In this situation, plans for transfer must be made as soon as possible.

3. the client's condition is such that he or she is:

- a. a danger to self or others; or
- b. is consistently disruptive to the peace and order of the facility, staff services, or other clients.

B. Emergency Discharge. The provider shall immediately report to the Community Forensic Service, probation officer, state level forensic coordinator, and provider(s) of behavioral health services any program violations (i.e. illegal drugs, suspected or confirmed weapon possession or access, gross deterioration of behavior, or non-compliance with medication). The provider in collaboration with the probation officer and community forensic staff, as appropriate, will be responsible for the relocation of the client to an appropriate secure placement.

C. The facility shall initiate outpatient services for the client upon discharge and provide consultation to the client concerning where to obtain necessary medications, resources and follow-up outpatient behavioral health services.

D. Discharge Records

1. The following discharge information shall be recorded in the client's record:

- a. date of discharge;
- b. destination; and,
- c. reason(s) for leaving.

2. Discharge records shall be retained for at least three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter D. Participation Requirements

§7241. Assessment, Service Coordination, and Monitoring

A. Once the client is admitted, the FSTRA facility shall conduct an assessment to determine the needs of the client. The assessment shall be kept in the client's record and shall at a minimum, include:

1. the client's interests, likes and dislikes;
2. review of physical health, psycho-social status, and cognitive status and the determination of services necessary to meet those needs;

3. a summary of the client's health needs, if any, including medication, treatment and special diet orders obtained from professionals with responsibility for the client's physical or emotional health;

4. a written description of the activities of daily living and instrumental activities of daily living for which the client requires assistance, if any, obtained from the client or the client's physician;

5. recreational and social activities which are suitable;

6. a plan for handling special emergency evacuation needs, if any; and

7. additional information or documents pertinent to the client's treatment planning, such as guardianship papers, power of attorney, living wills, do not-resuscitate orders, or other relevant medical documents.

B. Within 30 days after admission, the facility, with input from the client, shall develop a service plan using information from the assessment.

C. The service plan shall be responsive to the client's needs and preferences. The service plan shall include:

1. the client's needs;

2. the scope, frequency, and duration of services and monitoring that will be provided to meet the client's needs; and

3. staff/providers responsible for providing the services.

D. The client's service plan shall be revised when a client's condition changes. The revised service plan shall be signed by the client and the designated facility staff.

E. The service plan shall be monitored on an ongoing basis to determine its continued appropriateness and to identify when a client's condition or preferences have changed. A documented review of the service plan shall be made at least every quarter. However, changes to the plan may be made at any time, as necessary.

F. All service plans and reviews shall be signed by the client and facility staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7243. Personal and Supportive Services

A. The facility shall provide adequate services and oversight/supervision, including adequate security measures, around the clock as needed for any client.

B. Medications

1. The provider shall have clear written policies and procedures on medication assistance.

2. The provider shall assist clients in the self-administration of prescription and non-prescription medication as agreed to in their contract or service plan and as allowed by state statute/regulations.

3. Assistance with self-administration of medications shall be limited to the following.

a. The client may be reminded to take his/her medication.

b. The medication regimen, as indicated on the container, may be read to the client.

c. The dosage may be checked according to the container label.

d. The staff may open the medicine container (i.e. bottle, mediset, blister pak, etc.) if the client lacks the ability to open the container.

e. The client may be physically assisted in pouring or otherwise taking medications, so long as the client is cognitive of what the medication is, what it is for and the need for the medication.

4. An employee that provides assistance with the self-administration of medications to a client shall have documented training on the policies and procedures for medication assistance including the limitations of this assistance. Documentation shall include the signature of the employee. This training shall be repeated at least annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7245. Nutrition

A. The facility shall provide three varied, appetizing meals a day, seven days a week. Meals shall take into account clients' preferences and needs.

B. Menus shall be planned and written at least one week in advance and dated as served. The current week's menu shall be posted in one or more conspicuous places in the facility.

C. The facility shall provide medically prescribed diets as ordered by the client's physician. These menus shall be planned or approved by a registered dietician.

D. The provider shall purchase and provide to the clients only food and drink of safe quality. The storage, preparation and serving techniques shall ensure that nutrients are retained and spoilage is prevented. Milk and milk products shall be Grade A and pasteurized.

E. Staff shall be available in the dining area to provide supervision as needed.

F. Written reports of inspections by the Department of Health and Hospitals, Office of Public Health, Sanitarian Services shall be kept on file in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7247. Transportation Requirements

A. The provider shall have the capacity to provide or to arrange transportation for the following:

1. transportation to behavioral health services (i.e., community mental health center or addictive disorder clinic); and

2. all other related medical appointments.

B. The FSTRA facility must:

1. have liability insurance coverage and have proof of such coverage; and

2. conform to all state laws and regulations pertaining to drivers, vehicles and insurance.

C. The number of occupants allowed in a car, bus, station wagon, van, or any other type of transportation shall not exceed the number for which the vehicle is designed.

D. Provisions shall be made to accommodate clients who use assistive devices for ambulation.

E. Each vehicle shall be maintained in good repair.

F. If the center contracts with a commercial proprietor for transportation, it shall select one with a good reputation and reliable drivers. All rules established for transportation furnished by the center shall be observed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter E. Client Protection

§7251. Client Rights

A. A provider shall have a written policy on clients' civil rights and the practices of the provider shall assure that no client of a facility shall be deprived of civil or legal rights, benefits or privileges guaranteed by law or the Constitution of the United States solely by reason of status as a client of a facility. A copy of these rights shall be posted conspicuously in the facility.

B. In addition to the basic rights enjoyed by other adults, the provider's written policy on rights shall assure that clients shall be afforded the rights enumerated in R.S. 28:171.

C. The client shall receive, upon admission and during his/her stay, a written statement of the services provided by the facility and the charges for these services.

D. The client shall be free from mental, emotional, and physical abuse and neglect and assured that no chemical restraints will be used.

E. The facility shall ensure that records and other information about the client are kept confidential and released only with a client's expressed written consent or in accordance with Louisiana law.

F. The facility shall ensure that the client:

1. receives a timely response to a request from the administrator/director and/or staff;

2. has access to private telephone communication;

3. is able to send and receive mail promptly and unopened;

4. is notified in writing by the provider when the facility's license status is suspended, revoked or limited, and to be informed of the basis of the licensing agency's action;

5. is allowed to select a health care provider and arrange for the services, at his/her own expense, which are not available through the facility as long as the client remains in compliance with the conditions of his/her admission to the facility;

6. is encouraged and assisted to exercise rights as a citizen;

7. is allowed to voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal;

8. is fully informed of all client rights and all rules governing client conduct and responsibilities; and

9. is allowed to consult freely with counsel of their choice.

G. Each client shall be fully informed of these rights and of all rules and regulations governing client conduct and responsibilities, as evidenced by written acknowledgment, prior to or at the time of admission and when changes occur.

1. Each client's file shall contain a copy of the written acknowledgment which shall be signed and dated by the director or his/her designee, the client and/or representative.

H. A provider shall establish and have written grievance procedures that include, but are not limited to:

1. a formal process to present grievances; and

2. a process to respond to grievances in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter F. Facility Responsibilities

§7255. General Provisions

A. Providers shall comply and show proof of compliance with all relevant standards, regulations and requirements established by state, local, and municipal regulatory bodies. It is the provider's responsibility to secure the approvals from the following entities:

1. DHH, Health Standards Section;

2. Office of Public Health;

3. Office of State Fire Marshal;

4. City Fire Department, if applicable; and,

5. the applicable local governing authority (e.g., Zoning, Building Department or Permit Office).

B. The administrator/director or person authorized to act on behalf of the administrator/director shall be accessible to facility staff or designated representatives of DHH at all times.

C. A provider shall have an administrative file that includes:

1. the Articles of Incorporation or certified copies thereof, if incorporated, or partnership documents, if applicable;

2. a current copy of the approved constitution and/or bylaws of the governing body;

3. a current roster of the governing body membership which includes the members' addresses;

4. written policies and procedures approved by the owner/governing body that address the following:

a. confidentiality and security of files;

b. publicity;

c. personnel;

d. client's rights;

e. grievance procedure;

f. safekeeping of personal possessions, if applicable;

g. clients' funds, if applicable;

h. emergency and evacuation procedures;

i. abuse and neglect;

j. critical incidents;

k. admissions and discharge procedures; and

l. medication.

5. the minutes of formal governing body meetings;

6. an organizational chart of the provider;

7. all leases, contracts and purchase-of-service agreements to which the provider is a party, which includes all appropriate credentials;

8. insurance policies:

a. every provider shall maintain in force at all times a comprehensive general business insurance policy or policies in an amount adequate to cover all foreseeable occurrences. The insurance shall include coverage for any:

i. personal or professional negligence,

malpractice or misconduct by facility owners or employees;

ii. injuries received by any client while being transported by facility staff or third-party contractors; and

iii. injuries sustained by any client while in the facility; and

b. the policies shall be without limitations or exclusions of any kind; and

9. copies of Incident/Accident Reports.

D. An FSTRA facility shall maintain a personnel record for each employee. At a minimum, this file shall contain the following:

1. the application for employment and/or résumé of education, training, and experience;
 2. evidence of a criminal history check prior to an offer of employment, in accordance with state law;
 3. evidence of applicable professional credentials or certifications according to state law;
 4. documentation of Tuberculosis test results and any other provider required medical examinations;
 5. documentation of three reference checks;
 6. annual performance evaluation;
 7. the employee's hire and termination dates;
 8. documentation of orientation and annual training;
- and
9. documentation of a valid driver's license if driving or transporting clients.

E. A provider shall not release an employee's personnel record without the employee's written permission, except as required by state law.

F. A provider shall have a personnel record for each employee to be kept on the premises or at the corporate office. These records shall be made available and accessible to the survey staff within one hour of request by department surveyors.

1. All records shall be maintained in an accessible, standardized order and format, and shall be retained and disposed of in accordance with state laws.

2. A provider shall have sufficient space, facilities and supplies for providing effective record keeping services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7257. Core Staffing Requirements

A. Each FSTRA facility shall be staffed to properly safeguard the health, safety and welfare of the clients, as required by these regulations. At a minimum, the following staff positions are required; however, one person may occupy more than one position.

B. Administrator/Director

1. Each facility shall have a qualified administrator/director who is an on-site employee and is responsible for the day-to-day management, supervision and operation of the facility.

2. During periods of temporary absence of the administrator/director, there shall be a responsible staff person designated to be in charge that has the knowledge and responsibility to handle any situation that may occur.

3. There shall be a responsible staff person designated to be in charge on the premises of the FSTRA facility 24 hours per day.

4. The administrator/director shall be at least 21 years of age and have the responsibility and authority to carry out the policies of the facility.

5. The administrator/director shall meet one of the following criteria upon date of hire:

a. possess a bachelor's degree plus one year of administrative experience in the fields of health care, behavioral health services, or forensics;

b. possess an associate's degree plus two years of administrative experience in the fields of health care, behavioral health services, or forensics; or

c. in lieu of a degree, possess six years of administrative experience in health care, behavioral health services, or forensics.

6. Documentation of the administrator/director's qualifications shall be maintained on file at the facility.

C. Nursing Services

1. The facility shall provide a sufficient number of nursing service personnel consisting of registered nurses, licensed practical nurses and other staff to provide nursing care to all clients in accordance with the client's treatment plan.

2. Registered Nurse (RN). An FSTRA facility shall employ or contract with at least one RN who is responsible for the overall delivery and supervision of nursing services.

a. The RN must be currently licensed by, and in good standing with, the state of Louisiana and must comply with all requirements, including continuing education requirements, as established by law or regulation. No individual who is unlicensed may be employed as an RN.

b. The RN shall:

i. be on-site or available by telephone during the day time hours of the facility;

ii. develop policies and procedures related to the delivery of nursing services; and

iii. provide medication management through administration, supervision, education and training.

3. Licensed Practical Nurse (LPN). An FSTRA facility shall employ or contract with LPNs to meet the nursing needs of the clients.

a. The LPN must be currently licensed by, and in good standing with, the state of Louisiana and must comply with all requirements, including continuing education requirements, as established by law or regulation. No individual who is unlicensed may be employed as a LPN.

b. LPNs may administer medication and deliver nursing services as provided by Louisiana law or applicable regulations.

D. Direct Care Staff

1. An FSTRA facility must ensure that an adequate number of trained direct care staff is available to meet the needs of the clients in accordance with the client's scheduled and unscheduled needs.

2. Direct care staff may include care assistants, activities personnel, or other staff who clearly provide direct care services to clients on a regular basis.

3. Direct care staff shall have the following qualifications:

a. a minimum of a high school diploma and six months of experience working with adults with a serious and persistent behavioral health diagnosis; or

b. two years of experience working with adults with a serious and persistent behavioral health diagnosis.

3. An FSTRA facility shall have at least two direct care staff on duty when there is at least one client at the facility.

4. An FSTRA facility shall demonstrate that sufficient staff are scheduled and available (working) to meet the 24-hour scheduled and unscheduled needs of the clients. The

provider shall have at a minimum, one direct care staff person to every 15 clients.

5. An FSTRA facility shall not share direct care staff with another licensed facility. (Staff cannot fill two staff positions on the same shift at different licensed facilities.)

E. An FSTRA facility shall maintain a current work schedule for all employees, including relief workers, showing adequate coverage for each day and night.

F. FSTRA facility professional staff shall be licensed and/or certified by, and in good standing with, the state of Louisiana. The license shall be unrestricted. Professional staff must comply with all requirements, including continuing education requirements, as established by law or regulation.

G. Designated Recreational/Activity Staff. There shall be an individual designated to organize and oversee the recreational and social program of the facility.

H. An FSTRA facility must provide, as needed, consultation(s) with a registered dietician.

I. Staff Orientation and Training

1. During the first week of hire and prior to providing services to clients, the provider shall provide a 20-hour documented orientation including, but not limited to the following:

- a. the policies and procedures of the facility, including program components;
- b. emergency and evacuation procedures;
- c. training in proper fire and emergency safety procedures including:
 - i. CPR;
 - ii. the Heimlich Maneuver;
 - iii. first aid;
 - iv. crisis management; and
 - v. risk reduction;
- d. effective communication skills for forensic, behavioral health clients;
- e. confidentiality and HIPPA requirements;
- f. trainings and intervention programs as deemed appropriate and mutually agreed upon by Community Forensic Services and the state level forensic coordinator;
- g. client's rights; and
- h. procedures and requirements regarding the reporting of abuse, neglect and critical incidents.

2. Orientation for direct care staff shall include an additional five days of supervised training. Training, at a minimum, shall include the following:

- a. training in client care services (ADL'S & IADL's) provided by the facility;
- b. infection control to include blood borne pathogens;
- c. crisis de-escalation and the management of aggressive behavior including acceptable and prohibited responses; and
- d. any specialized training to meet clients' needs.

3. A new employee shall not be given sole responsibility for the implementation of a client's program plan until this orientation and training is completed.

a. The staff member shall sign a statement certifying that such training has occurred and this shall be maintained in the staff members personnel file.

4. Orientation and five days of supervised training shall meet the first year's annual training requirements.

5. All direct care staff shall receive certification in adult first aid within the first 30 days of employment.

J. Annual Training

1. A provider shall ensure that each direct care worker participates in in-service training each year. Normal supervision shall not be considered as meeting this requirement.

2. The provider shall document that direct care staff receives training on an annual basis in:

- a. the facility's policies and procedures;
- b. emergency and evacuation procedures;
- c. client's rights;
- d. the procedures and legal requirements concerning the reporting of abuse and critical incidents;
- e. client care services (ADL'S & IADL'S);
- f. infection control to include blood borne pathogens; and
- g. any other areas that may require specialized training to meet clients' needs.

3. All direct care staff shall have documentation of current certification in first aid.

4. The administrator/director shall participate annually in at least 12 hours of continuing education in the field of behavioral health and specialized training in the population served and/or supervisory/management techniques.

5. Each employee shall sign a statement of understanding certifying that annual training has occurred.

K. An employee's Annual Performance Evaluation shall include his/her interaction with clients, family, staff, and other providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7259. Client Records

A. An FSTRA facility shall maintain a separate record for each client. Such records shall be current and complete and shall be maintained in the facility or in a central administrative location readily available to facility staff and to the department.

B. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws.

C. The facility shall have sufficient space, facilities, and supplies for providing effective record keeping services.

D. The facility shall have a storage area that ensures the safeguarding of all client records and prevents loss from, including but not limited, to fire or water.

E. Each record shall contain at least the following information:

1. the client's identifying and personal information including:
 - a. the client's name;
 - b. date of birth;
 - c. sex;
 - d. Social Security number;
 - e. previous home address; and
 - f. marital status, if applicable;
2. dates of admission and discharge;
3. names, addresses, and telephone numbers of responsible persons to be notified in case of accident, death or other emergency;

4. name, address, and telephone number of a physician and dentist to be called in an emergency;

5. ambulatory status;

6. the client's plan/authorization for routine and emergency medical care, as required;

7. the client's written authorization for a representative and their name, address and telephone number, if applicable;

8. the pre-admission assessment by a forensic physician and admission agreement;

9. findings of the assessment and any special problems or precautions identified;

10. the service plan, updates, and quarterly reviews;

11. continuing record of any illness, injury or medical or dental care when it impacts the client's ability to function or the services he/she needs;

12. a record of all personal property and funds which the client has entrusted to the facility;

13. reports of any client complaints or grievances and the conclusion or disposition of these reports;

14. incident reports; and

15. written acknowledgments that the client has received clear verbal explanations and:

a. copies of his/her rights and the house rules;

b. written procedures for safekeeping of valuable personal possessions of clients; and

c. a written statement explaining the client's rights regarding personal funds and the right to examine his/her record.

F. All information and records obtained from or regarding clients shall be stored and kept confidential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7261. Abuse and Neglect

A. The provider shall have comprehensive written procedures concerning client abuse and neglect to include provisions for:

1. training and maintaining staff awareness of abuse prevention, current definitions of abuse and neglect, reporting requirements and applicable laws;

2. ensuring that regulations stipulated in this rule for reporting critical incidents involving abuse and neglect are followed;

3. ensuring that the administrator/director completes an investigation report within 10 working days;

4. ensuring that the client is protected from potential harassment during the investigation;

5. disciplining staff members who abuse or neglect clients; and

6. protecting clients from abuse inflicted by other clients or third parties, including but not limited to, criminal prosecution of the offending person and his/her permanent removal from the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7263. Critical Incidents

A. A provider shall have written procedures for the reporting and documentation of unusual incidents and other situations or circumstances affecting the health, safety or well-being of a client(s) (i.e. death by unnatural causes,

injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect).

1. Such procedures shall ensure timely verbal reporting to the director or designee and a preliminary written report within 24 hours of the incident.

2. Copies of all critical incident reports shall be kept as part of the client's record and a separate copy shall be kept in the administrative file of the provider.

B. Incident/Accident Report. When and if an incident occurs, a detailed report of the incident shall be made. At a minimum, the incident report shall provide documentation of the following:

1. the circumstances under which the incident occurred;

2. the date and time the incident occurred;

3. the location where the incident occurred (bathroom, bedroom, street, lawn, etc.);

4. immediate treatment and follow-up care;

5. the names and addresses of witnesses;

6. the date and time the family or representative was notified;

7. any symptoms of pain and injury discussed with the physician; and

8. the signatures of the staff completing the report, client, and director.

C. When an incident results in the death of a client, involves abuse or neglect of a client or entails any serious threat to the client's health, safety or well-being, a provider shall:

1. immediately report the incident verbally to the Administrator and submit a preliminary written report within 24 hours of the incident;

2. immediately notify the Department of Health and Hospitals, Health Standards Section, and other appropriate authorities in accordance with state law, with written notification to the above agencies to follow within 24 hours of the suspected incident;

3. immediately notify the family or the client's representative, with written notification to follow within 24 hours;

4. immediately notify the appropriate law enforcement authority in accordance with state law;

5. provide follow-up written reports to all of the persons and agencies identified in this §7261.C;

6. take appropriate corrective action to prevent future incidents; and

7. document its compliance with all of the above procedures for each incident and shall keep such documentation (including any written reports or notifications) in the client's file. A separate copy of all such documentation shall be kept in the provider's administrative file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7265. Personal Possessions

A. An FSTRA facility may, at its discretion, offer to clients the service of safekeeping their valuable possessions. The facility shall have a written statement of its policy.

B. If the facility offers such a service, a copy of the written policy and procedures shall be given to a client at the time of his/her admission.

C. The facility shall give the client a receipt listing each item that it is holding in trust for the client. A copy of the receipt shall be placed in the client's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7267. Client Funds

A. The facility's admission agreement shall include the client's rights regarding personal funds and list the services offered and charges, if any.

B. The provider shall offer safekeeping and management of a client's funds. If a client chooses to entrust funds with the provider, the provider shall obtain written authorization from the client and/or his/her representative for the safekeeping and management of the funds.

C. The provider shall:

1. provide each client with an account statement on a quarterly basis with a receipt listing the amount of money the facility 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 the funds received from the client in a separate interest-bearing account; and

6. not commingle the clients' funds with the facility's operating account.

D. The facility shall have and implement written policies and procedures to protect client funds.

E. 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 representative, as agreed upon in the admission agreement, with a complete account statement of the client's funds and personal property of the client being held by the provider.

F. A client with a personal fund account managed by an FSTRA facility may sign an account agreement acknowledging that any funds deposited into the personal account by, or on the client's behalf, are jointly owned by the client and his legal representative or next of kin. The account agreement must 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, for 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 monetary instrument to the order of any joint owner, for deposit into the account.

G. If a valid account agreement has been executed by the client, upon the client's death, the facility 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.

H. If a valid account agreement has not been executed, upon the client's death, the facility 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 facility shall abide by the procedures of the Louisiana Department of the Treasury and the Louisiana Uniform Unclaimed Property Act for the handling of funds of a deceased client that remain unclaimed.

I. 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.

J. 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7269. Contraband

A. There shall be no contraband, illegal drugs, or controlled dangerous substances that are not prescribed to a client on the campus of the facility. Clients may be subjected to random periodic drug testing as a requirement for residency at the facility. A positive drug test will be reported to the attending psychiatrist and the applicable court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter G. Safety and Emergency Preparedness

§7271. General Provisions

A. An FSTRA facility shall have an emergency preparedness plan designed to manage the consequences of natural disasters or other emergencies that could disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the clients and/or the community it serves. The emergency preparedness plan shall be made available, upon request or if mandated to do so, to local, parish, regional and/or state emergency planning organizations, the department and the Office of the State Fire Marshal.

B. At a minimum, the emergency preparedness plan shall include:

1. identification of potential hazards that could necessitate an evacuation, including internal and external disasters such as a natural disaster, acts of bioterrorism, weapons of mass destruction, labor work stoppage or industrial or nuclear accidents;

2. emergency procedures for evacuation of the facility;

3. procedures in the case of interruption of utility services in a way that affects the health and safety of clients;

4. identification of the facility and an alternate facility to which evacuated clients would be relocated;

5. the estimated number of clients and staff that would require relocation in the event of an evacuation;

6. the system or procedure to ensure that medical charts accompany clients in the event of a client evacuation

and that supplies, equipment, records and medications would be transported as part of an evacuation; and

7. the roles and responsibilities of staff members in implementing the disaster plan.

C. An FSTRA facility shall conduct and document fire drills once per month, one drill per shift every 90 days, at varying times of the day.

D. An FSTRA facility shall immediately notify the Health Standards Section and other appropriate agencies of any fire, disaster or other emergency that may present a danger to clients or require their evacuation from the facility.

E. The facility shall have access to 24-hour telephone service, and shall either post telephone numbers of emergency services, including the fire department, police department, medical services, poison control and ambulance services or show evidence of an alternate means of immediate access to these services.

F. General Safety Practices

1. The facility shall not maintain any firearm or chemical weapon in the living units of the facility.

2. The facility shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in a manner that ensures the safety of clients, staff and visitors.

3. The facility shall ensure that an appropriately equipped first aid kit is available in the living units and in all vehicles used to transport clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter H. Physical Environment

§7275. General Provisions

A. Location

1. The area to be licensed as an FSTRA facility shall meet all of the licensing regulations established for FSTRA facilities.

2. An FSTRA facility that is located within any other facility shall be secure and have its own identifiable staff, space and storage. The FSTRA facility shall have a separate entrance, separate dining area and separate common areas.

B. General Appearance and Conditions

1. Heating, cooling and ventilation systems shall permit comfortable conditions.

2. Furniture in good repair shall be available to facilitate usage by the number of clients in the facility.

3. The facility shall have sufficient space and equipment to accommodate the full range of program activities and services.

4. The facility shall be flexible and adaptable for large and small groups and individual activities and services.

5. There shall be sufficient office space to permit staff to work effectively and without interruption.

6. There shall be adequate storage space for program and operating supplies.

C. Interior Space

1. Floors and steps shall have a non-slippery surface and be dry when in use by the clients.

2. Doorways and passageways shall be kept clear to allow free and unhindered passage.

3. The facility shall provide an appropriate controlled-egress system on all required exit doors and doors leading to other areas of the facility unless prior approval of an alternative method for prevention of client elopement from the facility has been obtained from the authority (Office of the State Fire Marshal) having jurisdiction over such matters.

4. All staff shall have a key to locked exit doors.

5. All operable windows shall be equipped with a mechanism to limit exterior openings to prevent elopement.

6. Windows used for ventilation to the outside and exterior doors used for ventilation shall be screened and in good repair.

7. The facility shall be constructed, equipped, and maintained in good repair and kept free of hazards.

8. The facility shall have sufficient storage space for administration records, locked areas for medications, cleaning supplies (janitorial), food service (supplies) and lawn maintenance (equipment).

9. There shall be evidence of routine maintenance and cleaning programs in all areas of the facility.

10. The facility shall have an effective pest control program. Pest control services may be provided by maintenance personnel of the facility or by contract with a pest control company. If pest control chemicals are stored in the facility, they shall be kept in a locked location.

11. The facility shall have an area for the safe and secure maintenance and storage of medical records and other facility files, records and manuals.

D. Bedrooms

1. Single rooms must contain at least 100 square feet and multi-bed rooms shall contain at least 80 square feet per bed, exclusive of fixed cabinets, fixtures, and equipment. An existing state hospital that converts a building, unit or wing to an FSTRA facility shall contain a minimum of 65 square feet per bed in a multi-bed room.

2. Any client room shall not contain more than four beds.

a. Beds shall be of solid construction, appropriate to the size and age of the client and have a clean, comfortable, non-toxic fire-retardant mattress that fits the bed.

b. Cots or other portable beds are to be used in emergencies only.

3. Rooms shall have at least a 7 1/2 foot ceiling height over the required area.

a. In a room with varying ceiling heights, only portions of the room with a ceiling height of at least 7 1/2 feet are allowed in determining usable space.

4. There shall be at least three feet between beds.

5. There shall be sufficient and satisfactory separate storage space for clothing, toilet articles and other personal belongings of clients.

6. Doors to individual bedrooms shall not be equipped with locks or any other device that would prohibit the door from being opened from either side.

7. The provider shall not use any room that does not have a window as a bedroom space.

8. The facility shall provide sheets, pillows, bedspreads and blankets that are in good repair for each client. Linens not in good repair shall not be used.

9. Each client shall have his/her own dresser or other adequate storage space for private use and designated space

for hanging clothing in proximity to the bedroom occupied by the client.

10. The facility shall not have male and female clients at the same location.

E. Bathrooms

1. The number of toilets and hand-washing facilities shall be not less than one for each 13 clients.

2. A facility shall have wash basins with hot and cold water, flush toilets, and bath or shower facilities with hot and cold water according to client care needs.

3. Bathrooms shall be so placed as to allow access without disturbing other clients during sleeping hours.

4. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene, unless clients are individually given such items.

a. Clients shall be provided individual items such as hair brushes and toothbrushes.

5. Tubs and showers shall have slip proof surfaces.

6. An FSTRA facility shall have toilets and baths or showers that allow for individual privacy, unless the clients in care require assistance.

7. Toilets, wash basins and other plumbing or sanitary facilities in an FSTRA facility shall, at all times, be maintained in good operating condition and shall be kept free of any materials that might clog or otherwise impair their operation.

8. The facility shall have separate toilet facilities for staff.

F. Furnishings

1. The facility shall be furnished so as to meet the needs of the clients. All furnishings and equipment shall be kept clean and in good repair.

2. Adequate furniture shall be available and shall be appropriate for use by the clients in terms of comfort and safety.

3. Furnishings must include tables and chairs sufficient in number to serve all clients.

G. Kitchen

1. An FSTRA facility that has a kitchen area shall meet all health and sanitation requirements and must be of sufficient size to accommodate meal preparation for the proposed number of clients.

2. Kitchens used for meal preparations shall have the equipment necessary for the preparation, serving and storage and clean up of all meals regularly served to all of the clients and staff. All equipment shall be maintained in proper working order.

3. An FSTRA facility's refrigerator(s) shall be maintained at a temperature of 45 degrees Fahrenheit or below. Freezers shall be maintained at a temperature of 0 degrees Fahrenheit or below. Thermometers shall be provided for all refrigerators and freezers. The facility shall maintain logs of temperatures of the refrigerator and freezers. Abnormal temperatures shall be reported to management and arrangements made for repair/service.

4. The facility shall ensure that all dishes, cups and glasses used by clients are free from chips, cracks or other defects and are in sufficient number to accommodate all clients.

5. If food is prepared in a central kitchen and delivered to the facility, provisions shall be made and approved by the Department of Health and Hospitals, Office of Public Health, Sanitarian Services for proper maintenance of food temperatures and a sanitary mode of transportation.

H. Medication Storage and Monitoring

1. The facility shall have policies and procedures for the storage, administration and disposal of both prescription and over-the-counter medications.

2. There shall be a designated secure area for the storage and preparation of medications.

3. Medications that require refrigeration shall be stored in a separate refrigerator (not with food, beverages, etc.).

4. The FSTRA shall have a process for monitoring the inventory and reconciliation of controlled substances. The process shall include the reporting of lost or missing medications in accordance with the Louisiana State Board of Pharmacy.

5. Medications may be administered from a central area of the facility.

I. Laundry

1. An FSTRA facility shall provide for laundry services, either on-site or at an off-site location that is adequate to handle the needs of the clients.

2. If on-site, laundry facilities shall be located in a specifically designated area and there shall be adequate rooms and spaces for sorting, processing, and storage of soiled material.

3. Laundry rooms shall not open directly into client common areas or food service areas.

4. Domestic washers and dryers that are for the exclusive use of clients may be located in client areas, provided they are installed in such a manner that they do not cause a sanitation problem.

J. Water Supply

1. An adequate supply of water, under pressure, shall be provided at all times.

2. Clean sanitary drinking water shall be available and accessible in adequate amounts at all times. Disposable cups, if used, shall be stored in such a way as to prevent contamination.

3. When a public water system is available, a connection shall be made thereto. If water from a source other than a public water supply is used, the supply shall meet the requirements set forth under the rules and regulations of the Office of Public Health (OPH).

4. The facility shall have a plan and policy for an alternative water supply in the event of interruption of water supply and for the prolonged loss of water.

K. All sewage shall be disposed of by means of either:

1. a public system where one is accessible within 300 feet; or

2. an approved sewage disposal system that is constructed and operated in conformance with the standards established for such systems by OPH.

L. Facility Exterior

1. The provider shall maintain all areas of the facility that are accessible to the clients in good repair and free from any reasonably foreseeable hazard to health or safety.

2. All structures on the grounds of the facility shall be maintained in good repair.

3. Garbage and rubbish stored outside shall be secured in noncombustible, covered containers and shall be removed on a regular basis.

4. Fences shall be in good repair and constructed in such a way as to provide security.

5. Areas determined unsafe, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced or have natural barriers to protect clients.

6. Clients shall have access to safe, suitable outdoor recreational space.

7. The facility shall ensure that exterior areas are well lit at night.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter I. Secure Community Supervised Transitional/Residential Facility Module

§7279. General Provisions

A. Providers applying for the Secure Community Supervised

Transitional/Residential (SCSTR) Facility module under the FSTRA facility license shall meet the core licensing requirement as well as the following module specific requirements.

B. A secure community supervised transitional/residential facility is a secure residential facility within the community that provides individualized services to develop daily living skills and to prepare for vocational adjustment and reentry into the community, to persons who are under a court-ordered forensic conditional release and who are referred by a state forensic hospital or state forensic psychiatric unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7281. Operational Requirements

A. Staff Requirements

1. The FSTRA–SCSTR facility shall provide 24-hour, seven day per week “supervision” consisting of at least three direct care staff persons during the day, one of which must be a licensed nurse and at least two awake staff during the night.

2. The FSTRA-SCSTR facility shall have a licensed nurse on call when there are no licensed nurses on duty at the facility.

B. Admissions. The SCSTR facility shall:

1. only accept clients referred by DHH state forensic facilities or those who are under a court-ordered forensic conditional release;

2. admit only those clients who have the ability to self administer medications and provide for their own personal care needs;

3. not admit more clients into care than the number specified on the FSTRA facility’s license; and

4. provide contact information, including the telephone number and mailing address, for the appropriate state protection and advocacy organization.

C. Medication Administration

1. The facility shall have clear written policies and procedures on medication self-administration.

2. The facility shall assist clients in the self-administration of prescriptions and non-prescription medication according to the client’s service plan and as allowed by state laws and regulations.

3. Assistance with self-administration of medication shall be limited to the following:

a. the client may be reminded to take his/her medication;

b. the medication regimen, as indicated on the container, may be read to the client;

c. the dosage may be checked according to the container label;

d. staff may open the medicine container (i.e. bottle, mediset, blister pack, etc.) if the client lacks the ability to open the container; and

e. the client may be physically assisted in pouring or otherwise taking medications, so long as the client is cognitive of what the medication is, what it is for, and the need for the medication.

4. An employee that provides assistance with the self-administration of medications to a client shall have documented training on the policies and procedures for medication assistance including the limitations of this assistance. Documentation shall include the signature of the employee. This training shall be repeated at least annually.

5. Medications shall be stored in a secure central location and not stored in the client’s own room.

6. The facility may require the clients to come to a “medication” area to take their medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

Subchapter J. Secure Forensic Facility Module

§7285. General Provisions

A. Providers applying for the Secure Forensic (SF) Facility module under the FSTRA facility license shall meet the core licensing requirement as well as the following module specific requirements.

B. A secure forensic facility is a secure residential facility located on the grounds of a state hospital that provides individualized services, including personal care services and medication administration, to persons who are under a court order or court ordered forensic conditional release and who are referred by a state forensic hospital or state forensic psychiatric unit, in order to prepare such persons for transition to a less restrictive environment before transitioning to the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

§7287. Operational Requirements

A. The SF facility shall provide 24-hour, seven day per week “supervision” consisting of at least three direct care staff persons during the day and two awake staff during the night. There shall be at least two direct care staff persons in each building and/or unit at all times when clients are present.

1. The SF facility shall have an RN on duty during the day shift to oversee the nursing services of the facility.

2. The SF facility shall have at least one licensed nurse on duty for each shift.

3. The SF Facility shall provide for, either directly or through contract, a medical doctor on call.

B. Admission

1. The SF facility shall:

a. admit clients who are under a court order or court ordered forensic conditional release and who are referred by a DHH state forensic facility;

b. not admit more clients into care than the number specified on the FSTRA facility's license; and

c. provide contact information, including the phone number and mailing address, for the appropriate state protection and advocacy organization.

C. Client Services

1. The facility shall provide or coordinate, to the extent needed or desired by clients, the following services:

a. assistance with activities of daily living and all instrumental activities of daily living;

b. medication administration;

c. opportunities for individual and group socialization;

d. services for clients who have behavior problems requiring ongoing staff support, intervention, and supervision to ensure no danger or infringement of the rights of other clients or individuals;

e. household services essential for the health and comfort of clients (e.g. floor cleaning, dusting, bed making, etc.);

g. basic personal laundry services; and

h. a program of recreational activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:31 – 28:37.

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

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

Anthony Keck
Secretary

1009#072

DECLARATION OF EMERGENCY

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers

Children's Choice

Allocation of Waiver Opportunities

(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.11107 in

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department now proposes to amend the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services.

This action is being taken to secure enhanced federal funding. It is estimated that implementation of this Emergency Rule will result in an increase in expenditures in the Children's Choice Waiver Program by approximately \$2,270,233 for state fiscal year 2010-2011.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions

§11107. Allocation of Waiver Opportunities

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

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

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

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

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

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the Office for Citizens with Developmental Disabilities (OCDD) regional offices and human services authorities and districts as

needing more family support services than what is currently available through state funded family support services.

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

- a. be under 18 years of age;
- b. be designated by the OCDD regional office, human services authority or district as meeting priority level 1 or 2 criteria;
- c. be Medicaid eligible;
- d. be eligible for state developmental disability services; and
- e. meet the ICF/DD level of care.

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

- a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:
 - i. the individual's medical care needs;
 - ii. documented abuse or neglect of the individual;
 - iii. the individual's intense or frequent challenging behavioral needs; or
 - iv. death or inability of the caregiver to continue care due to their own age or health; or
 - v. the possibility that the individual may experience a health crisis leading to death, hospitalization or placement in a nursing facility.

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

3. Children who qualify for one of these waiver opportunities are not required to have a protected request date on the Developmental Disabilities Request for Services Registry.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 36:

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

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Anthony Keck
Secretary

1009#071

DECLARATION OF EMERGENCY

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

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice—Service Cap and Reimbursement Rate
Reduction (LAC 50:XXI.11301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the provisions governing the Children's Choice Waiver in a codified format for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 28, Number 9). Each participant in the Children's Choice Waiver has an annual service expenditure cap per plan of care year. The department amended the provisions governing the September 20, 2002 Rule in order to increase the annual service cap (*Louisiana Register*, Volume 33, Number 11). As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Children's Choice Waiver in order to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). The department also amended the provisions of the Children's Choice Waiver to clarify the family training service description and the components of this service that qualify for Medicaid payment (*Louisiana Register*, Volume 36, Number 2). The department amended the provisions of the January 22, 2010 Emergency Rule to revise the formatting as a result of the publication of the February 20, 2010 final Rule (*Louisiana Register*, Volume 36, Number 5).

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

which amended the provisions governing the Children's Choice Waiver to reduce the service cap and to further reduce the reimbursement rates paid for waiver services (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the provisions of the August 1, 2010 Emergency Rule governing the service cap in order to adjust the effective date of the service cap reduction. This action is being taken to ensure that adequate notification is provided to recipients who may be impacted by the service cap reduction.

Effective September 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the August 1, 2010 Emergency Rule governing the Children's Choice Waiver to adjust the effective date of the service cap reduction.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 113. Services

§11301. Service Cap

A. - B. ...

C. Effective September 1, 2010, Children's Choice Waiver services are capped at \$16,660 per individual per plan of care year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Chapter 121. Reimbursement

§12101. Reimbursement Methodology

A. - B.4.j.iv. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Children's Choice Waiver services shall be reduced by 4.75 percent of the rates on file as of January 21, 2010.

1. Support coordination services and environmental accessibility adaptations shall be excluded from this rate reduction.

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for Children's Choice Waiver services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

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

- a. ramps;
- b. lifts;
- c. general modifications;
- d. vehicle modifications;
- e. family training services; and
- f. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872

(September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), amended LR 36:

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

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

Anthony Keck
Secretary

1009#015

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers Supports Waiver—Reimbursement Rate Reduction (LAC 50:XXI.6101)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the Supports Waiver to implement a wage enhancement payment to providers for direct support professionals and amended the service provisions to include support coordination as a covered service (*Louisiana Register*, Volume 34, Number 4).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for Supports Waiver services to reduce the

reimbursement rates (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective September 21, 2010 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the Supports Waiver to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement Methodology

§6101. Reimbursement Methodology

A. - J. ...

K. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Supports Waiver services shall be reduced by 5.35 percent of the rates on file as of January 21, 2010.

1. Support coordination services and personal emergency response system (PERS) services shall be excluded from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

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.

Anthony Keck
Secretary

1009#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Home Health Program
Nursing and Home Health Aide Services
Reimbursement Rate Reduction
(LAC 50:XIII.701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIII.701 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 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is

directed to utilize various cost containment measures to ensure expenditures remain at 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, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed all prior Rules governing the reimbursement of home health services and adopted provisions which established a prospective reimbursement methodology for home health services and required prior authorization for medically necessary supplies used in the delivery of a home health service (*Louisiana Register*, Volume 22, Number 3). As a result of a budgetary shortfall, the reimbursement methodology for skilled nursing services was amended to establish a separate reimbursement rate when the nursing service is performed by a licensed practical nurse (*Louisiana Register*, Volume 27, Number 2).

As a result of a budgetary shortfall in state fiscal year 2010, the bureau promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for home health services to reduce the reimbursement rates paid for intermittent nursing and home health aide services (*Louisiana Register*, Volume 36, Number 2). The department repealed the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for home health services to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 9, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 9, 2010 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement of nursing and home health aide services covered under the Home Health Program to adjust the reimbursement rate reduction.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health

Subpart 1. Home Health Services

Chapter 7. Reimbursement Methodology

§701. Nursing and Home Health Aide Services

A. - A.4. ...

B. Reimbursement for intermittent nursing services and home health aide services is a prospective maximum rate per visit.

1. A separate reimbursement rate is established for nursing services at 80 percent of the rate in effect on January 31, 2000 when the nursing services are performed by a licensed practical nurse (LPN).

2. The rate in effect on January 31, 2000 continues to be paid when the nursing service is performed by a registered nurse (RN).

3. Effective for dates of service on or after February 9, 2010, the reimbursement rates for intermittent nursing services (performed by either a RN or LPN) and home health aide services shall be reduced by 5 percent of the rates in effect on February 8, 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 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

Anthony Kwak
Secretary

1009#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reduction
(LAC 50:V.953, 955, 959 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953, §955, §959, and adopts §967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act, and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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.

In anticipation of a budgetary shortfall in state fiscal year (SFY) 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 35, Number 5). As a result of the legislature allocating additional funds to lessen the impact of SFY 2010 budget reductions, the department repealed the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and amended the provisions governing inpatient hospital services to adjust the rate reductions (*Louisiana Register*, Volume 35, Number 8). The final Rule was published July

20, 2010 (*Louisiana Register*, Volume 36, Number 7). 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 continuing budgetary shortfall in SFY 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 1). The department subsequently promulgated an Emergency Rule which repealed the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for inpatient hospital services to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2). The department now proposes to amend the provisions of the February 3, 2010 Emergency Rule to revise the formatting of LAC 50:V.953, §955 and §959 as a result of the promulgation of the July 20, 2010 final Rule. This action is being taken to ensure that these provisions are appropriately adopted into the *Louisiana Administrative Code*.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services and children's specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 3, 2010 Emergency Rule governing the reimbursement methodology for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - M. ...

N. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

O. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to private hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:

§955. Long Term Hospitals

A. - E. ...

F. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:

§959. Inpatient Psychiatric Hospital Services

A. - G. ...

H. Effective for dates of service on or after February 3, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

I. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:

§967. Children's Specialty Hospitals

A. Routine Pediatric Inpatient Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period

ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

B. Inpatient Psychiatric Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by CMS beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants. Payment shall be the lesser of costs or the per diem limitation for each specialty service or type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each specialty or type of transplant per the cost reporting period ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each specialty or type of transplant multiplied times the per diem limitation for the period.

D. Children's specialty hospitals shall not be eligible for outlier payments after September 1, 2009.

1. Outlier payments made in SFY 2010 in excess of \$12,798,000 shall be considered as an interim payment in the determination of the cost settlement.

E. These provisions shall not preclude children's specialty hospitals from participation in the Medicaid Program under the high Medicaid or graduate medical education supplemental payment provisions.

1. All Medicaid supplemental payments shall be included as an interim Medicaid inpatient payment in the determination of cost settlement amounts on the filed cost report.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.A.-C above shall be reduced by 5 percent. Final payment shall be the lesser of 95 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 95 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

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

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

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.

Anthony Keck
Secretary

1009#070

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Pre-Admission Certification
(LAC 50:V.301)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50: V.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 repealed the December 20, 1985 Rule governing the reimbursement methodology and inpatient admission criteria for designated surgical procedures performed in an ambulatory (outpatient) setting, and amended the provisions of the June 20, 1994 Rule governing registration, length of stay assignments and pre-admission certification for inpatient hospital services to require pre-admission certification for all admissions to non-state and state operated acute care general hospitals (*Louisiana Register*, Volume 36, Number 1). The January 20, 2010 Rule also repromulgated the provisions contained in the June 20, 1994 Rule and a June 20, 2001 Rule governing pre-admission certification and length of stay assignments for inpatient psychiatric services for inclusion in the *Louisiana Administrative Code*.

The department determined that it was necessary to amend the provisions of the January 20, 2010 Rule to revise the provisions governing extensions of the initial length of stay assignment for inpatient hospital admissions (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 26, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients who rely on the services provided by acute care hospitals.

Effective September 25, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing pre-admission certification for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Pre-Admission Certification

§301. General Provisions

A. - F.2. ...

a. Subsequent approved extensions may be submitted for consideration referencing customized data, Southern Regional and national length of stay data.

F.3. - J.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:66 (January 2010), amended LR 36:

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

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

Anthony Keck
Secretary

1009#063

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Laboratory and Radiology Services
Reimbursement Rate Reduction
(LAC 50:XIX.4329 and 4334-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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 promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6). As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). The department now proposes to amend the provisions of the January 22, 2010 Emergency Rule to revise the formatting of LAC 50:XIX.4329 and §§4334-4337 as a result of the promulgation of the June 20, 2010 final Rule. This action is being taken to ensure that these provisions are appropriately incorporated into the Louisiana Administrative Code.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the January 22, 2010 Emergency Rule governing the reimbursement methodology for laboratory and radiology services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIX. Other Services

Subpart 3. Laboratory and Radiology

Chapter 43. Billing and Reimbursement

Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

A. - G. ...

H. Effective for dates of service on or after January 22, 2010, the reimbursement rates for laboratory services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:

§4334. Radiology Services

A. - F. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:

§4335. Portable Radiology Services

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for portable radiology

services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), LR 36:1248 (June 2010), LR 36:

§4337. Radiation Therapy Centers

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:

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.

Anthony Keck
Secretary

1009#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services
Reimbursement Rate Reduction
(LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing amends 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 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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 promulgated an Emergency Rule which amended the reimbursement methodology for emergency medical transportation services to reduce the reimbursement for disposable and routine supplies (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6). As a result of a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for emergency medical transportation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). The department now proposes to amend the provisions of the January 22, 2010 Emergency Rule to revise the formatting of LAC 50:XXVII.325 as a result of the promulgation of the June 20, 2010 final Rule. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the January 22, 2010 Emergency Rule governing the reimbursement methodology for emergency medical transportation reimbursement services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§325. Reimbursement

A. - F.2. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for emergency ambulance transportation services shall be reduced by 5 percent of the rate on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), LR 36:

Subchapter C. Aircraft Transportation

§353. Reimbursement

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 5 percent of the rate on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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.

Anthony Keck
Secretary

1009#068

DECLARATION OF EMERGENCY

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 proposes to amend LAC 50:XXVII.571 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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 amended the provisions governing the reimbursement methodology for emergency and non-emergency ambulance transportation services to increase the ground mileage and the ancillary services and repromulgated the existing provisions in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 34, Number 5).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency ambulance transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule. This action is necessary to avoid a budget deficit in the medical assistance programs.

Effective September 21, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency ambulance services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part. XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§571. Non-Emergency Ambulance Transportation

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the ground mileage and ancillary services reimbursement rates for non-emergency ambulance transportation services shall be reduced by 5 percent of the rate in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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.

Anthony Keck
Secretary

1009#059

DECLARATION OF EMERGENCY

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

Medical Transportation Program
Non-Emergency Medical Transportation
Reimbursement Rate Reduction
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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 and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing non-emergency medical transportation to increase the reimbursement rates (*Louisiana Register*, Volume 34, Number 5). As a result of a budgetary shortfall in state fiscal year 2010, the department

promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective September 21, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§573. Non-Emergency, Non-Ambulance Transportation

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 5 percent of the rates in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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.

Anthony Keck
Secretary

1000#058

DECLARATION OF EMERGENCY

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

Mental Health Rehabilitation Program
Reimbursement Rate Reduction
(LAC 50:XV.901)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to

ensure expenditures remain at 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, 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 promulgated an Emergency Rule which reduced the reimbursement rates paid for mental health rehabilitation services and established service limitations (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register* Volum 36, Number 6).

As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates paid for mental health rehabilitation services (*Louisiana Register*, Volume 36, Number 2). The department now proposes to amend the provisions of the January 22, 2010 Emergency Rule to revise the formatting of LAC 50:XV.901 as a result of the promulgation of the June 20, 2010 final Rule. This action is being taken to ensure that these provisions are appropriately incorporated into the Louisiana Administrative Code.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the January 22, 2010 Emergency Rule governing the reimbursement methodology for mental health rehabilitation services

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 9. Reimbursement

§901. Reimbursement Methodology

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Mental Health Rehabilitation services shall be reduced by 1.62 percent of the rates on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:

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.

Anthony Keck
Secretary

1009#067

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Multi-Systemic Therapy
Prior Authorization and
Reimbursement Rate Reduction
(LAC 50:XV.25305 and 25701)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.25305 and amends §25701 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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 promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for multi-systemic therapy (MST) to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing MST to further reduce the reimbursement rates and to establish prior authorization requirements (*Louisiana Register*, Volume 36, Number 2). The department now proposes to amend the provisions of the January 22, 2010 Emergency Rule to revise the formatting of LAC 50:XV.25701 as a result of the promulgation of the June 20, 2010 final Rule. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the January 22, 2010 Emergency Rule governing multi-systemic therapy.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 17. Multi-Systemic Therapy

Chapter 253. Services

§25305. Prior Authorization

A. Effective for dates of service on or after January 22, 2010, prior authorization is required for services in excess of 244 units or four months.

1. Proof of medical necessity must be submitted in accordance with department guidelines.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 36:

Chapter 257. Reimbursement

§25701. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 5 percent of the rates on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 35:245 (February 2009), amended LR 36:1250 (June 2010), amended LR 36:

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

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

Anthony Keck
Secretary

1009#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facility Minimum Licensing Standards
Nurse Aide Training and Competency Evaluation Program
(LAC 48:I.Chapter 100)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 100 in the Medical Assistance Program as authorized by R.S. 36:254. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing the Nurse Aide Training and

Competency Evaluation Program in Title 50 of the Louisiana Administrative Code (LAC) and repromulgated these provisions in LAC 48:I.Chapter 100, under licensing standards for nursing facilities (Louisiana Register, Volume 32, Number 11).

ACT 357 of the 2009 Regular Session of the Louisiana Legislature directed the department to establish provisions for state registration of all certified nurse aides (CNAs) working in nursing homes and skilled nursing facilities and related matters, including restricted registrations, minimum requirements to maintain certification and provisions for complaint investigations. In compliance with Act 357, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Nurse Aide Training and Competency Evaluation Program in order to establish state registration requirements for CNAs who work in nursing facilities and hospital-based skilled nursing facility units (Louisiana Register, Volume 36, Number 7). This Emergency Rule also established minimum requirements to maintain nurse aide certification and complaint investigation procedures. The department has now determined that it is necessary to amend the August 15, 2010 Emergency Rule to revise the provisions governing the minimum age an individual may enroll in the Nurse Aide Training Program and to clarify the provisions governing criminal history checks. This action is being taken to promote the health and welfare of nursing facility residents by assuring that CNAs have the proper training and certifications.

Effective August 23, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 15, 2010 Emergency Rule governing the Nurse Aide Training and Competency Evaluation Program.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 100. Nurse Aide Training and Competency Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

* * *

Certified Nurse Aide—an individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of 42 CFR 483.151-483.154, or has been determined competent as provided in 42 CFR 483.150(a) and (b), and is listed as certified and in good standing on Louisiana's nurse aide registry.

* * *

Nursing Homes or Nursing Facilities—any entity or facility serving two or more persons, who are not related to the operator by blood or marriage, that undertakes to provide maintenance, personal care or nursing for persons who are unable to properly care for themselves by reason of illness, age or physical infirmity.

Trainee—an individual who is at least 16 years old and is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2074 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10003. State Registration Requirements

A. Effective August 15, 2010, any nurse aide seeking employment with a nursing facility or hospital-based SNF shall be required to meet state registration and certification requirements.

B. The department will provide automatic registration of all certified nurse aides in the state, who according to the Louisiana Nurse Aide Registry, are employed with or contracted by a nursing facility or hospital-based skilled nursing facility (SNF) on August 15, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

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

Subchapter B. Training and Competency Requirements

§10013. Trainee Responsibilities

A. Each nurse aide trainee must be at least 16 years old.

B. Each nurse aide trainee should be clearly identified as a trainee during all clinical portions of the training. Identification should be recognizable to residents, family members, visitors and staff.

C. Trainees must take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training program.

1. Trainees will be provided with a maximum of three opportunities within one year following completion of the training program to successfully complete the competency evaluation program.

D. Registered nurses (RNs) and licensed practical nurses (LPNs) who have completed online courses are required to provide an official transcript to determine eligibility to test.

E. If trained in another state, the trainee must test and certify to the registry in that state before transferring to Louisiana, or retrain and test in Louisiana.

F. Military personnel must provide a copy of their military transcript and other documentation needed to determine eligibility to certify to the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10015. Training Curriculum

A. Each nurse aide training program shall provide all trainees with an orientation of the clinical training site that is a minimum of four hours long. This orientation is in addition to the total hours approved for the training program/school. The orientation shall include, but is not limited to:

1. - 5. ...

B. Training Curriculum

1. Providers applying to have a training program after the effective date of this Rule must use one of the two state-approved curriculums.

a. ...

2. Each additional unit objective added to the approved curriculum, above the minimum 80 hours, must be behaviorally-stated for each topic of instruction. Each objective must state performance criteria which are measurable and will serve as the basis for the competency evaluation.

a. The unit objectives will be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

c. Any additional topics of instruction will require review and approval from the department.

C. Curriculum Goals and Content

1. - 3. ...

D. The training program must be conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies in the following areas:

1. basic nursing skills including, but not limited to:

a. - i. ...

j. attaining and maintaining certification in cardiopulmonary resuscitation;

1.k. - 5.h. ...

E. Program Approval

1. To get a nurse aide training program approved, the facility or school must submit to the department the application, completed in its entirety, which denotes the state-approved curriculum that will be used and all required documentation stipulated in the Nurse Aide Training packet.

a. - c. Repealed.

2. All schools applying for approval must identify the physical location used for classroom instruction and for clinical experience. Non-facility based programs must also submit clinical contracts.

3. Approval to provide nurse aide training is granted specifically for the provider who submitted the application. There is no provision for subcontracting the training program.

4. If an approved program ceases to provide a nurse aide training and competency evaluation program for a two year period, the program will be closed. The provider must reapply if they wish to provide training at a later date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10017. Coordinators, Instructors and Trainers

A. ...

1. The program coordinator must be a registered nurse (RN) with a current Louisiana license and must have the following experience and qualifications:

a. - b. ...

2. The program coordinator may supervise no more than two nurse aide training programs simultaneously and must be on the premises where the program is being conducted for at least 50 percent of the duration of the program.

B. Instructors. Instructors may be RNs or LPNs and must hold a current Louisiana license. Licensed practical (vocational) nurses, under the general supervision of the

coordinator, may provide classroom and skills training instruction and supervision of trainees if they have two years of experience in caring for the elderly and/or chronically ill of any age, experience in teaching LPN or RN students or have equivalent experience.

1. Such experience is normally obtained through employment in:

- a. a nursing facility;
- b. a geriatrics department;
- c. a chronic care hospital; or
- d. other long-term care setting.
- e. - m. Repealed.

2. Experience in resident care, supervision and staff education is preferred.

3. The ratio of instructors to trainees in clinical training is 1:10 and the ratio of instructors to trainees in the classroom should not exceed 1:23.

C. Program Trainers. Qualified resource personnel from the health field may participate as program trainers as needed for discussion or demonstration of specialized core procedures.

1. Qualified resource personnel must have a minimum of one year of experience in their field and must be licensed, registered and/or certified, if applicable, and may include:

- a. registered nurses;
- b. licensed practical/vocational nurses;
- c. pharmacists;
- d. dietitians;
- e. social workers;
- f. sanitarians;
- g. fire safety experts;
- h. nursing home administrators;
- i. gerontologists;
- j. psychologists;
- k. physical and occupational therapists;
- l. activities specialists; and
- m. speech/language/hearing therapists.

2. All program trainers must have a minimum of one year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. The training program may utilize other persons such as residents, experienced aides and ombudsmen as resource personnel if these persons are needed to meet the planned program objectives or a specific unit of training.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2076 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10019. Training Program Responsibilities

A. The facility/school shall not accept a nurse aide trainee into a training program until the facility or school determines that the nurse aide trainee:

1. has not been convicted or found guilty by a court of law of:
 - a. abusing, neglecting or mistreating the elderly or infirm as defined by R.S. 40:2009.20;
 - b. misappropriating a resident's property; or
 - c. has not had a finding of abuse, neglect, mistreatment or misappropriation of a resident's property

placed on the Nurse Aide Registry or the Direct Service Worker Registry.

2. A criminal history background check shows no convictions or listing on the national sex offender public registry in accordance with R.S. 40:1300.53. Trainees may obtain a certified copy of their criminal history from the Louisiana State Police by requesting that a "right to review" be conducted.

3. Trainees shall not be prohibited from completing training due to:

- a. criminal history that is not related to abuse, neglect or misappropriation; or
- b. the Louisiana State Police not being able to complete a criminal history check due to the age of the trainee.

B. For facility-based training programs, the facility shall assure that trainees do not perform any care and services for which they have not been trained and found proficient by the instructor. Trainees providing services to residents must be under the general supervision of a licensed nurse approved to work in a nurse aide training program.

1. Trainees enrolled in facility based training programs must complete training within 30 days of beginning the program.

2. A class roster, as well as the beginning and ending dates of each training class, shall be clearly documented and available for review at all times. This shall be available for both classroom and clinical instruction.

C. ...

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10023. Compliance with Federal and State Regulations

A. The department shall review all components of a training and competency evaluation program for compliance with federal and state regulations.

1. For facility-based programs, after initial approval of a training and competency evaluation program, the Department will conduct an initial one year post-approval review at the annual survey to determine the program's implementation of and compliance with the requirements.

2. For non-facility based programs, the Department will conduct an initial one year post-approval review and thereafter will conduct a review every two years.

B. After the one year post-approval review, an on-site review of the program will be conducted at least every two years. Programs not meeting the minimum requirements may be terminated if the program does not provide an acceptable plan for correcting deficiencies.

C. Programs not accessible or refusing to permit unannounced visits by the department will be terminated.

D. A program that has not conducted training or certified trainees to the registry within a two year period will be closed.

E. Operational Requirements

1. In order to be considered operational and retain approval to conduct a training program, providers must have at least one employee on duty at the business location during

the hours of operation reported on the training program application submitted to the DHH Health Standards Section.

2. All nurse aide training providers (facility based and non-facility based) shall maintain a current, operational telephone number, fax number and e-mail address and shall keep the department informed of any changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10025. Nurse Aide Responsibilities

A. A certified nurse aide employed or contracted by a nursing facility or hospital-based SNF to provide nursing assistant services shall apply for registration with the department. Each application for registration of a certified nurse aide shall be submitted to the department on forms or other methods designated by the department, and shall contain such information required by the department. Any additional information required by the department shall be provided upon request.

B. In order to maintain certification, the certified nurse aide employed or contracted by a nursing facility or hospital-based SNF shall perform a minimum of 90 days or 720 hours of certified nurse aide duties in one nursing facility or hospital based SNF within a 120 day period each year.

1. The department shall confirm the completion of the required hours at least once every two years.

C. Nurse aides working in clinical settings other than nursing facilities or hospital based SNFs must perform at least eight hours of nursing or nursing related services in an approved setting during every consecutive 24 month period for pay after completion of a training and competency evaluation program to maintain certification.

D. Nurse aides working in a nursing facility or hospital-based SNF and in any other approved setting simultaneously during the two year registration period, must comply with the requirement for 90 days or 720 hours of certified nurse aide duties in one nursing facility or hospital-based SNF within a 120 day period each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter C. Nurse Aide Registry

§10033. General Provisions

A. The Department of Health and Hospitals shall develop and maintain a registry for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the registry will have the following information maintained and retrievable:

1. name;
2. address;
3. Social Security Number;
4. phone number;
5. e-mail address;
6. place of employment;
7. date of employment;

8. date employment ceased;
9. state certification number;
10. state registration number, as appropriate; and
11. documentation of any investigation, including codes for specific findings of a resident's:

- a. abuse;
- b. neglect;
- c. misappropriated property; and
- d. an accurate summary of findings only after actions on findings are final.

B. The registry will renew certification in accordance with the provisions of §10025 of this Chapter.

C. ...

D. If there is a final and binding administrative decision to place a finding on the registry or if there is a final conviction, guilty plea or no contest plea to a crime(s) by a nurse aide against the elderly, infirm or a nursing facility resident, the department shall place the adverse finding on the registry. Record of the occurrence and associated findings will remain permanently on the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants must, at a minimum, submit to the Nurse Aide Registry the following information:

1. his/her name;
2. his/her Social Security Number;
3. his/her e-mail address;
4. the certification number in the other state;
5. the address of the other state's registry;
6. his/her former place of employment; and
7. the date of employment and termination.

B. ...

C. Nurse aides granted reciprocity in Louisiana and who plan to be employed in a nursing facility or hospital-based SNF must also apply for state registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter D. Provider Participation

§10045. Training Program Responsibilities

A. A person cannot be employed as a nurse aide or nurse aide trainee by a nursing facility or hospital-based SNF for more than 30 days unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. Prior to employing or contracting with a certified nurse aide, a nursing facility or hospital-based SNF unit shall verify through the Louisiana's Certified Nurse Aide Registry that the certified nurse aide is currently certified and has a current state registration.

C. A person cannot be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident; or

2. misappropriated a resident's property.

D. The provider must complete and send the appropriate form to the Registry to notify the Registry of employment or termination of a certified nurse aide.

1. Failure to send notification to the Registry within five working days of employment or termination may result in further adverse action against the provider.

E. All facilities will continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide must receive and be compensated for 12 hours of on-going training per year.

2. Training can be received in the unit as long as it is:

- a. directed toward skills improvement;
- b. provided by appropriately trained staff; and
- c. documented.

F. When a change of ownership (CHOW) occurs, the new owner or the administrator/designee is responsible for ensuring that all reporting of employment and termination to the registry is current. In the event that a request for verification of work history is received after the CHOW occurs, the current owner is responsible for compliance.

G. The facility administrator/designee is responsible for reporting work history to the registry for nurse aides employed by staffing agencies. This shall be done at least monthly.

H. No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

I. If an individual who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

J. Providers shall issue a certificate of completion to nurse aides who successfully complete training and competency evaluation programs.

K. If a training program is facility-based, the administrator or their designee shall reconcile with the nurse aide registry at least monthly, their CNAs that are employed or have been terminated. Accuracy of information held by the registry is the responsibility of the facility. Failure to maintain current data shall result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter G. Medication Attendant Certified

§10081. General Provisions

A. The Department of Health and Hospitals (DHH) implements a three-year pilot project which establishes provisions for the use of medication attendants certified in licensed nursing facilities. The department shall also develop

and maintain a registry of individuals who have, at a minimum, successfully completed a state-approved medication attendant certified training course and competency evaluation, and criminal background check.

B. The medication attendant certified registry will contain the following items:

1. a list of individuals who have successfully completed a medication attendant certified training curriculum and competency evaluation. Each individual listed will have the following information maintained on the registry:

- a. name;
- b. address;
- c. Social Security number;
- d. phone number;
- e. e-mail address;
- f. place of employment;
- g. date of employment;
- h. date employment ceased;
- i. state certification number; j.

documentation of any investigation including codes for specific findings of:

- i. – v. ...

k. information relative to training and registry status which will be available through procedures established by the department.

C. ...

D. A certificate holder must notify the department within 30 days after changing his or her address or name.

E. A medication attendant certified or his or her employer, if aware, must immediately notify the department of any arrest in any state.

F. A person who holds a valid license, registration or certificate as a medication attendant issued by another state may also be certified in Louisiana if the transferring state's training program is at least 100 hours or more and the applicant passes the state competency examination.

1. The applicant must submit a request for reciprocity to the registry.

2. ...

3. The department may contact the issuing agency to verify the applicant's status with the agency.

G – G2. ...

H. The department shall deny renewal of the certificate of a medication attendant certified who is in violation of this Chapter at the time of the application renewal.

I. ...

J. A medication attendant certified must function under the direct supervision of a licensed nurse on duty at the nursing facility. A certificate holder must:

1. ...

2. comply with the department's rules applicable to personnel used in a nursing facility.

K. Persons employed as medication attendants certified in a nursing facility must comply with the requirements relating to nurse aides as set forth in the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, the department's rule governing the Standards for Payment for Nursing Homes and Minimum Licensure Standards for Nursing Homes or subsequent amendments. Requirements are met if the individual is:

1. ...

2. a trainee in a medication assistant training program approved by the department under this Chapter who is administering medications as part of the trainee's clinical experience.

L. ...

M. For the duration of the pilot project, nursing facilities may not count the MAC in required nursing hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1413 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§10088. Provider Participation and Responsibilities

A. A nursing facility must apply to the department to utilize medication attendants certified. Upon receipt of a facility's application, the department will review the facility's compliance history.

B. If a facility is non-compliant with program regulations, the department shall take into consideration the findings that resulted in the facility's noncompliance before making a determination whether or not to allow the facility to utilize medication attendants certified. Emphasis shall be placed on deficiencies cited in the area of medication administration such as significant medication errors, medication error rates and repeat deficiencies.

C. The department may deny a facility's request to use medication attendants if it is determined that, based upon the compliance history, the safety and well-being of residents would be jeopardized. If the facility is denied participation, the facility may ask for a reconsideration and review of the circumstances which contributed to the denial.

D. - D.8. ...

E. A facility's application that is not complete within 90 days of receipt by the department will be closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1417 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

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

Anthony Keck
Secretary

1009#014

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.1305 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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, 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 amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the per diem rates and wage enhancement payments (*Louisiana Register*, Volume 35, Number 7). The department amended the July 3, 2009 Emergency Rule to repeal the per diem rate reduction and continued the wage enhancement reduction (*Louisiana Register*, Volume 35, Number 10). The final Rule was published July 20, 2010 (*Louisiana Register*, Volume 36, Number 7).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the per diem rate paid to non-state nursing facilities (*Louisiana Register*, Volume 36, Number 2). The department subsequently amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the per diem rates which were increased on July 1, 2010 as a result of the FY 2009-10 rebasing (*Louisiana Register*, Volume 36, Number 3). The March 20, 2010 Rule also clarified the provisions governing the reimbursement methodology for state-owned or operated nursing facilities and non-state, government-owned or operated nursing facilities. The department promulgated an Emergency Rule which amended the January 22, 2010 Emergency Rule to clarify the reduction of the per diem rate (*Louisiana Register*, Volume 36, Number 5). In compliance with Act 244 of the 2009 Regular Session of the Louisiana

Legislature, the department amended the provisions governing the reimbursement methodology for nursing facilities to adjust the periodic rebasing of the nursing facility rates (*Louisiana Register*, Volume 36, Number 8). The department now proposes to amend the May 20, 2010 Emergency Rule to revise the formatting of LAC 50:VII.1305 as a result of the promulgation of the July 20, 2010 and the August 20, 2010 final Rules governing the reimbursement methodology for nursing facilities. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective September 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the May 20, 2010 Emergency Rule governing the reimbursement methodology for non-state nursing facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement paid to non-state nursing facilities shall be reduced by 1.5 percent of the per diem rate on file as of January 21, 2010 (\$1.95 per day).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:

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

Anthony Keck
Secretary

1009#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Family Planning Services
Reimbursement Rate Reduction
(LAC 50:IX.15141-15143)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.15141-15143 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the

Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at 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 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 provides Medicaid reimbursement for family planning services rendered by physicians in the Professional Services Program.

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the Professional Services Program in order to reduce the reimbursement rates for family planning services, and to promulgate these provisions in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective September 21, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for family planning services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter E. Family Planning Services

§15141. General Provisions (Reserved)

§15143. Reimbursement

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

B. Family planning services are currently reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for family planning services rendered by a physician shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

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

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

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.

Anthony Keck
Secretary

1000#057

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Board of Parole (LAC 22:XI.103, 503 511, and 1301)

The Board of Parole is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Louisiana Board of Parole.

The Emergency Rule implements several Acts of the 2010 Regular Session as follows:

Act No. 469 provides for membership of the board; specifically an ex officio member. The ex officio member shall not be a voting member nor shall he be counted or permitted to be counted for purposes of members necessary to take board action or to establish quorum.

Act No. 566 allows the Board to grant parole by 2/3 vote of a three-member panel or if the number exceeds a three member panel, a majority vote of those present if all of the following conditions are met:

(1) The offender has not been convicted of a crime of violence or a sex crime; (2) The offender has not committed any disciplinary offenses in the 12 consecutive months prior to the parole eligibility date; (3) The offender has completed the mandatory minimum of 100 hours of pre-release programming; (4) The offender has completed substance abuse treatment as applicable; (5) The offender has obtained a GED credential, unless the offender is deemed incapable of obtaining a GED credential, then the offender must complete at least one of the following: a literacy program, an adult basic education program or a job skills training program; (6) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the Secretary of the Department of Public Safety and Corrections.

Act No. 792 allows an offender to earn good behavior credit while on parole.

Act No. 961 amends the method by which one appointment to the Parole Board is made relative to victim's rights advocacy organizations.

The Emergency Rule is necessary to implement the changes to the Louisiana Board of Parole's Rules to allow the Louisiana Board of Parole to immediately start using a 2/3 vote at the hearings of offenders who qualify under this section, to add an ex officio member to the board membership, to provide that offenders may earn credit for good behavior while on parole and to provide for appointments to the Parole Board on or after August 15, 2010. Implementation of the changes could possibly result in a cost savings to the State if the offender is released from physical custody of the Louisiana Department of Public Safety and Corrections. A delay in promulgation of the rules would have an adverse impact on the offenders who fall under the new conditions.

This Declaration of Emergency is effective August 15, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Board of Parole

Chapter 1. Administration

§103. Composition of the Board

A.1. The board shall be composed of seven members appointed by the governor and one ex-officio member. Of the seven members appointed by the Governor, one shall be the chairman of the board.

a. The warden, or in his absence the deputy warden, of the correctional facility in which the offender is incarcerated shall be an ex officio member of the board. When the offender is housed in a local correctional facility and the warden or deputy warden of that facility is not able to attend the offender's parole hearing, the warden, or in his absence the deputy warden, of the facility where the offender's parole hearing is held may serve as an ex officio member. The ex officio member shall not be a voting member nor shall he be counted or permitted to be counted for purposes of the number of members necessary to take board action or the number of members necessary to establish quorum. In all other respects, the ex officio member shall have all duties, authority, requirements and benefits of any other board member.

2. ...

3. One member shall be appointed from a list of names submitted by any victim's rights advocacy organization which is recognized as a nonprofit with the Internal Revenue Service, incorporated or organized in the state of Louisiana and in good standing and does not engage in political activity, with each organization submitting a list of three names. However, no person nominated by any victim's rights advocacy organization shall be appointed to serve as a member of the board who has previously been confirmed by the senate and has served as a member of the board.

4. Each member shall, except the ex officio member, devote full time to the duties of the office and shall not engage in any other business or profession or hold any other public office.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended LR 36:

Chapter 5. Meetings and Hearing of the Board of Parole

§503. Selection of Three-Member Panels

A. The board shall meet in a minimum of three-member panels, except as otherwise provided in these rules.

B. The chairman of the board shall randomly assign all three-member panels. Each panel shall appoint the chairperson of that three-member panel.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq. and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended LR 36:

§511. Public Hearings

A. - B.2. ...

C.1. A unanimous vote is required to grant parole or to recommend work release regardless of the number of board members at the parole hearing, except as provided for in Subparagraph C.1.a. of this Subsection.

a. The board may grant parole with two votes of a three-member panel, or, if the number exceeds a three-member panel, a majority vote of those present if all of the following conditions are met.

i. The offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S.15:541, regardless of the date of conviction.

ii. The offender has not committed any disciplinary offenses in the 12 consecutive months prior to the parole eligibility date.

iii. The offender has completed the mandatory minimum of 100 hours of pre-release programming in accordance with R.S. 15:827.1.

iv. The offender has completed substance abuse treatment as applicable.

v. The offender has obtained a GED credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability. If the offender is deemed incapable of obtaining a GED credential, the offender must complete at least one of the following: a literacy program, an adult basic education program or a job skills training program.

vi. The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the Secretary of the Department of Public Safety and Corrections.

b. Notwithstanding any other provision of law in this section, no person convicted of a crime of violence against any peace officer as defined in R.S. 14.30(B), shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the board are present and all members present vote to grant parole.

C.2. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq. and RS. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended LR 36:

Chapter 13. Time Served

§1301. Time Must Be Served if Revoked

A.1. An offender returned to incarceration for a parole violation that does not include a new sentence for a felony offense will be returned to serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits and any credit for time served for good behavior while on parole.

2. ...

B. An offender returned to incarceration as a parole violator who has received a new sentence for a felony offense while on parole shall serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits and any credit for time served for good behavior while on parole. The new sentence shall be served consecutively to the previous sentence unless a concurrent term of imprisonment is expressly directed by the court.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., R.S. 15:540 et seq. and R.S. 15:571.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended LR 36:

C. A. Lowe, Jr.
Chairman

1009#001

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
Corrections Services**

**Disciplinary Rules and Procedures for Adult Offenders
(LAC 22:I. 341-363)**

The Department of Public Safety and Corrections is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Department of Public Safety and Corrections.

The Emergency Rule implements Acts of the 2010 Regular Session as follows:

Act No. 379 enacts a new law which prohibits fire-raising in a correctional facility.

Act No. 505 amends the definition of contraband in a correctional facility.

The Emergency Rule is necessary to implement changes to the Department of Public Safety and Corrections' Offender Rule Book which are effective August 15, 2010. A delay in promulgation of the rules would have an adverse impact on the Department's primary mission which is to provide for staff and offender safety by maintaining an organized and disciplined system of operations which enhance the stability of correctional facility operations.

This Declaration of Emergency is effective August 15, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult Services

**Subchapter B. Disciplinary Rules and Procedures for
Adult Offenders**

§351. Correcting Disciplinary Reports

A. - B. NOTE. ...

C. Evidence. The disciplinary board shall carefully evaluate all evidence presented or stipulated. In situations

where the disciplinary report is based solely on information from a confidential informant or from an offender whose identity is known, there must be other evidence to corroborate the violation. That evidence may include, but is not limited to, witness statements from another confidential informant who has not been unreliable in the past and has legitimate knowledge of the present incident(s), the record (investigative report) or other evidence. If requested, the accusing employee must be summoned to testify about the reliability and credibility of the confidential informant when the report is based solely on information from a confidential informant. (In order to accomplish this, the informant must have been reliable in the past and/or have legitimate knowledge of the present incident(s).)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin V. Conner*, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR27:417 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008), amended LR 36:

§363. Disciplinary Rules

A. ...

B. Contraband (Schedule B). No offender shall have under his immediate control any illicit drugs, any product that could be used to adulterate a urine sample, unauthorized medication, alcoholic beverage, yeast, tattoo machine, tattoo paraphernalia, syringe, any type weapon, cellular phone or component hardware or other electronic communications device, whether operational or not, (including but not limited to beepers, pagers, subscriber identity module (SIM) cards, portable memory chips, batteries for these devices, chargers, global satellite system equipment), or any other item not permitted by department regulation or institutional posted policy to be received or possessed or any other item detrimental to the security of the facility. Money is contraband. Any item not being used for the purpose for which it was intended will be considered contraband if it is being used in a manner that is clearly detrimental to the security of the facility. Possession and/or use of lighted cigarettes or other smoking materials are deemed to be contraband in non-smoking areas. To smuggle or attempt to smuggle prohibited items into or out of the facility will be in violation of this rule.

B.1. - X.20. ...

X. 21. Starting, causing, assisting in the creation of any fire, heat or spark of any nature by any means or methods, or attempting to start a fire and/or attempting to heat substances utilizing electrical/mechanical devices or any other means, other than in the performance of an approved work assignment;

X.22 - X.23. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995), *Cassels v. Stalder*, 342 F. Supp. 2d 555.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:419 (March 2001), amended by the Department of Public Safety and Corrections,

Corrections Services, LR 31:1099 (May 2005), LR 34:2201 (October 2008), amended LR 36:

James M. Le Blanc
Secretary

1009#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Crab Fishing Opening
East of the Mississippi River
Plaquemines, St. Bernard, and Orleans Parish

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) 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 August 5, 2010 which grants authority to the secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the secretary hereby opens to commercial crabbing that portion of state inside and outside territorial waters east of the Mississippi River and north of the northern shore of Pass a Loutre and 29 degrees 12 minutes 40 seconds north latitude beginning south of the northern shores of Lake Pontchartrain and Rigolets Pass and the Louisiana/Mississippi state line from the Louisiana territorial sea boundary westward to a line beginning along the U.S. Highway 11 bridge in Lake Pontchartrain southward to 89 degrees 51 minutes 35 seconds west longitude, thence southward along 89 degrees 51 minutes 35 seconds west longitude to the southern shore of the Mississippi River Gulf Outlet, thence southeastward along the southern shore of the Mississippi River Gulf Outlet to 89 degrees 42 minutes 32 seconds west longitude, thence southward along 89 degrees 42 minutes 32 seconds west longitude to 29 degrees 38 minutes 12 seconds north latitude, thence eastward along 29 degrees 38 minutes 12 seconds north latitude to Mozambique Point at 89 degrees 28 minutes 27.4 seconds west longitude, thence southward along the double-rig line as described in R.S. 56:495.1 to California Point at 29 degrees 27 minutes 21.7 seconds north latitude and 89 degrees 31 minutes 19.7 seconds west longitude, thence southeastward to Sable Island at 29 degrees 24 minutes 03 seconds north latitude and 89 degrees 28 minutes 06 seconds west longitude, thence southward along 89 degrees 28 minutes 06 seconds west longitude to the eastern shore of the Mississippi River, thence southward along the eastern shore of the Mississippi River to the northern shore of Pass a Loutre and 29 degrees 12 minutes 40 seconds north latitude effective August 21, 2010, except for that portion of state inside and outside territorial waters north of 29 degrees 59 minutes 30 seconds north latitude and

south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile westward from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 47 minutes 00 seconds north latitude and south of 29 degrees 51 minutes 00 seconds north latitude from 89 degrees 15 minutes 00 seconds west longitude westward to 89 degrees 22 minutes 00 seconds west longitude which will remain closed to all commercial fishing until further notice.

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 territorial waters shall open to commercial crabbing effective August 21, 2010.

Robert J. Barham
Secretary

1009#009

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Crab Fishing Opening West of the Mississippi River

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) 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 August 5, 2010 which grants authority to the secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the secretary hereby opens to commercial crabbing that portion of state outside territorial waters from the western shore of Southwest Pass of the Mississippi River and 89 degrees 25 minutes 00 seconds west longitude westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude, and that portion of state inside waters from the western shore of Southwest Pass of the Mississippi River and 89 degrees 25 minutes 00 seconds west longitude westward to the southern shore of Red Pass at 89 degrees 28

minutes 13.4 seconds west longitude, and that portion of state inside waters south of 29 degrees 30 minutes 00 seconds north latitude from the western shore of Grand Bayou westward to 89 degrees 50 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 35 minutes 00 seconds north latitude from 89 degrees 52 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside waters south of 29 degrees 18 minutes 30 seconds north latitude from the eastern shore of the Barataria Waterway westward to 90 degrees 00 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 16 minutes 00 seconds north latitude from 90 degrees 00 minutes 00 seconds west longitude westward to the eastern shore of Bayou Lafourche, and that portion of state inside waters south of 29 degrees 12 minutes 50 seconds north latitude from the eastern shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside waters south of 29 degrees 21 minutes 42 seconds north latitude from the western shore of Grand Bayou Blue and 90 degrees 17 minutes 50 seconds west longitude westward to the eastern shore of Bayou Terrebonne, and that portion of state inside waters south of 29 degrees 21 minutes 00 seconds north latitude from the eastern shore of Bayou Terrebonne westward to the western shore of Bayou Petit Caillou, and that portion of state inside waters south of 29 degrees 13 minutes 12 seconds from the western shore of Bayou Petit Caillou and the Houma Navigation Canal red buoy line westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude effective August 20, 2010, except for that portion of state inside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside territorial waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 2) 29 degrees 20 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 3) 29 degrees 13 minutes 40 seconds north latitude 89 degrees 33 minutes 00 seconds west longitude, 4) 29 degrees 15 minutes 00 seconds north latitude 89 degrees 32 minutes 30 seconds west longitude, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 21 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 10 seconds north latitude 89 degrees 57 minutes 30 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west

longitude westward to 90 degrees 07 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 09 minutes 00 seconds north latitude and south of 29 degrees 12 minutes 50 seconds north latitude from the western shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 03 minutes 00 seconds north latitude and south of 29 degrees 09 minutes 00 seconds north latitude from 90 degrees 13 minutes 30 seconds west longitude and the western shore of Bayou Lafourche westward to 90 degrees 34 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 05 minutes 00 seconds north latitude from 90 degrees 37 minutes 00 seconds west longitude westward to 90 degrees 58 minutes 00 seconds west longitude which will remain closed to all commercial fishing until further notice.

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 territorial waters shall open to commercial crabbing effective August 20, 2010.

Robert J. Barham
Secretary

1009#007

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(B) and R.S. 49:967(D) 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 September 2, 2010, in the following area:

That portion of state inside and outside waters east of the Mississippi River north of 29 degrees 59 minutes 30 seconds north latitude and south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile westward from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 47 minutes 00 seconds north latitude and south of 29 degrees 51 minutes 00

seconds north latitude from 89 degrees 15 minutes 00 seconds west longitude westward to 89 degrees 22 minutes 00 seconds west longitude, and that portion of state inside waters south of the northern shore of Pass a Loutre and the Mississippi River Channel at 29 degrees 09 minutes 00 seconds north latitude westward to the western shore of Southwest Pass of the Mississippi River, and that portion of state outside waters south of 29 degrees 12 minutes 40 seconds north latitude westward to 89 degrees 25 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside territorial waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 2) 29 degrees 20 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 3) 29 degrees 13 minutes 40 seconds north latitude 89 degrees 33 minutes 00 seconds west longitude, 4) 29 degrees 15 minutes 00 seconds north latitude 89 degrees 32 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 21 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 10 seconds north latitude 89 degrees 57 minutes 30 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west longitude westward to 90 degrees 07 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 09 minutes 00 seconds north latitude and south of 29 degrees 12 minutes 50 seconds north latitude from the western shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 03 minutes 00 seconds north latitude and south of 29 degrees 09 minutes 00 seconds north latitude from 90 degrees 13 minutes 30 seconds west longitude and the western shore of Bayou Lafourche westward to 90 degrees 34 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 05 minutes 00 seconds north latitude from 90 degrees 37 minutes 00 seconds west longitude westward to 90 degrees 58 minutes 00 seconds west longitude.

Recreational fishing is open in all state inside and outside territorial waters, except in the following areas, where only recreational angling and charter boat angling is allowed: that portion of state inside and outside waters east of the

Mississippi River north of 29 degrees 59 minutes 30 seconds north latitude and south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile westward from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and those portions of state waters west of the Mississippi River; including that portion of state inside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside territorial waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 2) 29 degrees 20 minutes 00 seconds north latitude 89 degrees 48 minutes 00 seconds west longitude, 3) 29 degrees 13 minutes 40 seconds north latitude 89 degrees 33 minutes 00 seconds west longitude, 4) 29 degrees 15 minutes 00 seconds north latitude 89 degrees 32 minutes 00 seconds west longitude, and that portion of state inside and outside territorial waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 21 minutes 00 seconds north latitude 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 10 seconds north latitude 89 degrees 57 minutes 30 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west longitude westward to 90 degrees 07 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 09 minutes 00 seconds north latitude and south of 29 degrees 12 minutes 50 seconds north latitude from the western shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside and outside territorial waters north of 29 degrees 03 minutes 00 seconds north latitude and south of 29 degrees 09 minutes 00 seconds north latitude from 90 degrees 13 minutes 30 seconds west longitude and the western shore of Bayou Lafourche westward to 90 degrees 34 minutes 00 seconds west longitude, and that portion of state inside and

outside territorial waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 05 minutes 00 seconds north latitude from 90 degrees 37 minutes 00 seconds west longitude westward to 90 degrees 58 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 Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to fish and other aquatic life.

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Stephen J. Oats
Chairman

1009#035

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational Angling and Charter Boat Angling Fisheries Opening

In accordance with the emergency provisions of R.S. 49:953(B) and R.S.49:967(D) of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby opens recreational angling, and charter boat angling by licensed charter boat guides in all state inside and outside territorial waters, effective immediately August 20, 2010.

Recreational angling and charter boat angling is being allowed within all state inside and outside waters impacted by oil from the Deepwater Horizon drilling rig accident which were previously closed to all recreational fishing, subject to continual testing and monitoring, as this activity is not regulated by the Food and Drug Administration, and the Environmental Protection Agency's nearshore water tests to date have shown no chemical contamination.

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close, reopen-reclose, broaden or otherwise modify the areas opened to recreational angling and charter boat angling if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Stephen W. Sagrera
Vice-Chairman

1009#008

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational Fisheries Closure and Commercial Fisheries Opening

In accordance with the emergency provisions of R.S. 49:953(B) and R.S.49:967(D) of the Administrative Procedure Act, and under the authority of 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 that Declaration of Emergency adopted by the Wildlife and Fisheries Commission on August 5, 2010, the Secretary of the Department of Wildlife and Fisheries hereby closes recreational fishing effective August 14, 2010, in the following areas:

That portion of state inside and outside waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude and 89 degrees 48 minutes 00 seconds west longitude, 2) 29 degrees 20 minutes 00 seconds north latitude and 89 degrees 48 minutes 00 seconds west longitude, 3) 29 degrees 13 minutes 40 seconds north latitude and 89 degrees 33 minutes 00 seconds west longitude and 4) 29 degrees 15 minutes 00 seconds north latitude and 89 degrees 32 minutes 30 seconds west longitude, and that portion of state inside and outside waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude and 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 21 minutes 00 seconds north latitude and 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude and 4) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 57 minutes 30 seconds west longitude, and that portion of state inside waters north of 29 degrees 09 minutes 00 seconds north latitude and south of 29 degrees 12 minutes 50 seconds north latitude from the western shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude is closed to recreational fishing.

Additionally, the Secretary of the Department of Wildlife and Fisheries hereby opens the commercial harvest of finfish and shrimp effective August 14, 2010, in the following areas:

That portion of state outside waters seaward of the inside/outside shrimp line as described in R.S. 56:495 from the western shore of Southwest Pass of the Mississippi River and 89 degrees 25 minutes 00 seconds west longitude westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude, and that portion of state inside waters from the western shore of Southwest Pass of the Mississippi River westward to the southern shore of Red Pass at 89 degrees 28 minutes 13.4 seconds west longitude, and that portion of state inside waters south of 29 degrees 30 minutes 00 seconds north latitude from the western shore of Grand Bayou westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 35 minutes 00 seconds north latitude from 89 degrees 52 minutes 00 seconds west longitude westward to the eastern shore of the Barataria

Waterway, and that portion of state inside waters south of 29 degrees 18 minutes 30 seconds north latitude from the eastern shoreline of the Barataria Waterway westward to 90 degrees 00 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 16 minutes 00 seconds north latitude from 90 degrees 00 minutes 00 seconds west longitude westward to the eastern shore of Bayou Lafourche, and that portion of state inside waters south of 29 degrees 12 minutes 50 seconds north latitude from the eastern shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside waters south of 29 degrees 21 minutes 42 seconds north latitude from the western shore of Grand Bayou Blue and 90 degrees 17 minutes 50 seconds west longitude westward to the eastern shore of Bayou Terrebonne, and that portion of state inside waters south of 29 degrees 21 minutes 00 seconds north latitude from the eastern shore of Bayou Terrebonne westward to the western shore of Bayou Petit Caillou, and that portion of state inside waters south of 29 degrees 13 minutes 12 seconds north latitude from the western shore of Bayou Petit Caillou and the Houma Navigation Canal red buoy line westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude except for that portion of state inside and outside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside and outside waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude and 89 degrees 48 minutes 00 seconds west longitude, 2) 29 degrees 20 minutes 00 seconds north latitude and 89 degrees 48 minutes 00 seconds west longitude, 3) 29 degrees 13 minutes 40 seconds north latitude and 89 degrees 33 minutes 00 seconds west longitude and 4) 29 degrees 15 minutes 00 seconds north latitude and 89 degrees 32 minutes 30 seconds west longitude, and that portion of state inside and outside waters bounded by the following coordinates: 1) 29 degrees 18 minutes 00 seconds north latitude and 89 degrees 52 minutes 00 seconds west longitude, 2) 29 degrees 21 minutes 00 seconds north latitude and 89 degrees 52 minutes 00 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude and 4) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 57 minutes 30 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west longitude westward to 90 degrees 07 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 09 minutes 00 seconds north latitude and south of 29 degrees 12 minutes 50 seconds north latitude from the western shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 03

minutes 00 seconds north latitude and south of 29 degrees 09 minutes 00 seconds north latitude from 90 degrees 13 minutes 30 seconds west longitude and the western shore of Bayou Lafourche westward to 90 degrees 34 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 05 minutes 00 seconds north latitude from 90 degrees 37 minutes 00 seconds west longitude westward to 90 degrees 58 minutes 00 seconds west longitude which shall remain closed to all commercial fishing until further notice.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to

fish and other aquatic life. Those areas closed to commercial fishing west of Southwest Pass of the Mississippi River now match the areas closed to recreational fishing. LDWF made these adjustments to align with areas reopened based on FDA testing and to allow LDWF enforcement agents to better monitor closed areas.

The secretary has made these recreational and commercial fishing area adjustments in order to align with areas reopened based on FDA fish tissue testing results and to allow LDWF enforcement agents to better monitor closed areas. The recreational fishing closure and commercial fishing opening shall become effective August 14, 2010.

Robert J. Barham
Secretary

1009#006

Rules

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

2, 4-D and ULV Malathion/Pyrethroid (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) and with the enabling statute, R.S. 3:3203, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, acting for the Commissioner of Agriculture and Forestry, amends regulations governing the use of the pesticide 2, 4-D and products containing 2, 4-D and adoption of regulations governing the aerial application of an ultra low volume insecticides to be applied to cotton fields infested with insects.

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

The applications of insecticides in accordance with the current concentration regulations have not been sufficient to control plant bugs. Failure to allow the concentrations in ultra low volume (ULV) of Malathion and a ULV pyrethroid application (tank mixed) will allow the plant bugs the opportunity to destroy the cotton during the growing season, effectively destroying the cotton crop. The destruction of the cotton crop or a substantial portion of the cotton crop will cause irreparable harm to the economy of Northern Louisiana and to Louisiana agricultural producers.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - O.2. ...

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

a. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually from April 1 through April 30 in the following

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

b. Applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators from May 1 through July 31, in the areas listed in subparagraph a. of this paragraph, except as follows:

i. A written request to make a permitted commercial application shall be made to, and specific written authorization to make the application obtained from, the assistant commissioner of the office of agricultural and environmental sciences or, in his absence, the commissioner of agriculture and forestry.

ii. Permitted commercial applications of 2, 4-D or products containing 2, 4-D shall be limited to Allen Parish (in the area south of Deer Farm Road and Carrier Road and north of U.S. Highway 190 between U.S. Highway 165 and Castor Creek) and Evangeline Parish (in the area south of LA Highway 104, north of US Highway 190 and west of LA Highway 13).

4. - 5.b....

P. Ultra Low Volume (ULV) Malathion and ULV Pyrethroid Applications; Restrictions

1. An ULV Malathion and a ULV pyrethroid insecticide (tank mixed) may be applied to control plant bugs in cotton only between June 1 and September 30 subject to the following restrictions.

a. Applications shall be made at no less than seven day intervals at an application rate not to exceed the individual pesticide product labels and with no other dilutions or tank mixes.

b. Each application shall be reported, in writing and within 24 hours of the application, to the appropriate Boll Weevil Eradication Program District Office by the commercial applicator, farmer, agricultural consultant or owner/operator.

c. The report shall include the names and addresses of the commercial applicator, the farmer, the agricultural consultant (if appropriate), and the owner/operator; the department's applicator number; the field name or number; the number of acres treated; the pesticide product rates; the WPS re-entry interval; the EPA registration number and total amount of each pesticide applied; the application date and time; and the wind speed and direction.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR

24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), LR 35:628 (April 2009), LR 36:1980 (September 2010).

Mike Strain DVM
Commissioner

1009#085

RULE

Department of Economic Development Office of Business Development

Entertainment Industry Tax Credit
Programs—Digital Media Act
(LAC 61:1.1661-1673)

The Department of Economic Development has amended the following revised rules for the administration of the Digital Media Tax Credit Program.

Title 61

REVENUE AND TAXATION

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

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter D. Louisiana Digital Media Act

§1661. Purpose

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

B. The purpose of this program is to encourage the development in Louisiana of a strong capital base for the production of digital interactive media products and platforms in order to achieve a more independent, self-supporting industry.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009), amended LR 36:1981 (September 2010).

§1663. General Description

A. The program offers a tax credit for the producers of digital interactive media projects, which submitted applications prior to January 1, 2009 and for the producers of digital interactive media products and platform projects which submitted applications on or after July 1, 2009.

B. Tax credits are earned per calendar year at the time funds are expended in Louisiana on a state certified production.

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

D. Tax credits become transferable only after final certification of expenditures.

E. These rules shall become effective upon approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, in accordance with the Administrative Procedures Act.

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

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

G. A state-certified production which receives tax credits pursuant to the provisions of this Section shall not be eligible to receive the rebates provided for in the Quality Jobs Program, R.S. 51:2451 through 2461, in connection with the activity for which the tax credits were received.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009), amended LR 36:1981 (September 2010).

§1665. Definitions

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

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

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

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

Base Investment—the actual funds expended in Louisiana by a state-certified production as production-related costs for design or development of digital interactive media, including costs for payroll and component parts.

Component Parts—all elements that are integral to the functioning or development of such products and platforms. Some examples may be, but are not limited to; software, computer code, image files, music files, audio files, scripts and plays, concept mock-ups, software tools, and testing procedures. Shall also include, but not be limited to: computer servers, workstations, server racks, hard drives, optical drives, monitors, keyboards, integrated video and audio equipment, networking routers, switches, network cabling, and any other computer-related hardware necessary to create or operate a digital interactive media product or platform.

Department—Department of Economic Development.

Digital Interactive Media—means products or platforms that are:

- a. intended for commercial production, use or distribution;
- b. contain at least two of the following types of data: text, sound, fixed images, video, or 3D geometry; and
- c. that have all of the following three characteristics:
 - i. digital—a system that uses discrete (discontinuous) values ordinarily symbolized numerically to represent information for input, processing, transmission and storage. A digital system would be contrasted with an analog system which uses a continuous range of values to represent information. The term digital includes, but is not limited to information input, processed, transmitted and stored via the internet;

ii. interactive—a digital media system for inputting, processing, transmitting or storing information or data in which users of the system are able to respond to the digital media system by inputting, transmitting, processing or storing information or data in response to the information or data provided to them through the digital media system. Digital media system means communication delivered via electronic energy where the information stored, transmitted, or received is in digital form;

iii. media—communication tools used to store, transmit, distribute and deliver information and data. It includes methods and mechanisms for information distribution through, but not limited to distributed networks, such as the Internet, and through compact disc, CD-ROM, various types of DVD, and other removable storage drives and devices;

d. *digital interactive media* may include, but not be limited to:

- i. video or interactive games;
- ii. simulation software;
- iii. interactive educational or training products;
- iv. internet sites designed and developed as social media;
- v. software applications that provide connectivity; and communications between mobile devices and digital interactive media web platforms; and
- vi. technology designed to stream live or pre-recorded video content over the internet to large simultaneous audiences;

e. *digital interactive media* shall not include:

- i. software development primarily designed and developed for institutional, private or internal purposes;
- ii. largely static internet sites designed to provide information about a person, business, or firm; or
- iii. products regulated under the Louisiana Gaming Control Law.

Digital Interactive Media Company—an entity organized under the laws of the state of Louisiana and engaged in the business of producing *digital interactive media* as defined in this Section. *Digital interactive media company* shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, nor with any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as part of such bankruptcy.

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

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

Expended in Louisiana—an expenditure to lease immovable property located within the state; and expenditure as compensation for services performed in the state; or an expenditure to purchase or lease tangible personal property within the state where the transaction is subject to the state sales or lease tax provisions of Title 47 of the Revised Statutes of 1950. A transaction that is subject to the state sales or lease tax provisions of Title 47 of the

Revised Statutes of 1950 shall include transactions which are also subject to a statutory exclusion or exemption.

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

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

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

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

Office—Office of Entertainment Industry Development.

Payroll—includes all salary, wages and other compensation sourced or apportioned to Louisiana, including related benefits,

Person—a natural person, corporation, partnership, limited partnership, limited liability company, joint venture, trust, estate or association.

Production Expenses—preproduction and production expenditures in the state directly relating to a state-certified production:

a. may include without limitation the following:

- i. preproduction stage expenses such as design documents, mock-ups and prototypes;
- ii. testing software, source code development, patches, updates, sprites, three-dimensional models and level design;

(a). testing software—activities entirely devoted to quality assurance of a product;

(b). three-dimensional models—electronic media representations, three dimensional representations of geometric data for the purpose of rendering 2D images and performing calculations;

(c). updates—activities directly relating to recalibrating or revising a product;

iii. costs associated with photography and sound synchronization, lighting and related services;

(a). lighting and related services – includes but not limited to, the use of motion capture technology or green screen technology;

iv. rental of Louisiana facilities and equipment, that are directly related to production;

v. purchase of prepackaged audio files, video files, photographic, or libraries;

vi. purchase of license to use pre-recorded audio files, video or photographic files;

vii. development costs associated with producing audio files and video files to be used in the production of the end product under development;

viii. purchase of game engines or content management platforms produced for general sale;

b. shall not include the following:

i. expenditures made prior to preproduction, such as research and development, workforce recruitment or intellectual property research;

- ii. postproduction expenditures for marketing and distribution;
 - iii. non-production related overhead;
 - iv. amounts that are later reimbursed by the state or any other governmental agency;
 - v. costs related to the transfer of tax credits;
 - vi. amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production;
 - vii. the application fee; or
 - viii. state or local taxes;
- c. the cost of customization or custom development of a product is not an eligible production expense, unless the customization services are performed in Louisiana.

Resident or Resident of Louisiana—a natural person and, for the purposes of determining eligibility for the tax incentives provided by this section, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

Secretary—Secretary of the Department of Economic Development.

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

Tax Credit—digital interactive media producer tax credit.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:632 (April 2009), amended LR 36:1981 (September 2010).

§1667. Certification Procedures

A. Application

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

- a. a distribution plan;
- b. a preliminary budget, including estimated base investment;
- c. a statement that the project will qualify as a state certified production; and
- d. the applicant shall provide additional information upon request.

B. Qualification

1. The office shall determine whether a production or project qualifies, by meeting all requirements of R.S. 47:6022 and these regulations, and taking the following factors into consideration.

- a. The contribution of the production or project to the goal of creating an independent, self-supporting digital interactive media industry.
- b. The impact of the production or project on the employment of Louisiana residents.
- c. The impact of the production or project on the overall economy of the state.

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6022 until such statute is amended, modified or repealed.

3. Amount of Tax Credits. Tax credits are earned per calendar year at the time funds are expended in Louisiana on a state certified production.

a. For applications for state-certified productions submitted to the office prior to July 1, 2009 and subsequently approved by the office and the secretary, a tax credit shall be earned by producers as follows.

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

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

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

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

b. For applications for state-certified productions submitted to the office on or after July 1, 2009 and subsequently approved by the office and the secretary, a tax credit shall be earned by a digital interactive media company as follows.

i. Expenditures made on or after July 1, 2009 shall earn tax credits at the rate of 25 percent the base investment.

(a). To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, a digital interactive media company shall earn additional tax credits at the rate of 10 percent of payroll.

(b) The initial certification shall be effective for expenditures made prior to the date of initial certification and shall be valid until the production is completed.

(c). The production shall be considered complete when it receives its first commercial release, or other appropriate benchmark as agreed to between the parties and outlined in the initial certification.

ii. Expenditures made prior to July 1, 2009 may qualify for tax credits as follows.

(a). The initial certification shall indicate a beginning date for qualifying expenditures to earn tax credits, (hereafter known as "start date") which shall be no earlier than June 30, 2005, the effective date of the original LA Digital Media Act, R.S. 47:6022.

(b) Tax credits shall be earned when expenditures are made, at the following rates.

(i). For each of the first and second years following the start date, the producer shall earn tax credits at the rate of 20 percent of the base investment.

(ii). For each of the third and fourth years following the start date, the producer shall earn tax credits at the rate of 15 percent of the base investment.

(iii). For each of the fifth and sixth years following the start date, the producer shall earn tax credits at the rate of 10 percent of the base investment.

(c) As an illustrative example, if a company applies on August 1, 2009, but indicates that it may have qualifying expenditures dating back to August 1, 2007, the producer would earn tax credits at the following rates.

(i). Expenditures made from August 1, 2007 through June 30, 2009 would earn tax credits at the rate of 20 percent for the first and second years after the start date.

(ii). Expenditures made July 1, 2009 onwards would earn at the flat rate of 25 percent with the possibility of an additional 10 percent for payroll expenditures.

(d) The initial certification letter shall specifically state the applicable tax credit rates for each state certified production.

C. Initial Certification

1. After review and upon a determination of qualification, initial certification will be issued by the office and the secretary, including:

- a. classification of the project as a state certified production;
- b. a unique identifying number;
- c. the total anticipated base investment;
- d. the entity names and allocation percentages for tax credits.

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

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

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

5. As a condition for receiving certification of tax credits under this Section, state-certified productions may be required to display the state brand or logo, or both, as prescribed by the secretary and as outlined in the initial certification letter.

D. Final Certification and Accounting Requirements

1. Prior to final certification of tax credits of a state-certified production or any portion thereof, the producer or digital interactive media company shall submit to the office:

- a. a cost report of production expenditures;
 - i. the cost report of expenditures shall be subject to an agreed-upon procedures engagement conducted by a certified public accountant in accordance with statements on standards for attestation engagements established by the American Institute of Certified Public Accountants;
 - ii. the accountant shall issue a report in the form of procedures and findings. The accountant shall be a certified public accountant licensed in the state of Louisiana and shall be an independent third party unrelated to the digital interactive media company;
 - iii. the agreed upon procedures have been established by the office and the secretary, with assistance from the Society of Louisiana Certified Public Accountants,

as set forth in Section 1673 of these rules, as promulgated in accordance with the Administrative Procedure Act;

b. any additional information as requested by the office and/or the secretary, reasonably necessary to determine eligibility for tax credits, including but not limited to a request for an additional audit at the applicants expense.

2. Upon completion of all or a portion of a state-certified production, the office shall review the production expenses and upon a determination of qualification the office and the secretary will issue a final tax credit certification letter including:

- i. the amount of tax credits;
- ii. the unique identifying number for the state certified production.

3. Multiple requests for final certification may be submitted.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:633 (April 2009), amended LR 36:1983 (September 2010).

§1669. Application and Transfer of Tax Credits

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

B. After receiving final certification, a tax credit may be applied as follows.

1. The credit shall be allowed against the income tax due for applications submitted prior to July 1, 2009, and against the income or franchise tax due for applications submitted on or after July 1, 2009. The credit shall be allowed against the income or franchise tax due from a taxpayer for the taxable period in which the credit is earned as well as the immediately preceding period. If the tax credit allowed exceeds the amount of such taxes due from a taxpayer, then any unused credit may be carried forward by the taxpayer as a credit against subsequent tax liability for a period not to exceed ten years. However, in no event shall the amount of the tax credit applied in a taxable period exceed the amount of such taxes due from the taxpayer for that taxable year.

2. All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this section on their corporation income tax return, or in the case of applications submitted after July 1, 2009, their income and franchise tax returns.

3. Individuals shall claim any credit allowed under this section on their individual income tax return.

4. Entities not taxed as corporations shall claim any credits allowed under this Section on the returns of the partners or members as follows.

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

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

c. Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

C. After receiving final certification, a tax credit may be transferred as follows.

1. Any tax credits allocated to a person and not previously claimed by any taxpayer against his Louisiana state income or franchise tax may be transferred or sold by such person to another person, subject to the following conditions.

a. A single transfer may involve one or more transferees.

b. Transferors and transferred shall submit to the office and the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified production number, the name of the stat-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of the transfer, the amount transferred, a copy of the tax credit certificate, and any other information required by the office or the Department of Revenue.

c. Failure to comply with this paragraph will result in disallowance of the tax credit until the taxpayers are in full compliance.

d. The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally earned.

e. The transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 35:634, amended LR 36:1984 (September 2010).

§1671. Recapture and Recovery of Tax Credits

A. If the office finds that funds for which a digital interactive media company received credits are not actually expended in Louisiana as a production-related cost of a state-certified production, then the digital interactive media company's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.

B. Credits previously granted to a taxpayer, but later disallowed, may be recovered by the Secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the credits were earned.

1. The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

2. The provisions of this Section are in addition to and shall not limit the authority of the Secretary of the Department of Revenue to assess or to collect under any other provision of law.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:1985 (September 2010).

§1673. Agreed Upon Accounting Procedures

A. The agreed upon accounting procedures shall be available to the public as follows:

1. posted on LouisianaEntertainment.gov;
2. available for viewing during regular business hours in the office;
3. sent to the applicant and incorporated into the initial certification letter; or
4. available upon written request to the director; and
5. are included in the rules as detailed in the following Subsection.

B. Instructions

1. Purpose. In an effort to ensure compliance with the amendments made to R.S. 47:6022 (the Louisiana Digital Media Act) during the 2009 Regular Session of the Louisiana Legislature, the Louisiana Department of Economic Development is requiring the independent verification of production expenses incurred by Digital Interactive Media Companies during the creation of state-certified productions. As such, the cost report of production expenditures shall be subject to an agreed-upon procedures engagement conducted by a certified public accountant in accordance with Statement on Standards for Attestation Engagements established by the American Institute of Certified Public Accountants. The agreed-upon procedures engagement must be performed by an independent certified public accountant licensed in the state of Louisiana that is unrelated to the digital interactive media company. The final agreed-upon procedures report must be received prior to any certification of expenditures. The results of the agreed-upon procedures engagement may affect the validity of tax credits granted under this program.

2. Testing. The performance of the agreed-upon procedures will require the testing of payroll and non-payroll expenditures.

3. Sampling Criteria/Instructions—Payroll Expenses

a. Obtain the cost report of production expenditures for the period selected by the Digital Interactive Media Company and verify the mathematical accuracy of such report.

b. Obtain the bank statements from the Digital Interactive Media Company relevant to the applicable project for the period covered by the cost report of production expenditures.

c. Obtain the detailed payroll registers for the period selected by the Digital Interactive Media Company (should be the same period covered as the cost report of production expenditures). This report should indicate the names, address, taxpayer identification number, permanent address, the amount of compensation, and the employee's state of residence.

d. Foot the payroll registers mentioned in item 3.c for mathematical accuracy and agree the total to the cost report of production expenditures mentioned in Subparagraph 3.a.

4. Verification Procedures—Payroll Expenses—Louisiana Residents

a. From the detailed payroll registers referenced in Subparagraph 3.c above, segregate the gross payroll for all Louisiana residents and agree the total to the Louisiana payroll/salaries indicated on either the cost report of production expenditures or the footnotes to the cost report of production expenditures.

b. From the payroll registers for Louisiana residents (see Subparagraph 4.a above), select all disbursements to those individuals whose gross salaries during the period in question exceeded 5 percent of the total disbursements indicated on the cost report of production expenditures for the period in question (see Subparagraph 4.a) for further testing.

c. Excluding those individuals already selected for further testing in Subparagraph 4.b above, select an additional sample consisting of the lesser of 60 individual payroll disbursements or 50 percent of the payroll disbursements not already selected in Subparagraph 4.b above from the payroll registers for Louisiana residents (see Subparagraph 4.a above), for further testing.

d. For each employee selected for testing in Subparagraphs 4.b and 4.c, perform the following, detailing any exceptions noted:

i. if the employee is a salaried employee, verify that the gross salary for the selected disbursement is supported by and agrees to an employment contract or other form of approved pay documentation;

ii. if the employee is an hourly employee, verify that the hourly wage rate for the selected transaction is supported by and agrees to the approved pay rate documentation in the employee's personnel file;

iii. if the employee is an hourly employee, verify that the hours paid for the selected transaction is supported by approved timesheets;

iv. verify that the disbursement of such funds is a qualifying expenditure given the operations of the Digital Interactive Media Company;

v. verify that the payroll expenditures were actually made by the Digital Interactive Media Company as evidenced by deductions in the bank account statements maintained by the Digital Interactive Media Company and that the disbursement cleared the bank during the period in question; and

vi. review employee's personnel file, verifying that the individual meets the definition of "resident" or "resident of Louisiana" as defined by the amendments made to R.S. 47:6022 during the 2009 Regular Session of the Louisiana Legislature: "resident" or "resident of Louisiana" means a natural person and any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

5. Verification Procedures—Payroll Expenses—Non Louisiana Residents

a. From the detailed payroll registers referenced in Subparagraph 3.c above, segregate the gross payroll for all non-Louisiana residents and agree the total to the non-Louisiana payroll indicated on either the cost report of production expenditures or the footnotes to the cost report of production expenditures.

b. From the payroll registers for non-Louisiana residents (see Subparagraph 5.a above), select all disbursements to those individuals whose gross salaries during the period in question exceeded 5 percent of the total disbursements indicated on the cost report of production expenditures for the period in question (see Subparagraph 3.a for further testing).

c. Excluding those individuals already selected for further testing in Subparagraph 5.b above, select an additional sample consisting of the lesser of 60 individual payroll disbursements or 50 percent of the payroll disbursements not already selected in Subparagraph 5.b above from the payroll registers for non-Louisiana residents (see Subparagraph 5.a above), for further testing.

d. For each employee selected for testing in Subparagraphs 5.b and 5.c, perform the following procedures, detailing any exceptions noted:

i. if the employee is a salaried employee, verify that the gross salary for the selected disbursement is supported by and agrees to an employment contract or other form of approved pay documentation;

ii. if the employee is an hourly employee, verify that the hourly wage rate for the selected transaction is supported by and agrees to the approved pay rate documentation in the employee's personnel file;

iii. if the employee is an hourly employee, verify that hours paid for the selected transaction is supported by approved timesheets;

iv. verify that the disbursement of such funds is a qualifying expenditure given the operations of the Digital Interactive Media Company; and

v. verify that the payroll expenditures were actually made by the Digital Interactive Media Company as evidenced by deductions in the bank account statements maintained by the Digital Interactive Media Company and that the disbursement cleared the bank during the period in question.

6. Sampling Criteria/Instructions—Non-Payroll Expenses

a. Obtain the cost report of production expenditures for the period selected by the Digital Interactive Media Company and verify the mathematical accuracy of such report.

b. Obtain the detailed listing of non-payroll expenditures for the period selected by the Digital Interactive Media Company (should be the same period covered as the cost report of production expenditures). This report should indicate the payee, the date of payment, the date that the payment cleared the bank, and amount of the payment.

c. Foot the payroll registers mentioned in Subparagraph 6.b for mathematical accuracy and agree the total to the cost report of production expenditures mentioned in Subparagraphs 3.a and 6.a.

7. Verification Procedures—Non-Payroll Expenses

a. From the detailed listing of non-payroll expenditures referenced in Subparagraph 6.b above, select all disbursements for a particular contract of purchase that exceeded five percent of the total disbursements indicated on the cost report of production expenditures for the period in question (see Subparagraphs 3.a and 6.a) for further testing.

b. Excluding those expenditures already selected for further testing in Subparagraph 7.a above, select an additional sample consisting of the lesser of 60 individual disbursements or 50 percent of the non-payroll disbursements not already selected in Subparagraph 7.a above from the detailed listing of non-payroll expenditures (see Subparagraph 7.a above), for further testing.

c. For each disbursement selected for testing in Subparagraphs 7.a and 7.b, perform the following procedures, detailing any exceptions noted:

i. verify that the transaction is supported by an original invoice/receipt and that the amounts are in agreement;

ii. verify that the expense category to which the disbursement was coded appears reasonable based on the invoice documentation;

iii. verify that the disbursement of such funds is a qualifying expenditure given the operations of the Digital Interactive Media Company; and

iv. verify that the expenditures were actually made by the Digital Interactive Media Company as evidenced by deductions in the bank account statements maintained by the Digital Interactive Media Company and that the disbursement cleared the bank during the period in question.

8. Formatting Procedures. Before submission to the Louisiana Department of Economic Development, ensure that these steps have been taken.

a. Redact all but the last four digits of any employees SSN.

b. Separate expenditures by calendar year, as well as the aggregate project totals.

c. Submit detailed list of all expenditures as spreadsheet.

d. For expenditures after June 29, 2005 and before July 1, 2009, separate those from any expenditures made after July 1, 2009 using the same guidelines above.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:1985 (September 2010).

Kristy Mc Kearn
Undersecretary

1009#046

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District,
and State Accountability System
(LAC 28:LXXXIII.Chapters 3 - 9, 33, and 37 - 45)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to Bulletin 111—*The Louisiana School, District, and State Accountability System*: Chapters 3, 4, 5, 7, 9, 33, 37, 39, 43, and 45.

Proposed changes in Chapter 3 provide clarification of the composition of school performance scores for schools that have not met accountability standards.

Proposed changes in Chapter 4 provide clarification for assessment, attendance, and dropout Index Calculations, particularly defining dropout.

Proposed changes in Chapter 5 provide clarification about grade levels at which students take state assessments, combination of regular and alternate assessment for LAA 2 students, deletion of School Performance Score sharing scenario, with clarification about School Performance Score pairing scenarios.

Proposed changes in Chapter 7 provide clarification of the terms and limitations for the combination of LAA 1 and LAA 2 proficiency.

Proposed changes in Chapter 9 provide clarification about School Performance Score improvement.

Proposed changes in Chapter 33 provide detail of how to outline procedures for the placement of new schools into accountability and the reestablishment of accountability for reconfigured schools.

Proposed changes in Chapter 37 provide clarification about lab and charter school accountability.

Proposed changes in Chapter 39 provide clarification of assessment taken by students with disabilities.

Proposed changes in Chapter 43 provide clarification of LAA 1 proficiency limitations.

Proposed changes in Chapter 45 establish a prescribed time limit for accountability waivers for schools impacted by disasters and make reference to their re-entry into accountability as new or reconfigured schools after the expiration of the waiver.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System Chapter 3. School Performance Score Component §301. Composition of School Performance Scores

A. ...

B. Each school shall receive its school performance scores under one site code regardless of its grade structure.

C. Preliminary accountability results shall include both preliminary school performance scores for all schools labeled academically unacceptable in the current and prior year and those schools on the academic watch list, and the subgroup component analysis for those schools in subgroup component failure in the current or prior year, or who failed the subgroup component the prior year. Final accountability results shall be issued during the fall semester of each year and all accountability reports will reflect the configuration of the school as it existed the prior spring semester.

1. Beginning in 2008, the preliminary accountability results shall include those schools identified as:

a. failing the SPS component based on the current year Baseline SPS; or

b. failing the SPS component based on the prior year Baseline SPS; or

c. being academically unacceptable (any level) the prior academic year; or

- d. failing the subgroup component based on prior spring test results;
- e. exiting any level of Subgroup Component Failure in the current year.

D. In the fall of 2007, schools will receive two SPS.

1. The Growth SPS will determine Growth Labels and rewards status for the SPS component.

2. The Growth SPS will consist of the indicators and weighting in the table above, with the test data collected in spring 2007, and attendance and dropout data collected in the academic year 2005-2006.

3. The Baseline SPS will determine performance labels, academic assistance levels and academically unacceptable schools.

4. For K-8 schools in 2007, the Baseline SPS will consist of the indicators and weighting in the table below, with the test data collected in spring 2006 and 2007, and attendance and dropout data collected in the academic years 2003-2004 and 2004-2005.

2007 (and beyond) Baseline SPS K-8 Indicators and Weighting	
LEAP, iLEAP, LAA-1 and 2 (90% K-8)	Grades 3-8
Attendance (10% K-6; 5% 7-8)	Grades K-8
Dropout Rate (5% 7-8)	Grades 7-8

5. For 9-12 schools in 2007, the Baseline SPS will determine Performance Labels and Academically Unacceptable schools.

a. 9-12 schools that were not labeled Academically Unacceptable in 2006 and whose 2007 baseline SPS are below 60, are labeled Academically Unacceptable in 2007, but if their 2007 Growth SPS are 60 or greater shall have SI requirements waived.

6. For 9-12 schools in 2007, the Baseline SPS will consist of the indicators and weighting in the table below, with the test data collected in spring 2006 and 2007, and graduation data collected in the academic year 2005-2006.

2007 (and beyond) Baseline SPS 9-12 Indicators and Weighting	
LEAP, iLEAP, LAA-1 and 2 (70%)	Grades 9-11
Cohort Graduation Index (30%)	Grade 12

E. In 2008 and beyond, schools will continue to receive two SPS.

1. A Growth SPS will be calculated using the indicators and weighting from the tables above (Paragraphs I.4 and I.6).

2. The Growth SPS will continue to determine growth labels and rewards status for the SPS component.

a. The Growth SPS will include test data from the most recent spring administration (in the prior academic year) and attendance/dropout or graduation data from two years prior.

3. A Baseline SPS will continue to determine Performance Labels and Academically Unacceptable schools.

4. The indicators and weighting for both SPS will consist of that used for the 2007 Baseline SPS.

a. The Baseline SPS will include test data from the two most recent spring administrations and

attendance/dropout or graduation data from two and three years prior.

F. - L. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034, 2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007), LR 33:2593 (December 2007), LR 34:430 (March 2008), LR 35:639 (April 2009), LR 36:1987 (September 2010).

§303. Calculating the SPS Component

A. ...

B. Beginning in 2006, the K-6 Baseline SPS will be calculated using the following formula. Beginning in 2007, both Baseline and Growth SPS will use this formula.

The SPS for a K-6 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example: $[(87.8 * 90\%) + (110.9 * 10\%)] = 90.1$			
Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 3-6)	87.8	90%	79.0
Attendance (K-6)	110.9	10%	11.1
			SPS = 90.1

1. Any K-6 school with at least one grade that is assessed (3-6) will receive an SPS based only on its own student data.

2. Any configuration that has no assessed grades will be paired/shared as described in §521.

C. Beginning in 2006, the K-8 Baseline SPS will be calculated using the following formula. Beginning in 2007, both Baseline and Growth SPS will use this formula.

The SPS for a K-8 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example: $[(87.8 * 90\%) + (95.2 * 5\%) + (102.7 * 5\%)] = 88.9$			
Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 3-8)	87.8	90%	79.0
Attendance (K-8)	95.2	5%	4.8
Dropout (7-8)	102.7	5%	5.1
			SPS = 88.9

1. Any K-8 school with at least one grade that is assessed (3-8) will receive an SPS based only on its own student data.

D. In 2007 and future years, the 9-12 SPS will be calculated using the following formula.

The SPS for a 9-12 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example: $[(92.1 * 70\%) + (83.3 * 30\%)] = 89.5$			
Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 9-11)	92.1	70%	64.5
Graduation Index (Grade 12)	83.3	30%	25.0
			SPS = 89.5

E. Beginning with the 2007 baseline SPS, a combination school (a school with a grade configuration that includes a combination from both categories of schools, K-8 and 9-12,) will receive a score from a weighted average of the SPS from the K-8 grades and the SPS from the 9-12 grades.

1. The K-8 SPS will be weighted by the number of students eligible to test during the spring test administration.

2. The 9-12 SPS will be weighted by the sum of:
- the students eligible to test during the spring test administration; and
 - the number of members of the cohort used as the denominator in the graduation index calculation.

F. - K.3. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2738 (December 2003), amended LR 31:763 (April 2004), LR 32:1020 (June 2006), LR 32:2034 (November 2006), LR 36:1988 (September 2010).

§307. Incentive Points

A. - C. ...

D. Students repeating the GEE ELA, math, science, and/or social studies tests shall not earn incentive points.

D.1. - E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2739 (December 2003), amended LR 31:2422 (October 2005), LR 32:1021 (June 2006), LR 33:252 (February 2007), LR 36:1989 (September 2010).

§313. Formula for Calculating a CRT Index for a Combination School

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2739 (December 2003), repealed LR 36:1989 (September 2010).

Chapter 4. Assessment, Attendance, and Dropout Index Calculations

§405. Calculating a K-8 Assessment Index

A. For all grades 3 - 8 use the values from the following table.

iLEAP, LEAP and GEE Index Points	
Label	Subject-Test Index Points
Advanced =	200
Mastery (Exceeding the Standard) =	150
Basic (Meeting the Standard) =	100
Approaching Basic (Approaching the Standard) =	50
Unsatisfactory =	0

1. Add any incentive points earned by repeating 4th or 8th graders to their subject-test index points (a student scoring Basic in 06 in ELA, who scored Unsatisfactory in 05 in ELA, is recorded as earning 150 points in 06 in ELA.

B. Weight each subject-test index score by the corresponding value from the table below.

Unit Weights for K-8 Assessment Index				
Grade	ELA	Math	Science	Social Studies
3rd	2	1	1/2	1/2
4th	2	2	1	1
5th	1	1	1	1

Unit Weights for K-8 Assessment Index				
Grade	ELA	Math	Science	Social Studies
6th	1	1	1	1
7th	1	1	1	1
8th	2	2	1	1

C. Sum all weighted subject-test index scores.

D. Sum all weights applied to subject-test index scores from the table above (in Subsection B).

E. Weight the sum of all summer school incentive points (from the prior summer as described in §307) by 2.

F. Add the value from Step (Subsection) E to the value from Step (Subsection) C.

G. Divide the sum from Step (Subsection) F by the sum from Step (Subsection) D. This quotient is the K-8 Assessment Index.

H. Example of K-8 Assessment Index Calculation

Grade	Subject	Subject-Test Index Score	Incentive Points (Spring Retest)	Unit Weight	Weighted Subject-Test Index Score
3	ELA	100		2	200
3	MTH	50		1	50
3	SCI	50		0.5	25
3	SS	100		0.5	50
4	ELA	100	50	2	300
4	MTH	50		2	100
4	SCI	50	50	1	100
4	SS	50		1	50
5	ELA	150		1	150
5	MTH	150		1	150
5	SCI	100		1	100
5	SS	150		1	150
6	ELA	100		1	100
6	MTH	100		1	100
6	SCI	100		1	100
6	SS	50		1	50
7	ELA	0		1	0
7	MTH	50		1	50
7	SCI	0		1	0
7	SS	0		1	0
8	ELA	150		2	300
8	MTH	100		2	200
8	SCI	100		1	100
8	SS	150		1	150
Sums				28	2575
K-8 Assessment Index				2575 ÷ 28 = 92.0	

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 36:1989 (September 2010).

§409. Calculating a 9-12 Assessment Index

A. For all grades 9-11, use the values from the table in §405.A, above.

B. Adjust each subject-test index by the corresponding dropout adjustment factor.

1. The 9th grade dropout adjustment factor is the previous year's 9th grade non-dropout rate plus 4.0 percent (100.0% - 9th grade DO rate + 4.0%).

2. The 10th grade dropout adjustment factor is the product of the previous year's 9th grade non-dropout rate plus 4.0 percent and the 10th grade non-dropout rate plus 4.0

percent $[(100.0\% - 9\text{th grade DO rate} + 4.0\%) \times (100.0\% - 10\text{th grade DO rate} + 4.0\%)]$.

3. The 11th grade dropout adjustment factor is the product of the previous year's 9th grade non-dropout rate plus 4.0 percent and the 10th grade non-dropout rate plus 4.0 percent and the 11th grade non-dropout rate plus 4.0 percent $[(100.0\% - 9\text{th grade DO rate} + 4.0\%) \times (100.0\% - 10\text{th grade DO rate} + 4.0\%) \times (100.0\% - 11\text{th grade DO rate} + 4.0\%)]$.

C. Weight each adjusted subject-test index score by the corresponding value from the table below.

Unit Weights for 9-12 Assessment Index					
Grade	ELA	Math	Science	Social Studies	Total
9th Grade	1	1			2
10th Grade	1.25	1.25			2.5
11th Grade			1.25	1.25	2.5

D. Sum all weighted values from step C, above.

E. Divide the sum from step D, above, by the sum of all weights applied to subject-test index scores from the table above (in C). This quotient is the 9-12 Assessment Index.

F. Example of 9-12 Assessment Index Calculation

1. Non-dropout rates in this example are; 9th-95.0 percent, 10th-98.0 percent, and 11th-99.0 percent.

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
9	ELA	100	.990	99.0	1	99.0
9	MTH	50	.990	49.5	1	49.5
10	ELA	100	1.010	101.0	1.25	126.3
10	MTH	150	1.010	151.5	1.25	189.4
11	SCI	50	1.040	52.0	1.25	65.0
11	SS	50	1.040	52.0	1.25	65.0
Sums					7	594.2
9-12 Assessment Index				$594.2 \div 7 = 84.9$		

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010).

§411. Attendance Index Calculations

A. An attendance index score shall be calculated for each school. The attendance index shall be calculated using the prior two years' average attendance rates as compared to the state's goal.

B. K-8 school attendance index formula= $(16.667 * ATT) - 1483.4$.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), amended LR 36:1990 (September 2010).

§413. Dropout Index Calculations

A. A dropout index score for each school shall be calculated. The index shall be calculated using the prior two years' average dropout rates as compared to the state's goal.

B. The National Center for Educational Statistics "event rate" definition of *dropout* shall be adhered to, but in rare instances, with BESE approval, the Louisiana Department of

Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

C. All LEP students shall take the English Language Development Assessment (ELDA) annually as well as the appropriate state assessment for their enrolled grade.

D. GEE 21 scores for repeaters (in any subject) shall not be included in high school SPS calculations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 36:1990 (September 2010).

Chapter 5. Inclusion in Accountability

§511. Attendance Index Calculations

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), repealed LR 36:1990 (September 2010).

§513. Dropout Index Calculations

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), repealed LR 36:1990 (September 2010).

§514. Subgroup Performance Scores (GPS)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1445 (July 2004), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), LR 36:1990 (September 2010).

§515. State Assessments and Accountability

A. Louisiana students in grades 3 through 11 will participate in only one of the following state assessments on an annual basis:

1. - 2. ...
3. iLEAP; or
4. LEAP Alternate Assessment Level 1 (LAA 1); or
5. LEAP Alternate Assessment Level 2 (LAA 2).

a. Some LAA 2 students will participate in a combination of regular assessment (LEAP, iLEAP, GEE) and LAA 2 if the IEP requires this.

b. These students can take only one test in each subject at any single test administration, e.g., LAA 2 in ELA and GEE in mathematics, science, and social studies.

B. All LEP students shall take the English Language Development Assessment (ELDA) annually as well as the appropriate state assessment for their enrolled grade.

C. GEE 21 scores for repeaters (in any subject) shall not be included in high school SPS calculations.

D. High school students who meet LEAP alternate assessment participation criteria shall take the LAA at the 9th, 10th, and 11th grade beginning in spring 2004.

E. Scores shall not be included in school performance score calculations for LEP students who have not been enrolled in a school in the United States for one full school year.

F. Scores earned by any student during an academic year who transferred into the LEA after October 1 of the same academic year shall not be included in the School

Performance Score (SPS) or Subgroup Performance Score (GPS).

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:2422 (October 2005), LR 32:1022 (June 2006), LR 33:253 (February 2007), LR 36:1990 (September 2010).

§519. Inclusion of Schools

A. Beginning in 2006 for the Baseline SPS, all K-8 schools shall have a minimum number of 80 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

1. - 2. Repealed.

B. Beginning in 2007 for the Growth SPS, all K-8 schools shall have a minimum number of 40 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

1. - 2. Repealed.

C. In 2007 for the Growth SPS, all 9-12 and combination schools shall have a minimum number of 40 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

D. Beginning in 2007 for the Baseline SPS, all 9-12 and combination schools shall have a minimum number of 80 units in any combination of graduation cohort membership and LEAP, iLEAP, and LAA 1 or 2.

E. Each member of a cohort used to calculate a graduation index shall be counted as 4 units when determining the minimum number of units required calculating an SPS.

F. Beginning in 2007, any school that does not have a district feeder pattern must have at least 40 FAY students for 2 consecutive academic years to have an SPS (Baseline or Growth) calculated.

G. - J. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 32:1022 (June 2006), LR 34:431 (March 2008), LR 36:1991 (September 2010).

§521. Pairing/Sharing of Schools with Insufficient Test Data

A. Beginning in 2006, any school with at least one testing grade (3-11) will receive its Baseline SPS based only on its own student data provided it meets the requirements of §519.

1. Repealed.

B. Beginning with the Baseline SPS in 2006, any K-2 school will share 3rd grade test data from another school. The K-2 school will provide its own attendance data to its own SPS.

1. - 4. Repealed.

C. Beginning in 2007, any school enrolling only 12th grade students will share data with a school or schools containing grades 9-11 that send it the majority of its students. This sharing relationship is to define the cohort that will provide the starting roster on which its graduation index will be based. The 12th grade school will receive an SPS based solely on the graduation index.

D. Beginning in 2007, any K-2, 9-12 configuration shall receive an SPS based solely on the 9-12 data.

E. A district must identify the school where each of its non-standard schools shall be "paired." The "paired" school

must be the one that receives by promotion the largest percentage of students from the non-standard school. In other words, the "paired" school must be the school into which the largest percentage of students "feed." If two schools receive an identical percentage of students from a non-standard school, the district shall select the "paired" school.

F. A school's paired status at the beginning of the school year for the baseline SPS shall be its status at the end of the school year for the growth SPS (unless a school closure occurs).

G. Requirements for the number of test/graduation index units shall be the sum of the units used to calculate the school's SPS (see §519).

1. -3. Repealed.

H. If a school has too few test units to be a "stand-alone" school, it may request to be considered stand-alone.

1. It shall receive an SPS that is calculated solely on that school's data, despite the small number of test units.

2. The request shall be in writing to the LDE from the LEA superintendent.

3. The school forfeits any right to appeal its SPS and status based on minimum test unit counts.

I. Once the identification of "paired" schools has been made, this decision is binding for 10 years. An appeal to the BESE may be made to change this decision prior to the end of 10 years, when redistricting or other grade configuration and/or membership changes occur.

J. If 10 years has not elapsed, but a paired/shared school acquires a sufficient number of testing units, then the pair/share relationship will be broken, and the school will be treated as a stand-alone school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 30:1445 (July 2004), LR 32:1023 (June 2006), LR 36:1991 (September 2010).

§525. Growth Targets for New or Reconfigured Schools and Reconstituted Schools

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2742 (December 2003), repealed LR 36:1991 (September 2010).

Chapter 7. Subgroup Component

§703. Inclusion of Students in the Subgroup Component

A. - C.1.a.ii.

b. beginning in fall 2007, districts that exceed the two percent cap may do so without penalty if the sum of LAA 1 and LAA 2 students labeled proficient does not exceed three percent of all students tested within the district;

i. the district fails to request the waiver; or

ii. if the district requests the waiver but it is determined by LDE that ineligible students were administered LAA 2.

1.c. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR

30:1996 (September 2004), amended LR 30:2256 (October 2004), amended LR 30:2445 (November 2004), LR 31:912 (April 2005), LR 31:2762 (November 2005), LR 33:253 (February 2007), LR 34:428 (March 2008), LR 34:867 (May 2008), LR 36:1991 (September 2010).

Chapter 9. Evaluating Improvement

§903. Growth Targets and Labels

A. Exemplary Academic Growth—a school that makes its growth target, the Students with Disabilities (SWD) and Economically Disadvantaged (ED) subgroups improving their adjusted Subgroup Assessment Indices (SAI) at least two points, and the school is not AUS.

B. Recognized Academic Growth—a school that makes its growth target but either subgroup does not improve its adjusted Subgroup Assessment Index (SAI) at least two points and/or the school is AUS.

C. Minimal Academic Growth—a school improving (at least 0.1 points) but not meeting its growth target.

D. No Growth—a school with a change in SPS of 0 to –2.5 points.

E. School In Decline—a school with a declining SPS (more than –2.5 points).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 33:2595 (December 2007), LR 36:1992 (September 2010).

Chapter 27. Supplemental Educational Services Replaced by Bulletin 124

§2701. Definition of Supplemental Services

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2750 (December 2003), amended LR 30:764 (April 2004), repealed LR 36:1992 (September 2010).

§2702. Supplemental Educational Service Models

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:1644 (August 2003), LR 30:764 (April 2004), repealed LR 36:1992 (September 2010).

§2703. Supplemental Service Providers

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2750 (December 2003), amended LR 30:764 (April 2004), repealed LR 36:1992 (September 2010).

§2705. State Educational Agency Role and Responsibilities

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2750 (December 2003), repealed LR 36:1992 (September 2010).

§2707. Local Educational Agency Role and Responsibilities

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), amended LR 30:764 (April 2004), repealed LR 36:1992 (September 2010).

§2709. Optional LEA Responsibilities

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), repealed LR 36:1992 (September 2010).

§2711. SES Agreement between Provider and LEA

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), repealed LR 36:1992 (September 2010).

§2713. SES Provider Responsibilities

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:765 (April 2004), repealed LR 36:1992 (September 2010).

§2715. State Department of Education Approval and Monitoring of SES Providers

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:765 (April 2004), repealed LR 36:1992 (September 2010).

§2717. Appealing State Department of Education SES Decisions

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:766 (April 2004), repealed LR 36:1992 (September 2010).

§2719. Remaining an SES Provider

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:766 (April 2004), repealed LR 36:1992 (September 2010).

§2721. Review of Provider Performance

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:766 (April 2004), repealed LR 36:1992 (September 2010).

Chapter 33. New Schools and/or Significantly Reconfigured Schools

§3301. Inclusion of New Schools

A. - B. ...

C. New K-8 schools (in existing LEAs) with one year of test data shall be included in accountability. For attendance and dropout data, the district average for elementary schools will be used.

D. The new high school in an existing LEA shall enter accountability using its first year of assessment data, adjusted by the district average dropout data.

1. This adjusted assessment index shall be used as a first year baseline SPS to assign performance labels.

2. The baseline in year two shall consist of the adjusted assessment data from year one and assessment data from year two adjusted by the schools own dropout data from year one.

3. The growth SPS in year two shall consist of one year adjusted assessment data.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator (along with two years of adjusted assessment data in year three of the school's operation).

E. New schools in new districts and new charter schools unaffiliated with existing districts shall enter accountability after their second year of assessment.

1. Elementary schools shall receive their first baseline scores using two years of assessment data and one year of their own attendance and dropout data.

2. High schools shall receive their first baseline scores using two years of assessment data, the first year unadjusted by dropout data, and the second year adjusted by dropout data.

3. High schools shall receive their first growth scores in their third year of operation.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator (along with two years of adjusted assessment data) in year three of the school's operation.

F. Schools with the same first three digits of their six digit site codes are in the same district/LEA when district averages must be used for accountability purposes.

G. Schools that do not align with the patterns described in this section will be included in accountability as soon as the required data is available.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010).

§3303. Reconfigured Schools

A. Prior to any reconfiguration, the LDE will review the changes to school sites in the planned reconfiguration and will consult with the LEA on the effects that the reconfiguration will have on rewards and/or AUS or subgroup component failure status. After this consultation, the LDE shall make all decisions regarding the effects of these changes on rewards, AUS or subgroup component failure status, and sanctions for all schools effected by the changes and will notify the LEA of its decision.

B. All reconfigurations must be submitted to the Sponsor Site Database before October 1 of the first year of operation under the reconfiguration.

C. Schools that are reconfigured shall continue in accountability based on their new configurations with a change in SPS indicators driving the decisions.

1. K-6 schools have elementary assessment and attendance indicators.

2. K-8 schools have elementary assessment, attendance and dropout indicators.

3. 9-12 schools have secondary assessment and cohort graduation indicators.

4. Combination schools have at least elementary and secondary assessment and attendance indicators; and possibly dropout and graduation indicators.

D. Schools that reconfigure but keep the same indicators will continue in accountability with no special consideration (e.g. K-5 changes to K-6, K-6 changes to K-3, K-7 changes to K-8, 4-12 changes to 6-12. 9-12 changes to 10-12).

E. Schools that reconfigure and add an indicator/s in the process will:

1. receive a baseline SPS following the first year of operation with the new configurations using one year of assessment data; and, a district average for a dropout, attendance, or graduation indicators except in cases where the LDE can determine the district average will inflate scores to avoid accountability consequences;

2. the LDE may use data from a school with similar demographics and/or assessment results if circumvention of policy is indicated;

3. no growth score shall be calculated nor growth labels assigned.

F. Schools that reconfigure and lose an indicator will receive a score based on two years of data collected at the school that aligns with the new configuration.

G. A district with a K-8 school with a greater than 50 percent change in student enrollment, excluding expected grade progression, may request that the school receive a baseline SPS using the first year of assessment data under the new configuration and a district average for attendance and dropout data. A reconfigured high school will retain its graduation data from the prior year. Any AUS, SCF, or AA status and eligibility for participating in any specific programs shall be determined by the LDE. No growth score shall be calculated nor growth labels assigned.

H. The LDE will consult with the district concerning the SPS calculation when unusual circumstances or configurations exist.

I. Data collected at one site shall not be moved to another site and included in accountability results except when two or more schools with dissimilar configurations combine to create one school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 31:2765 (November 2005), LR 33:2600 (December 2007), LR 36:1993 (September 2010).

Chapter 37. Inclusion of Lab Schools and Charter Schools

§3701. Special Consideration of Lab and Charter Schools

A. Such schools shall be included in the Louisiana Accountability System following the same rules that apply to traditional and/or alternative schools. The only exceptions are lab schools and Type 1, 2, 3 and 5 charter schools that are independent schools and frequently cannot be paired or shared with another school grade level, and/or if there is no home-based district school to which a given student's scores can be returned. Therefore, if they do not have the required data such schools cannot receive an SPS. However, if they meet the requirements for accountability under the subgroup component, these analyses will be conducted, subgroup

component failure decisions will be based on these results. If neither the SPS or subgroup component can be fully applied, the state will include the results of these students in the aggregate state accountability report.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 33:2600 (December 2007), LR 36:1993 (September 2010).

Chapter 39. Inclusion of Students with Disabilities

§3901. Assessment of Students with Disabilities

A. All students, including those with disabilities, shall participate in Louisiana's testing program. The scores of all students who are eligible to take the LEAP, iLEAP, GEE, LAA 1, or LAA 2 shall be included in the calculation of the SPS. Most students with disabilities shall take the assessments with accommodations, if required by their Individualized Education Program (IEP).

1. - 3. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 31:2763 (November 2005), LR 36:1994 (September 2010).

Chapter 43. District Accountability

§4310. Subgroup Component AYP (Adequate Yearly Progress)

A. - A.1.f. ...

B. Inclusion of Students in the Subgroup Component

1. - 3. ...

a. the alternate academic achievement standards for students participating in LAA 1 will be used, provided that the percentage of proficient LAA 1 students does not exceed 1.0 percent of all students in the grades assessed. If the district exceeds the 1.0 percent proficient cap, the district shall request a waiver. The students exceeding the cap shall be assigned a zero on the assessment and be considered non-proficient if:

B.1.a.i. - E.2.b.NOTE. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1447 (July 2004), amended LR 30:2446 (November 2004), LR 31:424 (February 2005), LR 31:633 (March 2005), LR 31:913 (April 2005), LR 32:1029 (June 2006), amended LR 33:635 (April 2007), LR 34:429 (March 2008), LR 34:868 (May 2008), LR 36:1994 (September 2010).

Chapter 45. Disaster Considerations for School and District Accountability

§4503. One Year Waive for "Severe Impact" Schools and Districts

A. Schools that meet either of two conditions associated with disasters shall be labeled "severe impact" schools and shall receive a one year waiver of accountability decisions based on the schools' school performance scores. The one year waiver is limited to the year in which the disaster occurred. The conditions are:

A.1. - C. ...

D. The year following the waivers, the waived schools shall be considered new schools and shall enter accountability according to the policy in Chapter 33.

E. - M. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1412 (August 2006), amended LR 33:636 (April 2007), LR 36:1994 (September 2010).

§4505. Severe Impact Schools Following a One Year Disaster Waiver

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1413 (August 2006), amended LR 36:1994 (September 2010).

Jeanette Vosburg
Executive Director

1009#027

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District,
and State Accountability System
Calculating a Graduation Index
(LAC 28:LXXXIII.613, 1101, 1601, 4311, 5101, and 5103)

Editor's Note: This Section is being repromulgated to correct a typographical error. The original Rule may be viewed in its entirety on pages 1769-1771 of the August 20, 2010 edition of the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 111—The Louisiana School, District, and State Accountability System*: §613, Calculating a Graduation Index, §1101, Performance Labels, §1601, Entry into and Exit from Academically Unacceptable School Status, §4311, Performance Labels, §5101, Definition of a Distinguished Educator, and §5103, Role of a Distinguished Educator. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations. The changes in Chapter 6 provide detail of how the Graduation Index is calculated. The changes in Chapters 11, 16, and 43 provide detail of school and district performance scores and labels and explain how schools will enter and exit from Academically Unacceptable School status.

Title 28

EDUCATION

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

Chapter 6. Graduation Index

§613. Calculating a Graduation Index

A. - A.1. ...

B. The graduation index of a school shall be the average number of points earned by cohort members.

1. Beginning with the 2011 Baseline SPS, the baseline graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the current subgroup component (see §708).

2. Beginning with the 2012 Growth SPS, the growth graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the prior year's subgroup component (see §708).

3. The cohort graduation rate adjustment factor shall be calculated using the formula: unadjusted graduation index + [(graduation rate – graduation rate target) * 1.5].

4. The graduation rate target shall be 65 percent in 2011 and increase 5 percent per year until 2014 when it will reflect the goal of 80 percent established in R.S. 17:2928.

C. - F. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:000 (April 2010), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010).

Jeanette B. Vosburg
Executive Director

1009#028

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Agricultural Education (LAC 28:CXV.2373)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2373. Agricultural Education. This revision proposes to amend Bulletin 741 by adding CASE Animal Science, CASE Plant Science, Meat Processing, Veterinary Assistant II, and Woodworks courses to Agricultural Education course offerings. This action is in direct response to industry demands for workers trained in occupations related to meat processing, veterinary assistants, and woodworking.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

**Chapter 23. Curriculum and Instruction
§2373. Agricultural Education**

A. The Agricultural Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory Agriscience	7-8	-
Agribusiness	10-12	½-1
Agricultural Education Elective I, II	9-12	1/2-3
Agriscience I	9-12	1

Course Title(s)	Recommended Grade Level	Units
Agriscience II	10-12	1
Agriscience III	11-12	1
Agriscience Elective I, II	9-12	½-3
Agriscience-Construction Technology	11-12	½-1
Agriscience-Leadership	9-12	½-1
Agriscience Power Equipment	11-12	½-1
Animal Science	11-12	1/2
Biotechnology in Agriscience	11-12	1
Canine Care and Training	9-12	½
CASE Animal Science	10-12	1
CASE Plant Science	10-12	1
Cooperative Agriscience Education I	11-12	3
Cooperative Agriscience Education II	12	3
Environmental Studies in Agriscience	11-12	1
Equine Science	11-12	½-1
Floristry	11-12	1
Forestry	11-12	½-1
Horticulture	11-12	½-1
Landscape Design, Construction and Maintenance	10-12	1
Meat Processing	11-12	1
Precision Instrumentation in Agriscience	10 12	½
Small Animal Care and Management	10-12	½-1
Veterinary Assistant	10-12	1
Veterinary Assistant II	11-12	1
Woodworks	10-12	1
Industry-Based Certifications		
NCCER Welding Technology I Agriscience	11-12	1-3
NCCER Carpentry in Agriscience	11-12	1-3
NCCER Electrical I Agriscience	11-12	1-3
NCCER Pipefitting in Agriscience	11-12	1-3

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1298 (June 2005), amended LR 33:277 (February 2007), LR 33:2050 (October 2007), LR 34:2386 (November 2008), LR 35:1875 (September 2009), LR 35:2747 (December 2009), LR 36:1995 (September 2010).

Jeanette Vosburg
Executive Director

1009#017

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Career Options (LAC 28:CXV.2397)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends Bulletin 741—*Louisiana Handbook for School Administrators*: §2397. Career Options. The Career Options policy was updated as required by Act 257 of the 2009 Legislative Session. It changes the name of the Five Year Plan to the Individual Graduation Plan. There will be no costs or savings to state or local governmental units.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

§2397. Career Options

A. Preparation for Choosing an Area of Concentration

1. To prepare students for choosing a career option at the high school level, at least six activities which expose students to career and technical and academic fields of study shall be conducted at each grade level in grades six through eight during each school year. Such activities shall include career interest inventories and information to assist students in the career decision-making process and may include job shadowing, job mentoring, and job internships. The activities may also include field trips, guest speakers, community service activities, and uses of technology such as word processing, desktop production, computer-assisted drafting and graphics. Each school with grades six through eight shall maintain records of such activities.

2. By the end of the eighth grade, each student shall develop, with the input of his family, an Individual Graduation Plan. Such a plan shall include a sequence of courses which is consistent with the student's stated goals for one year after graduation. Each student's Individual Graduation Plan shall be reviewed annually thereafter by the student, parents, and school advisor and revised as needed. Every middle, junior, or high school shall require that the parent/guardian/legal custodian sign his/her child's schedule form and the Individual Graduation Plan for students in grades 8-12. Students shall be able to change from one major (area of concentration) to the other at the end of any school year.

3. School counselors or others designated by the school principal, or both, shall be responsible for the completion of the Individual Graduation Plan of each eighth grade student. The school counselors and others shall counsel each student with regard to high school graduation requirements and shall assist the student in developing his plan. The school counselors and others shall forward such plans to the appropriate high schools where such students shall attend.

4. During the ninth and tenth grades, each student shall pursue the rigorous core curriculum required by his school for his chosen major. The core curriculum shall include required coursework as established by BESE and appropriate elective courses.

B. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:183.1 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1303 (June 2005), amended LR 36:1996 (September 2010).

Jeanette Vosburg
Executive Director

1009#020

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Foreign Languages (LAC 28: CXV.2345)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2345. Foreign Languages. The revision adds Greek and Chinese to the Foreign Language Program of Studies. This change was requested by schools teaching these subjects. The courses must be listed in Bulletin 741 to be included in the TOPS core.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 23. Curriculum and Instruction

§2345. Foreign Languages

A. The foreign language course offerings shall be as follows.

Course Title(s)	Units
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
American Sign Language I, II	1 each
Greek I, II, III, IV	1 each
Chinese I, II, III, IV	1 each

B. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 273; R.S. 17:284.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1295 (June 2005), amended LR 36:1996 (September 2010).

Jeanette Vosburg
Executive Director

1009#016

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—General Career and Technical Education
(LAC 28: CXV.2377)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2377. General Career and Technical Education. The amendment will delete a course

offering, Java Programming, as a 1-credit course. The action is being proposed to update Career and Technical course offerings.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 23. Curriculum and Instruction

§2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	1
CTE Internship II	12	1
CTE Internship I	11-12	2
CTE Internship II	12	2
Consumer Finance and Banking	12	1
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2-1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
STAR I	11-12	1
STAR II	12	1
Entrepreneurship	11-12	1
Journey to Careers	9	1/2-1
Oracle Internet Academy		
Database Design and Programming	11-12	1
Database Programming with PL/SQL	11-12	1
Finance Academy		
Business Economics	11-12	1/2
Financial Services	11-12	1/2
Financial Planning	11-12	1/2
Ethics in Business	11-12	1/2
Insurance	11-12	1/2
Business in a Global Economy	11-12	1/2
Principles of Finance	11-12	1/2 – 1
Principles of Accounting	11-12	1/2
Managerial Accounting	11-12	1/2
Advanced Finance	11-12	1/2
Hospitality and Tourism Academy		
Principles of Hospitality and Tourism	11-12	1/2
Customer Service	11-12	1/2
Sports Entertainment and Event Management	11-12	1/2
Geography and World Cultures	11-12	1/2
Sustainable Tourism	11-12	1/2
Hospitality Marketing	11-12	1/2
Information Technology Academy		
Principles of Information Technology	11-12	1/2
Computer Networking	11-12	1/2
Web Design	11-12	1/2
Databases Design	11-12	1/2
Computer Systems	11-12	1/2
Introduction to Programming	11-12	1/2
Digital Video	11-12	1/2

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 32:546 (April 2006), LR 32:1415 (August 2006) LR 33:278 (February 2007), LR 33:2050 (October 2007), LR 34:1386 (July 2008), LR 34:2558 (December 2008), LR 35:1229 (July

2009), LR 35:2319 (November 2009), LR 35:2748 (December 2009), LR 36:1997 (September 2010).

Jeanette Vosburg
Executive Director

1009#018

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Technology Education (LAC 28: CXV.2385)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends Bulletin 741—*Louisiana Handbook for School Administrators*: §2385. Technology Education. This revision amends Bulletin 741 by adding NCCER Industrial Maintenance and NCCER Insulating courses to Technology Education course offerings. This action is in direct response to industry demands for workers trained in occupations related to industrial maintenance and insulating.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 23. Curriculum and Instruction

§2385. Technology Education

A. Technology Education (formerly industrial arts) course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Advanced Electricity/Electronics	10-12	1
Advanced Metal Technology	10-12	1
Advanced Wood Technology	10-12	1
Aerospace Engineering	11-12	1
Basic Electricity/Electronics	9-12	1
Basic Metal Technology	9-12	1
Basic Wood Technology	9-12	1
Civil Engineering and Architecture	11-12	1
Communication/Middle School	6-8	-
Communication Technology	9-12	1
Computer Integrated Manufacturing	11-12	1
Construction/Middle School	6-8	-
Construction Technology	10-12	1
Cooperative Technology Education	10-12	3
Digital Electronics	9-10	1
Energy, Power, and Transportation Technology	9-12	1
Engineering Design I, II	11-12	1
Engineering Design and Development	11-12	1
General Technology Education	9-12	1
Introduction to Engineering Design	8-12	1
Manufacturing Technology	9-12	1
Manufacturing Technology/Middle School	6-8	-
Marine Engineering	11-12	0.5
Materials and Processes	10-12	1
Modular Technology/Middle School	6-8	-
Physics of Technology I	10-12	1
Physics of Technology II	11-12	1
Power Mechanics	9-12	1

Course Title(s)	Recommended Grade Level	Units
Principles of Engineering	9-10	1
Technology Education Computer Applications	9-12	1
Technology Education Elective I, II	9-12	1/2-3
Transportation Technology/Middle School	6-8	-
Welding Technology	10-12	1
Industry-Based Certifications		
Advanced Technical Drafting	10-12	1
Architectural Drafting	10-12	1
Basic Technical Drafting	9-12	1
NCCER Carpentry I, II TE	11-12	1-3
NCCER Electrical I, II TE	11-12	1-3
NCCER Industrial Maintenance	11-12	1-3
NCCER Instrumentation Control Mechanic I, II	11-12	1-3
NCCER Insulating	11-12	1-3
NCCER Pipe Fitter I, II TE	11-12	1-3
NCCER Welding Technology I, II TE	11-12	1-3
Process Technician I, II	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 35:1229 (July 2009), LR 35:2323 (November 2009), LR 35:2747 (December 2009), LR 36:1997 (September 2010).

Jeanette Vosburg
Executive Director

1009#019

RULE

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, the Board of Elementary and Secondary Education amends Bulletin 746—*Louisiana Standards for State Certification of School Personnel*: §411. School Nurse. This revision in policy is a correction for Bulletin 746. Previously Bulletin 746 listed renewal guidelines for a Type A ancillary School Nurse. A Type A ancillary School Nurse certificate is valid for life of continuous service, so therefore the renewal guidelines were listed in error. This revision of policy will eliminate that language.

Title 28

EDUCATION

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

Chapter 4. Ancillary School Service Certificates

Subchapter A. Child Nutrition Program Supervisor

§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. six semester hours earned in nursing, education, or other health-related subjects completed since the Type B certificate was issued; and

b. current Louisiana licensure as a registered professional nurse.

C. Type A School Nurse—valid for life with continuous service.

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 36:1998 (September 2010).

Jeanette Vosburg
Executive Director

1009#021

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Teaching Certificate (LAC 28:CXXXI.906 and 911)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends Bulletin 746—*Louisiana Standards for State Certification of School Personnel*: §906. Procedures and Rules for Issuance of a Denied Certificate and §911. Procedures and Rules for Reinstatement of Certificates Suspended or Revoked due to Criminal Convictions and/or Submission of Fraudulent Documents. This revision in policy would specify the conditions candidates denied certification for criminal offenses and/or submission of fraudulent documentation must meet in order for the State Board to consider issuance of a certificate. The previous information that was in this policy did not clarify the steps someone would have to take to have the State board consider issuance of a Louisiana teaching certificate. This revision in policy clearly outlines all steps required for the issuance of a teaching certificate if someone has a previous felony

conviction or had previously submitted fraudulent documents for certification.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel
Chapter 9. Actions Related to Criminal Offenses
and/or the Submission of Fraudulent
Documentation**

**§906. Procedures and Rules for Issuance of a Denied
Certificate**

A. Issuance will never be considered for teachers convicted of the following crimes: R.S. 14:30, 14:30.1, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:79.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82.1, 14:86, 14:89, 14:89.1, 14:93, 14:93.2.1, and 14:286.

B. Issuances of certificates shall not be considered until at least three years have elapsed from the date of entry of final conviction.

C. An applicant may apply to the board for issuance of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no further convictions. The applicant must provide a current state and FBI criminal history background check from state police that is clean and clear.

2. There has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide relevant documentation.

D. Applicant Responsibilities

1. Contact the office of the Board of Elementary and Secondary Education and request a hearing for issuance of the certificate.

2. Provide each applicable item identified above in Section C, evidence that all requirements for certification have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials and/or from other community leaders.

E. State Board Responsibilities

1. The board will consider the request for issuance and documentation provided. The board is not required to conduct a hearing and may summarily deny a request for issuance of certificate.

2. If the board or its designees decide to conduct an issuance hearing, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. The applicant may be represented and/or accompanied by legal counsel. In addition to the applicant and his/her legal counsel, a maximum of three witnesses may be called to provide testimony regarding the applicant's rehabilitation. Testimony and information considered will be limited to evidence of rehabilitation. Any conviction will be given full faith and credit, and no testimony will be taken to refute the finding of the court. The written documentation provided prior to the hearing will also be considered.

3. The Board of Elementary and Secondary Education reserves the right to accept or reject any document or testimony offered as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for issuance of a teaching certificate. The board further reserves the right to deny a request for issuance based upon the applicant's dishonesty in failing to disclose a prior criminal conviction and/or for falsifying academic records. (If the board denies issuance, the applicant must wait one year to re-apply.)

4. The committee of the board shall make a recommendation to the full board regarding whether the applicant's teaching certificate should be issued. Board staff shall notify the applicant of the board's action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1999 (September 2010).

**§911. Procedures and Rules for Reinstatement of
Certificates Suspended or Revoked due to
Criminal Convictions and/or Submission of
Fraudulent Documents**

A. Reinstatement will never be considered for teachers convicted of the following crimes: R.S. 14:30, 14:30.1, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:79.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82.1, 14:86, 14:89, 14:89.1, 14:93, 14:93.2.1, and 14:286.

B. Reinstatements of certificates shall not be considered until at least three years have elapsed from the date of entry of final conviction or from date of the submission of fraudulent documentation.

C. An applicant may apply to the board for reinstatement of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no further convictions and/or submissions of fraudulent documentation. The applicant must provide a current state and FBI criminal history background check from state police that is clean and clear.

2. There has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide relevant documentation.

D. Applicant Responsibilities

1. Contact the office of the Board of Elementary and Secondary Education and request a hearing for reinstatement of the certificate.

2. Provide each applicable item identified above in Subsection C, evidence that all requirements for certification have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials and/or from other community leaders.

E. State Board Responsibilities

1. The board will consider the request for reinstatement and documentation provided. The board is not

required to conduct an reinstatement hearing and may summarily deny a request for issuance/reinstatement.

2. If the board or its designees decide to conduct an reinstatement hearing, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. The applicant may be represented and/or accompanied by legal counsel. In addition to the applicant and his/her legal counsel, a maximum of three witnesses may be called to provide testimony regarding the applicant's rehabilitation. Testimony and information considered will be limited to evidence of rehabilitation. Any conviction will be given full faith and credit, and no testimony will be taken to refute the finding of the court. The written documentation provided prior to the hearing will also be considered.

3. The Board of Elementary and Secondary Education reserves the right to accept or reject any document or testimony offered as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for reinstatement of a teaching certificate. The board further reserves the right to deny a request for reinstatement based upon the applicant's dishonesty in failing to disclose a prior criminal conviction and/or for falsifying academic records. (If the board denies reinstatement, the applicant must wait one year prior to re-application.)

4. The committee of the board shall make a recommendation to the full Board regarding whether the applicant's teaching certificate should be issued, reinstated, suspended for an additional period of time, or remain revoked. Board staff shall notify the applicant of the board's action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1831 (October 2006), amended LR 34:2560 (December 2008), LR 36:1999 (September 2010).

Jeanette Vosburg
Executive Director

1009#023

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—VTIE, CTTIE, and CTTIE-1 Certificates (LAC 28:CXXXI.507 and 511)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends Bulletin 746—*Louisiana Standards for State Certification of School Personnel*: §507. VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines and §511. Process for Reinstating Lapsed CTTIE or VTIE Certificates. There are limited career and technical course offerings at technical colleges and higher education institutions available to teachers. This policy revision will expand the options for Career and Technical Trade and Industrial Education (CTTIE) teachers to renew and upgrade their certificates by earning equivalent contact hours through

approved coursework (e.g., online instructional modules) that are aligned to topics in career and technical policy. Current policy provides only one option for CTTIE personnel to acquire professional coursework for renewal/upgrade of an initial CTTIE certificate and reinstatement of a lapsed CTTIE certificate. CTTIE teachers are required to complete three semester hours of specific approved college coursework each year until a minimum number of required hours have been completed.

Title 28

EDUCATION

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

Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel

§507. VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines

A. Holder must earn at least three semester hours or 45 contact hours in approved coursework each year until a minimum number of required semester hours or contact hours have been completed, as follows:

1. with no degree—fifteen semester hours or 225 contact hours;
2. with an associate degree—twelve semester hours or 180 contact hours;
3. with a baccalaureate degree—nine semester hours or 135 contact hours;
4. with a graduate degree—six semester hours or 90 contact hours;
5. with a valid Louisiana teaching certificate (Type A, B, C, Level 1, 2, 3 or OS)—three semester hours or 45 contact hours (New Instructor Workshop is not required.);
6. with three years of post-secondary teaching experience—three semester hours or 45 contact hours (must include the New Instructor Workshop);
7. with a valid Louisiana teaching certificate (Type A, B, C, Level 1, 2, 3 or OS) and three years of teaching experience—immediate CTTIE 2 certification.

B. The coursework must be completed from the following approved list:

1. new instructor workshop (mandatory for all instructors who do not hold a valid Louisiana teaching certificate and do not have three years of successful teaching experience);
2. foundations of vocational technical education;
3. preparation of vocational technical education instructional materials;
4. management of the vocational technical education classroom(s)/laboratory(ies);
5. occupational safety and health;
6. testing and evaluation in vocational technical education;
7. teaching special needs students in vocational technical education;
8. methods of teaching vocational technical education;
9. occupational analysis and course development;
10. ethics and diversity in the workplace/classroom;
11. computer technology in the classroom;
12. curriculum planning;
13. vocational guidance;
14. management of change;

RULE

Board of Elementary and Secondary Education

Bulletin 1566—Pupil Progression Policies and Procedures
(LAC 28:XXXIX.Chapters 1-11)

15. basic theory in vocational education;
16. advanced theory in vocational education;
17. development of vocational teacher competency;
18. adolescent psychology;
19. other education pedagogy courses, including online courses, from accredited institutions. Must have prior approval from the Office of Career and Technical Education.

C. If a state or national license is required in the workplace, a current license must be held. A state or national license will be recognized as an industry-based certification.

D. Upon successful completion of the required hours, and upon written request, a VTIE or a CTTIE temporary certificate was converted to a permanent CTTIE certificate until June 30, 2006. After June 30, 2006, certificates for all holders of VTIE, CTTIE, and CTTIE-1 certificates who are completing the required hours will be converted to five year CTTIE-2 certificates upon written request.

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 32:1814 (October 2006), amended LR 33:2356 (November 2007), LR 35:2753 (December 2009), LR 36:2000 (September 2010).

§511. Process for Reinstating Lapsed CTTIE or VTIE Certificates

A. If holder allows a period of five consecutive calendar years to pass in which he/she is not a regularly employed teacher for at least one semester, or 90 consecutive days, the certificate will lapse for disuse.

B. To reinstate a CTTIE or VTIE certificate if a license is required in the workplace, holder must present evidence that he/she has a current state or national license. Holder must also present evidence that he/she earned six semester hours or 90 contact hours of credit in state-approved courses (see §507.B) during the five year period immediately preceding request for reinstatement.

C. If a license is not required in the workplace, to reinstate a CTTIE or VTIE certificate the holder must present evidence that he/she earned six semester hours or 90 contact hours of credit in state-approved courses (see §507.B) during the five year period immediately preceding request for reinstatement.

D. If holder did not earn the required six semester hours or 90 contact hours, the lapsed certificate may be reactivated upon request (at the level that was attained prior to disuse) for a period of one year, during which time the holder must complete reinstatement requirements.

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 32:1814 (October 2006), amended LR 35:2754 (December 2009), LR 36:2001 (September 2010).

Jeanette Vosburg
Executive Director

1009#022

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends Bulletin 1566—*Pupil Progression Policies and Procedures*: Chapters 1-11. The revision of Bulletin 1566 was done to simplify and reorganize the Bulletin. The appendices were eliminated and the content integrated into appropriate locations within the Bulletin. Repetitive information was deleted. Also, changes were made to the High Stakes Testing Policy as required by Act 276 of the 2009 Louisiana Legislative Session. Those changes involve providing a fourth grade transition program for students who meet certain requirements and limiting the time that students can be retained in the eighth grade due to failure of the LEAP test to one year.

Title 28

EDUCATION

Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures

Editor's Note: Bulletin 1566 was promulgated in LR 6:144 (April 1980), amended LR 11:685 (July 1985) and LR 16:766 (September 1990), promulgated LR 19:1417 (November 1993), amended LR 24:2081 (November 1998). Historical notes will reflect activity on individual Sections from November 1999 forward.

Chapter 1. Purpose

§101. Foreword

A. This publication represents a forward step in the implementation of a vital component of the Louisiana Competency-Based Education Program. These policies and procedures represent a cooperative effort of offices in the Louisiana Department of Education (DOE), and educators from across the state.

B. The DOE will continue to provide leadership and assistance to school systems in an effort to attain a public system of education that makes the opportunity to learn available to all students on equal terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 33:2061 (October 2007), LR 36:2001 (September 2010).

§103. Preface

A. "The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just and designed to promote excellence in order that every individual may be afforded an equal opportunity to achieve his full potential" (Preamble to Article VIII, Louisiana Constitution). This goal statement from the Constitution suggests that public elementary and secondary education is only a part of a continuum of services that should be available to assist each

individual to identify and reach his/her own educational or training goals as quickly and effectively as possible.

B. The amendment and enactment of the Louisiana Competency-Based Education Program, Act 750, (R.S. 17:24.4) by the Louisiana State Legislature in Regular Session during the summer of 1997, was the result of an ever-increasing demand by Louisiana's taxpayers for a better accounting of their educational dollars. This far-reaching statute called for:

1. the establishment of a program for shared educational accountability in the public educational system of Louisiana;
2. the provision for a uniform system of evaluation of the performance of school personnel;
3. the attainment of established goals for education;
4. the provision of information for accurate analysis of the costs associated with public educational programs;
5. the provision of information for an analysis of the effectiveness of instructional programs; and
6. the annual assessment of students based on state content standards.

C. The Louisiana Competency-Based Program is based on the premise that the program must provide options to accommodate the many different learning styles of its students. Every effort is being made to tailor the curriculum to the needs of the individual student, including the student with special instructional needs who subsequently needs curricular alternatives. Such a practice enhances the probability of success, since the student is provided with an instructional program compatible with his individual learning styles as well as with his needs.

D. The Louisiana State Legislature in Regular Session during the summer of 1997 amended and reenacted R.S. 17:24.4(F) and (G)(1), relative to the Louisiana Competency-Based Education Program, to require proficiency on certain tests as determined by the state Board of Elementary and Secondary Education (BESE) for student promotion and to provide guidance relative to the content of pupil progression plans.

E. The amended Sections relate state content standards adopted for mathematics, English language arts, science, and social studies, to the Louisiana Educational Assessment Program (LEAP), and to the comprehensive pupil progression plans of each of the local educational agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 33:2061 (October 2007), LR 36:2001 (September 2010).

Chapter 3. General Procedure for Development; Approval and Revision of a Pupil Progression Plan

§301. Development of a Local Plan

A. Committee of Educators

1. The state Board of Elementary and Secondary Education (BESE) and the DOE require assurances that the local education agency (LEA) Supervisors of Elementary and Secondary Education, Special Education, Career and Technical Education, Adult Education, Title I, teachers and principals and other individuals deemed appropriate by the local Superintendent are included in the development of the parish pupil progression plan.

B. Committee of Parents

1. A committee representing the parents of the school district shall be appointed by each city and parish school board. Procedures shall be established whereby this committee shall be informed of the development of the pupil progression plan. Opportunities shall be provided for parents to have input into the development of the local plan.

2. Due process and equal protection considerations require the local board to include on the parent committee representatives of various disability groups, racial, socio-economic, and ethnic groups from the local district.

3. The local board shall provide staff support to the parent committee.

C. The LEA shall keep on file a written description of the method of selection, composition, function and activities of the local committees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2170 (November 1999), amended LR 36:2002 (September 2010).

§303. Adoption Procedures

A. Initial Adoption by the Local School Board

1. Meetings of the local committees shall be conducted within the legal guidelines of Louisiana's Open Meeting Law.

2. The local pupil progression plan shall be adopted at a public meeting of the local board, notice of which shall be published pursuant to the Open Meetings Law. It shall be stated that once the plan has been adopted and approved, the policies in the local plan shall be incorporated into the policies and procedures manual of the local school board.

3. The statements defining the committee-selection process and the pupil progression plan are public documents that must be handled within the guidelines of the Public Records Act.

B. Locally Initiated Interim Revisions

1. LEAs will comply with the same procedure as for initial adoption by the local school board.

C. State Mandated Interim Revisions

1. School systems will be notified of any policy change that will affect their currently approved pupil progression plan within 15 working days after the Notice of Intent is passed by BESE.

2. LEAs shall develop a procedure for informing the public of the proposed policy change.

3. After final adoption as a rule by BESE, school boards shall adopt and incorporate the state mandated policy changes into their current pupil progression plan within 30 working days after notification of said changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4; R.S. 42:4:2(A)(2); R.S. 44:1-42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 27:188 (February 2001), LR 27:1517 (September 2001), LR 36:2002 (September 2010).

§305. Submission Process

A. Upon adoption for submission by the local school board, the plan along with a formal submission statement shall be submitted annually to the Office of Student and School Performance. Documentation of input in the plans development by educators and parents as well as public

notice prior to local board approval and locally-initiated revisions (including dates and locations) must be submitted.

1. Interim revisions: locally-initiated and state-mandated.

a. Resubmission of the local board approved pages is made to the DOE.

b. Signatures of the local school board president and superintendent are required.

c. The revisions are incorporated into the pupil progression plan at both the local and state level.

2. BESE shall certify that the plan includes the requirements for students promoted to high school in the career diploma pathway.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 26:64 (January 2000), 27:1517 (September 2001), LR 36:2002 (September 2010).

Chapter 5. Placement Policies—General Requirements

§501. State Requirements

A. Each local pupil progression plan shall contain written policies relative to regular placement and alternatives to regular placement. Such policies must conform to the requirements of these policies and procedures.

B. Based upon local school board policy pursuant to these policies and procedures, each teacher shall, on an individualized basis, determine promotion or placement of each student. Local school board policies relative to pupil progression will apply to students placed in regular education programs as well as to exceptional students and to students placed in alternative programs. Placement decisions for exceptional students must be made in accordance with the least restrictive environment requirements of state and federal laws.

C. No school board member, school superintendent, assistant superintendent, principal, guidance counselor, other teacher, or other administrative staff members of the school or the central staff of the parish or city school board shall attempt, directly or indirectly, to influence, alter, or otherwise affect the grade received by a student from his/her teacher.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:414.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 3:2062 (October 2007), LR 36:2003 (September 2010).

§503. Regular Placement

A. Promotion—Grades K-12

1. Promotion from one grade to another for regular students and students with disabilities shall be based on the following statewide evaluative criteria.

a. Each plan shall include the school attendance requirements.

b. Each plan shall include the course requirements for promotion by grade levels.

c. Each plan shall include the requirements for entering the career diploma pathway, including the requirements listed below.

i. The plan shall include requirements for students promoted to the ninth grade career diploma

pathway who have not met the LEAP promotional standard for entering the ninth grade. The requirements should include the following.

(a). The student must successfully complete the LEAP summer remediation program in the subject area of the component of the eighth grade LEAP test on which they scored at the *Unsatisfactory* level and must take the summer retest.

(b). The student must have achieved a minimum cumulative grade point average of 1.5 on a 4.0 scale for course work required for completion of the eighth grade.

(c). Acceptable Attendance Standards. For the 2009-2010 school year, students must meet the attendance requirements in the pupil progression plan. For 2010-2011 and following, students must meet the state minimum attendance requirements to be eligible to receive grades.

(d). Acceptable Behavior Standards. Students must meet the behavior requirements in the pupil progression plan.

(e). A student must participate in a dropout prevention and mentoring program during his first year in high school as approved by the BESE. Acceptable programs include research based dropout prevention programs such as Jobs for America's Graduates Multi-Year Program, Graduation Coach Program, or the school district may submit a proven effective, research-based dropout prevention and mentoring program other than the two listed above to the DOE for approval by BESE. All programs must include the following components:

(i) an academic catch up component to address the all area(s) of student deficiency;

(ii) an adult mentoring component with an emphasis on workforce awareness and readiness;

(iii) a work awareness and work readiness skills component;

(iv) a work-based learning component such as job shadowing/job exploration/paid internships.

ii. Every student who seeks to pursue a career diploma shall have the written permission of his/her parent or other legal guardian on the Career Diploma Participation Form after a consultation with the school guidance counselor or other school administrator. The student and parent must be informed of the advantages and disadvantages of the different diploma pathways. The signature of the student and parent or guardian indicates that a determination has been made that the pursuit of a career diploma is appropriate and in the best interest of the student. The school principal shall also sign the form acknowledging that appropriate counseling has taken place.

d. Each plan shall include other applicable requirements, including the High Stakes policy requirements for entering students in fifth or ninth grade.

B. Requirements for High School Students

1. Each plan shall include the following statements, that:

a. for incoming freshmen prior to 2010-2011, in addition to completing the required minimum number of 23 Carnegie units of credit as presented by BESE, the students must pass the required components of the Graduation Exit Examination (GEE) in order to receive a high school diploma;

b for incoming freshmen in 2010-2011 and beyond, in addition to completing the required minimum number of Carnegie units of credits as presented by BESE, students must pass the required End-of-Course tests to receive a high school diploma;

c. any student who is at least 15 years of age or will attain the age of 15 during the next school year, who scored at least at the *Approaching Basic* level on either the English language arts or mathematics component of the eighth grade LEAP test, and meets the criteria established in the pupil progression plan of the LEA where the student is enrolled, may be promoted to the ninth grade for the purpose of pursuing a career diploma;

d. any student entering the ninth grade having scored *Unsatisfactory* in math or English on the eighth grade LEAP test on the eighth must enroll in and pass a high school remedial course approved by BESE in the *Unsatisfactory* subject (English language arts or mathematics) before earning Carnegie credit for any other English or mathematics course.

C. Retention—Grades K-12

1. Retention of a student shall be based upon the student's failure to meet the criteria established by local boards for promotion and other criteria contained in these policies and procedures.

D. Acceleration

1. Grades K-8

a. The local school board shall establish written policies and procedures for the placement of students who evidence that they will benefit more from the instructional program at an advanced grade level.

2. Grades 9-12

a. The local school board shall follow the policies and procedures established in *Bulletin 741—Louisiana Handbook for School Administrators*, and other local requirements for student acceleration.

E. Transfer Students

1. The local school board shall establish written policies for the placement of students transferring from all other systems and home schooling programs (public, nonpublic, both in and out-of-state, and foreign countries).

a. Effective with the 2000-2001 school year, students in grades 5 and 9 transferring to the public school system from any in-state nonpublic school (state approved and unapproved), any home schooling program or Louisiana resident transferring from any out-of-state school shall be required to pass the English language arts and Mathematics portions of the LEAP placement test.

b. Schools can only make recommendations to parents regarding student enrollment in kindergarten, since kindergarten is not mandatory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 2000), amended LR 26:1433 (July 2000), LR 27:189 (February 2001), LR 27:1683 (October 2001), LR 29:123 (February 2003), LR 30:409 (March 2004), LR 33:2063 (October 2007), LR 34:2389 (November 2008), LR 36:2003 (September 2010).

§505. Other Placement Requirements

A. Progression—Students Participating in LEAP Alternate Assessment (LAA1) or LEAP Alternate Assessment Level 2 (LAA2)

1. Students with disabilities who participate in the LEAP Alternate Assessments (LAA1 or LAA2) shall have promotion decisions determined by the School Building Level Committee.

B. Alternative Schools/Programs

1. The local school board may establish alternative schools/programs/settings which shall respond to particular educational need(s) of its students.

C. Review of Placement

1. Review of promotion and placement decisions may be initiated by the local school board, superintendent and/or parent or guardian.

2. Each local school board may adopt policies whereby it may review promotion and placement decisions in order to insure compliance with its local plan.

D. Due Process

1. Due process procedures for teachers, students, and parents shall be specified in each local pupil progression plan as related to student placement. The LEA must assure that these procedures do not contradict the due process rights of students with disabilities as defined in the IDEA-Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 27:189 (February 2001), LR 27:1683 (October 2001), LR 36:2004 (September 2010).

§507. Records and Reports

A. LEAs shall maintain permanent records of each student's placement, K-12. Each record shall be maintained as a part of the student's cumulative file.

B. Student records for the purposes of these guidelines shall include:

1. course grades;
2. scores on LEAP;
3. scores on local testing programs and screening instruments necessary to document the local criteria for promotion;
4. information (or reason) for student placement (see definition of *placement*);
5. documentation of results of student participation in remedial and alternative programs;
6. special education documents as specified in the approved IDEA-Part B, LEA application;
7. a copy of the letter informing the parent of either the placement of the student in or the removal of the student from a remedial program;
8. a statement regarding written notification to parent concerning retention and due process procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 27:189 (February 2001), LR 27:1683 (October 2001), LR 36:2004 (September 2010).

§509. Local Options

A. In addition to the statewide mandatory criteria for student placement, local school boards, by written local policies, may also establish local criteria to be used in determining student placement. Such criteria shall be compatible with the statewide criteria established in Chapter 5, §501 and shall be submitted to the LDE as part of the local pupil progression plan.

B. At the option of local school systems, the plans may include other factors to be considered in pupil placements.

C. In conjunction with the enumerated legislated policies and DOE directives, LEAs may include evaluative criteria in their local pupil progression plans. If other criteria are used, the pupil progression plan must so specify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 36:2004 (September 2010).

§511. Legislative Guidelines

A. Local school systems are encouraged to develop local criterion-referenced testing programs for local assessment use.

B. Local criteria for K-12 must supplement the content standards approved by the BESE.

C. Local criteria must be coordinated with statewide curricular standards for required subjects, to be developed as part of the competency-based education plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17; R.S. 17:24.4; R.S. 17:391.7(G).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 36:2005 (September 2010).

§513. Local Testing Programs

A. Student scores on local testing programs may be used as additional criteria for determining pupil progression. Additional skills may be specified and tested for mastery at the local level as additional criteria for placement.

B. With reference to pupil placement, the local school system shall state the name of the instrument and publisher of other testing and screening programs to be used locally in grades K-12 for regular and exceptional students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 36:2005 (September 2010).

Chapter 7. High Stakes Testing Policy

§701. Promotion Standard

A. A student who is a first-time fourth or eighth grader must score at or above the *Basic* achievement level on the English Language Arts or Mathematics components of the LEAP and at or above the *Approaching Basic* achievement level on the other (hereafter referred to as the passing standard) to be promoted to the fifth or ninth grade.

1. Exceptional students participating in LEAP must be provided with accommodations as noted in the students' IEPs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2005 (September 2010).

§703. Retention

A. The decision to retain a student in the fourth or eighth grade more than once as a result of his/her failure to achieve the passing standard on the English language arts and mathematics components of LEAP shall be made by the LEA in accordance with the local pupil progression plan which shall include the following.

B. LEAs shall provide a fourth grade transitional program for students meeting the minimum criteria.

1. The purpose of a fourth grade transitional program is to provide a class setting to students who have demonstrated the ability to benefit from a combination of intensive fourth grade remedial work and fifth grade regular coursework. Students in the transitional program may be able to progress to the sixth grade the following year.

2. Minimum criteria for placement into a fourth grade transitional program:

a. the student must score at the *Approaching Basic/Approaching Basic* achievement level on the English language arts and mathematics components of LEAP;

b. the student must have met all requirements for promotion from the fourth grade as outlined in the local pupil progression plan; and

c. the student must participate in both the summer remediation program offered by the LEA and the summer retest.

3. Minimum criteria for promotion to the sixth grade from a fourth grade transitional program:

a. the student must be provided remediation in the subject area(s) on which the student scored below *Basic* on LEAP as well as instruction in the fifth grade curriculum;

b. the student must score a minimum of *Basic/Approaching Basic* on English language arts and math and a minimum of *Approaching Basic/Approaching Basic* on the in science and social studies on the fourth grade LEAP; and

c. the student must have met all requirements for promotion from the fifth grade as outlined in the local pupil progression plan.

C. A student who has repeated the fourth grade and who is 12 years old on or before September 30 may be promoted according to the local pupil progression plan.

D. Students who are repeating the eighth grade due to failure to achieve the passing standard on the eighth grade LEAP may take high school courses except any in a content area in which they scored *Unsatisfactory* on the eighth grade LEAP. These students may be housed on a high school campus or a middle school campus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2005 (September 2010).

§705. Supports for Students

A. Remediation

1. LEAs shall offer, at no cost, a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics to students who did not take the spring LEAP tests or who failed to meet the passing standard. The LEA shall provide transportation to and from the assigned LEAP remediation summer site(s) from, at a minimum, a common pick-up point.

2. Students are not required to attend summer remediation to be eligible for the summer retest.

3. Student with disabilities attending summer remediation shall receive special supports as needed.

4. Students with disabilities who participate in LEAP Alternate Assessment, Level 1 (LAA1), are not eligible to attend the LEAP summer remediation programs.

5. Students with disabilities who participate in LEAP Alternate Assessment, Level 2 (LAA2), are eligible to attend LEAP summer remediation programs.

B. School Year Support

1. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the passing standard, as well as for students who were retained in grades 4 or 8.

2. In order to move students toward grade level performance, LEAs shall design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the passing standard, and for fourth and eighth grade students being retained. The purpose of the additional instructional strategies is to move the students to grade-level proficiency by providing the following:

a. focused instruction in the subject area(s) on which a student scored at the *Approaching Basic* and/or *Unsatisfactory* level on iLEAP;

b. focused remediation for those fourth and eighth grade students repeating the grade as a result of failing to achieve the passing standard in ELA and/or math on the LEAP;

c. ongoing instruction in the core subject areas using curricula based on state-level content standards and the grade-level expectations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2005 (September 2010).

§707. Exceptions to High Stakes Policy

A. Mastery/Advanced Waiver. The LEA may waive the state policy for students scoring at the *Unsatisfactory* level in English language arts or mathematics, if the student scores at the *Mastery* or *Advanced* level in the other, provided that:

1. the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

2. the student has participated in both the spring and summer administrations of LEAP and has attended the summer remediation program offered by the LEA (the student shall participate in the summer retest only on the subject that he/she scored at the *Unsatisfactory* level during the spring test administration); and

3. parental consent is granted.

B. U/B Waiver—Eighth Grade. The LEA may waive the state policy for eighth grade students scoring at the *Unsatisfactory* level in English language arts or mathematics, if the student scores at the *Basic* level in the other, provided that the following criteria are met:

1. the student scored *Approaching Basic* or above on the science and social studies components of LEAP;

2. the student had an overall 2.5 grade point average on a 4.0 scale;

3. the student had a minimum 92 percent attendance during the school year;

4. the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

5. the student has participated in both the spring and summer administrations of LEAP and has attended the summer remediation program offered by the LEA (the student shall participate in the summer retest only on the

subject that he/she scored at the *Unsatisfactory* level during the spring test administration); and

6. parental consent is granted;

7. if a student meets the criteria for this waiver, and is promoted with an *Unsatisfactory*, the student must enroll in and pass a high school remedial course in the *Unsatisfactory* subject before enrolling in or earning Carnegie credit for English or mathematics.

C. AB/AB Waiver—Eighth Grade. After the summer retest, an LEA, through its superintendent, may consider a waiver for an eighth grade student who has scored at the *Approaching Basic* level on both the English language arts and mathematics components of LEAP. The LEA may grant the waiver in accordance with the local pupil progression plan provided the following criteria are met.

1. The student has attended the LEAP summer remediation program offered by the LEA, and has taken the summer retest of the component(s) (English language arts and/or mathematics) on which the student scored *Approaching Basic* or below on the spring test.

D. Twenty Point Appeal—Fourth Grade. After the summer retest, an LEA, through its superintendent, may consider granting a waiver on behalf of individual students, provided that all of the following criteria have been met.

1. The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP must fall within 20 scaled score points of the cutoff score for *Basic*.

2. The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) for which the appeal is being considered.

3. The student must have attended the LEAP summer remediation program and have taken the LEAP retest.

4. The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program

5. The principal and the SBLC must review student work samples and attest that the student exhibits the ability to perform at or above the *Basic* achievement level in the subject for which the appeal is being considered.

E. LEP Waiver. Limited English Proficient (LEP) students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

F. Extenuating Circumstances Waiver

1. An LEA, through its superintendent, may grant a waiver on behalf of individual students who are unable to participate in LEAP testing or unable to attend LEAP summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

a. a physical illness or injury that is acute or catastrophic in nature;

b. a chronic physical condition that is in an acute phase;

c. court-ordered custody issues.

2. Documentation

a. *Physical Illness*—appropriate documentation must include verification that the student is under the

medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

b. *Custody Issues*—certified copies of the court-ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

3. Student Eligibility/Retest Requirements

a. Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court-ordered custody category related to LEAP; and

b. who are unable to participate in both the spring and the summer administration of LEAP; or

c. who failed to achieve the passing standard on the spring administration of LEAP English language arts and mathematics tests and are unable to participate in LEAP summer retest:

i. shall take the Iowa Tests for grade placement within 10 school days of returning to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction;

ii. must score at or above the cutoff score on the selected form of the Iowa Tests for grade placement to be promoted to the fifth or ninth grade; and

iii. are not eligible for a retest. These students may be eligible for the other waivers in accordance with the local pupil progression plan;

d. students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court-ordered custody category related to LEAP; and

e. who are unable to participate in the spring testing and/or summer remediation, including the provision of remediation through hospital/home-bound instruction, are required to take the LEAP summer retest. These students may be eligible for the other waivers in accordance with the local pupil progression plan.

G. State-Granted Waiver

1. A local school superintendent, a parent or guardian, or the DOE may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

2. The DOE will provide a report to BESE detailing state-granted waivers.

3. Documentation

a. *LEA Error*—the LEA superintendent or parent must provide the State Superintendent of Education with school- and student-level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

b. *Other Unique Situations*—documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted.

4. Testing/Promotion Decisions

a. The DOE will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

H. Students with Disabilities

1. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessment, Level 1 (LAA1) or LEAP Alternate Assessment, Level 2 (LAA2), shall have promotion decisions determined by the SBLC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2006 (September 2010).

Chapter 9. Regulations for the Implementation of Remedial Education Programs Related to LEAP

§901. Preface

A. The regulations for remedial education programs approved by BESE provide for the development of local remedial education programs by local education agencies.

B. The DOE shall recommend for approval by the BESE only those local remedial education plans in compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 33:2063 (October 2007), LR 36:2007 (September 2010).

§903. Legal Authorization

A. R.S. 17:24.4(G) provides that those students who fail to meet required proficiency levels on the state administered criterion-referenced LEAP tests shall receive remedial education programs that comply with regulations adopted by BESE.

B. R.S. 17:394-400 is the established legislation for the remedial education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4; R.S. 17:394-400.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 36:2007 (September 2010).

§905. Definition and Purpose

A. Definition

Remedial Education Programs—local programs designed to assist students, including identified students with disabilities, to overcome their educational deficits identified as a result of the state's criterion-referenced testing program for grades 4 and 8 and the GEE.

B. Purpose

1. The purpose of the Louisiana Remedial Education Act is to provide supplemental funds for the delivery of supplemental remedial instruction adapted for those eligible students in the elementary and secondary schools of this state as set forth in the city and parish school board pupil progression plans. A program of remedial education shall be put into place by LEAs following regulations adopted by the DOE and approved by BESE pursuant to R.S. 17:24.4. All eligible students shall be provided with appropriate remedial instruction.

2. The intent of remedial educational programs is to improve student achievement in the grade appropriate skills identified as deficient on the state's criterion-referenced testing program for grades 4 and 8 and the GEE.

3. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the *Approaching Basic* or *Unsatisfactory* level on the LEAP English language arts and/or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation shall be provided to students who score at the *Unsatisfactory* level on the LEAP science and social studies tests.

5. Remediation is recommended for fourth and eighth grade students who score at the *Approaching Basic* level on the LEAP science or social studies tests.

6. Beyond the goal of student achievement in grade appropriate skills, additional goals are to give students a sense of success, to prevent alienation from school, and to prevent their early departure from school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4; R.S. 17:395; R.S. 17:396; R.S. 17:397.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 28:1189 (June 2002), LR 30:409 (March 2004), LR 31:1975 (August 2005), LR 33:2063 (October 2007), LR 36:2007 (September 2010).

§907. Responsibilities of BESE

ABESE shall perform the following functions in relation to the remedial education program:

1. approve as a part of the *Pupil Progression Policies and Procedures* (Bulletin 1566) the regulations for development of local remedial education programs designed to meet student deficiencies as identified through LEAP in English language arts, written composition, mathematics, social studies and science for the GEE and English language arts, mathematics, science and social studies for LEAP;

2. approve remedial education programs submitted by LEAs as a part of their local pupil progression plan;

3. approve qualifications/certification requirements for remedial education teachers;

4. receive from the DOE an annual evaluation report on local remedial education programs that meet the requirements of R.S. 17:400(B);

5. approve the evaluation criteria developed by the DOE for determining the effectiveness of remedial education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4; R.S. 17:398; R.S. 17:399; R.S. 17:400.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999), amended LR 33:2064 (October 2007), LR 36:2008 (September 2010).

§909. State Funding of Remedial Education Programs

A. Remedial education funds shall be appropriated annually within the Minimum Foundation Program (MFP) formula.

B. State remedial education funds shall be distributed to the parish and city school boards according to the distribution process outlined within the Minimum Foundation Program.

C. State funds for the remedial education program shall not be used to supplant other state, local, or federal funds

being used for the education of such students. A plan for coordination of all state, local and federal funds for remediation must be developed by each LEA.

D. The use of state remedial education funds shall not result in a decrease in the use for educationally deprived children of state, local, or federal funds which, in the absence of funds under the remedial education program, have been made available for the education of such students.

E. For funding purposes, a student receiving remediation in English language arts, mathematics, social studies and/or science, shall be counted for each area in which remediation is needed for the GEE and for English language arts and mathematics for LEAP.

F. Students in the remedial education program are also included in the student membership count for MFP funding purposes.

G. The remedial education program shall be coordinated with locally funded and/or federally funded remedial education programs, but shall remain as a separate remedial program.

H. If the DOE determines through its monitoring authority that an LEA is not actually providing the type of remedial education program that was approved through its pupil progression plan or is not complying with state evaluation regulations, the DOE shall recommend appropriate action until such time as it is determined that the LEA is in compliance with its approved pupil progression plan and with state evaluation regulations.

I. The state and local funds expended in the program shall be included in the instructional parameters for each city or parish school board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4; R.S. 17:398; R.S. 17:399.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999), amended LR 33:2064 (October 2007), LR 36:2008 (September 2010).

§911. Criteria for State Approval

A. Student Eligibility

1. Any public elementary or secondary student, including a student with a disability participating in LEAP who does not meet the performance standards established by the DOE and approved by BESE, as measured by the state criterion-referenced tests, shall be provided remedial education.

2. The failure of students with disabilities to achieve performance standards on the state criterion-referenced tests does not qualify such students for special education extended school year programs.

B. Teacher Qualifications

1. Remedial teachers shall possess the appropriate certification/qualifications as required by BESE.

2. LEAs may employ an instructional paraprofessional under the immediate supervision of a regularly certified teacher to assist with the remediation. Paraprofessionals must have all of the following qualifications:

a. must be at least 20 years of age;

b. must possess a high school diploma or its equivalent; and

c. must have taken a nationally validated achievement test and scored such as to demonstrate a level of achievement equivalent to the normal achievement level of a tenth grade student.

3. LEAs may employ educators already employed as regular or special education teachers to provide remedial instruction. These educators may receive additional compensation for remedial instruction, provided the services are performed in addition to their regular duties.

C. Program Requirements

1. Student Profile

a. The Remedial Education Student Profile for the LEAP GEE, provided by the DOE shall be used by the LEA for providing remediation for each eligible student.

2. Coordination with Other Programs

a. The school system shall assure that coordination and communication occur on a regular basis among all who provide instruction for a student receiving remedial instruction.

3. Instruction

a. For the GEE, remediation shall be provided in English language arts, mathematics, science, and social studies. Students shall be offered 50 hours of remediation each school year in each content area they do not pass.

b. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the *Approaching Basic* or *Unsatisfactory* level on the LEAP English language arts and/or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

c. Remediation shall be provided to students who score at the *Unsatisfactory* level on the LEAP science, and social studies tests.

d. Remediation is recommended for fourth and eighth grade students who score at the *Approaching Basic* level on the LEAP science or social studies tests.

e. Instruction shall include but not be limited to the philosophy, the methods, and the materials included in the Louisiana Comprehensive Curriculum or local curricula that are based upon Louisiana content standards in mathematics, English language arts, science and social studies.

f. Remedial methods and materials shall supplement and reinforce those methods and materials used in the regular program.

g. Each student achieving mastery criteria shall continue receiving instruction for maintenance of grade appropriate skills. The amount of instruction shall be based upon student need.

D. Student Assessment

1. The LEAs shall develop, as part of their pupil progression plans, mastery criteria based on the Louisiana content Standards, Grade-Level Expectations (GLEs), and local curricula based on these standards and GLEs.

2. For the GEE these mastery criteria shall be used in determining the extent of student achievement in those grade appropriate skills in English language arts, written composition, mathematics, social studies, and/or science in which he/she was found deficient.

3. For LEAP, these mastery criteria shall be used in determining the extent of student achievement in those grade appropriate skills in English language arts, mathematics, science and social studies.

4. LEAs shall describe the methods used to measure student achievement of these criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17:24.4; R.S. 17:395; R.S. 17:397; R.S. 17:398.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999), amended LR 27:189 (February 2001), LR 30:409 (March 2004), LR 31:1975 (August 2005), LR 33:2064 (October 2007), LR 36:2008 (September 2010).

§913. Local Program Development and Evaluation

A. Each LEA shall develop annually a remedial education program as part of its pupil progression plan, which complies with the established regulations adopted by the DOE and approved by BESE pursuant to R.S. 17.24.4.

B. The remedial education plan shall describe all remedial instruction and proposals for program improvement. Proposals shall include a narrative that shall incorporate the following:

1. program objective;
2. student population to be served and the selection criteria to be used;
3. methodologies, materials, and/or equipment to be used in meeting the remediation needs;
4. brief description of the remedial course;
5. plan for coordination of state, federal, and local funds for remediation;
6. procedure for documenting student's and parent(s) refusal to accept remediation;
7. evaluation plan encompassing both the educational process and the growth and achievement evidenced of students.

C. The remedial program shall be based on performance objectives related to educational achievement in grade appropriate skills addressed through the statewide content standards for required subjects, and shall provide supplementary services to meet the educational needs of each participating student.

D. Each LEA shall adhere to the remedial education plan as stated in its approved pupil progression plan and shall provide services accordingly.

E. Each LEA shall include within the remedial education plan a summary of how state, federal, and local funds allocated for remediation have been coordinated to ensure effective use of such funds.

F. Each LEA shall maintain a systematic procedure for identifying students eligible for remedial education.

G. Each LEA shall offer remediation accessible to all students. Refusal to accept remediation by student and parent(s) must have written documentation signed by student and parent(s).

H. A list of all students eligible for remediation shall be maintained at the central office level with individual school lists maintained at the building level.

I. Each LEA shall participate in the evaluation of the Remedial Education Program conducted by the DOE.

J. Evaluation

1. Each LEA shall complete an annual evaluation of its program, using the approved DOE guidelines, and shall submit the evaluation report to the State Superintendent by July 15 of each year. The evaluation plan shall include specific means to examine and document:

- a. student performance;
- b. coordination with other programs;
- c. instruction.

2. The evaluation shall be conducted as described in the local evaluation plan.

K. Annually, prior to October 15, each LEA shall report to the public the results of its efforts to provide a remedial education program and the results of the monitoring review submitted by the State Superintendent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:395; R.S. 17:397; R.S. 17:399; R.S. 17:400.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999), amended LR 27:190 (February 2001), LR 36:2009 (September 2010).

§915. State Department of Education Responsibilities

A. The DOE shall be responsible for reviewing plans, monitoring implementation, and evaluating the remedial education programs of the LEA.

B. The State Superintendent of Education shall prepare an annual report for submission to the BESE and the Joint Committee on Education of the Louisiana Legislature which shall contain:

1. the number of students participating in remedial education programs; and
2. the level of student achievement.

C. The DOE shall provide guidelines for local evaluation of programs, shall review the local evaluation plans, shall monitor the implementation of remedial education plans, and shall receive and approve evaluation reports.

D. Within 60 days of receipt of the evaluation report from the local school system, the DOE shall submit to each local school system an analysis of the system's evaluation report and the DOE's monitoring results (Board Policy).

E. The DOE shall provide technical assistance to the city and parish school boards which shall include:

1. assistance with development of the remedial section of the pupil progression plan;
2. assistance with staff development;
3. assistance with the use of appropriate department forms;
4. assistance with program implementation; and
5. assistance with conducting local evaluations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:400.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999), amended LR 36:2010 (September 2010).

Chapter 11. Appendix A

§1101. Definition of Terms

A. As used in this bulletin, the terms shall be defined as follows.

1. State Terms

Acceleration—advancement of a pupil at a rate faster than usual in or from a given grade or course. This may include "gifted student" as identified according to Bulletin 1508.

Alternate Assessment—the substitute way of gathering information on the performance and progress of students with disabilities who do not participate in typical state assessments.

Alternative to Regular Placement—placement of students in programs not required to address the State Content Standards.

Content Standards—statements of what we expect students to know and be able to do in various content areas.

LEAP Summer Remediation Program—the summer school program offered by the LEA for the specific purpose of preparing students to pass the LEAP summer retest in English language arts, or mathematics.

Louisiana Educational Assessment Program (LEAP)—the state's testing program that includes the grades 3, 5, 6, 7 and 9 Louisiana Norm-referenced Testing Program; the grades 4 and 8 Criterion-referenced Testing Program including English language arts, mathematics, social studies and science and the Graduation Exit Examination (English language arts, mathematics, written composition, science and social studies).

Promotion—a pupil's placement from a lower to a higher grade based on local and state criteria contained in these Guidelines.

Pupil Progression Plan—the comprehensive plan developed and adopted by each parish or city school board which shall be based on student performance on the Louisiana Educational Assessment Program with goals and objectives which are compatible with the Louisiana competency-based education program and which supplement standards approved by BESE. A pupil progression plan shall require the student's proficiency on certain test as determined by BESE before he or she can be recommended for promotion.

Regular Placement—the assignment of students to classes, grades, or programs based on a set of criteria established in the pupil progression plan. Placement includes promotion, retention, remediation, and acceleration.

Remedial Programs—programs designed to assist students including students with disabilities and Non/Limited English Proficient (LEP) students, to overcome educational deficits identified through the Louisiana Education Assessment Program and other local criteria.

Remediation—see *remedial programs*.

Retention—nonpromotion of a pupil from a lower to a higher grade.

2. Local Terms

a. The definition of *terms* used in a local school system plan must be clearly defined for use as the basis for interpretation of the components of the plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999), amended LR 27:190 (February 2001), LR 31:1976 (August 2005), LR 33:2064 (October 2007), amended LR 36: 2010 (September 2010).

Chapter 13. Appendix B

§1301. LEAP High Stakes Testing Policy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 27:1683 (October 2001), LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 30:409 (March 2004), LR 31:1976 (August 2005), LR 31:3104 (December 2005), LR 33:2064 (October 2007), LR 34:2390 (November 2008), repealed LR 36:2010 (September 2010).

Chapter 15. Appendix C

§1501. Waiver Request

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:413 (March 2004), amended LR 31:1978 (August 2005), LR 33:2066 (October 2007), repealed LR 36:2011 (September 2010).

Jeanette Vosburg
Executive Director

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RULE

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Gifted/Talented Students (LAC 28:XLIII.Chapters 11-20)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amends Bulletin 1706—*Regulations for Implementation of the Children with Exceptionalities Act*: Subpart 2. Regulations for Gifted/Talented Students. The Rule formally realigns the state special education regulations for gifted and talented students with recent changes to Bulletin 1706, Subpart 1, its companion document and provides Louisiana educators and education administrators with current policies and procedures related to the provision of special education services for students with exceptionalities. This document will now be aligned with Louisiana Revised Statute 17:1941 et seq.

Title 28

EDUCATION

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart 2. Regulations for Gifted/Talented Students

Chapter 11. State Eligibility

§1101. Free Appropriate Public Education

A. The Louisiana State Board of Elementary and Secondary Education (the state board) shall be responsible for the assurance of a free appropriate public education to all gifted and talented students ages three through twenty-one years unless the student exits with a high school diploma; and shall exercise supervision and control of public elementary and secondary education.

B. The state board shall be directly responsible for the provision of a free appropriate public education (FAPE) to gifted and talented students, ages three through 21 years, who are within the jurisdiction of either Special School District or in the state board special schools (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center) unless the student exits with a high school diploma.

C. The state ensures the use of whatever state, local, federal, and private sources of support are available in the state to meet the requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§1102. Issuance of Regulations

A. The state board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for the provision of a free appropriate public education developed pursuant to R.S. 17:1941

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§1103. Compliance with Federal Rules

A. The state board has the responsibility of complying with rules and regulations governing grants for educational purposes from the federal government or from any other person or agency, which are not in contravention to the Constitution and laws, and the authority to take all action necessary to achieve compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§1104. Reserved.

§1105. Program Options

A. The department shall ensure that each LEA take steps to ensure that its gifted and talented students residing in the area served by the LEA have available to them the variety of educational programs and services available to all students in the area served by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§1106. Reserved.

§1107. Child Find Activities

A. Each LEA, in accordance with the requirements of this subpart, shall document that the effort of ongoing identification activities is conducted to identify and locate each student who is under its jurisdiction, who is suspected of being gifted or talented in visual arts, music or theatre and in need of special education and related services, and who is one of the following:

1. enrolled in an educational program operated by an LEA;
2. enrolled in a private school program;
3. enrolled in a public or private preschool or day care program;
4. is not enrolled in school, except for students who have graduated with a regular high school diploma.

B. Ongoing identification activities apply to highly mobile gifted and talented students (such as migrant and homeless students) and students who are suspected of being gifted or talented in visual arts, music or theatre and in need of special education.

C. Notice of the child identification effort regularly undertaken by the department and LEAs must be published or announced in newspapers or other media with circulation adequate to notify parents throughout the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2011 (September 2010).

§§1108-1116. Reserved.

§1117. Facility Comparability

A. Facilities identified as being for gifted and talented students and the services and activities provided therein shall meet the same standards and level of quality as do the facilities, services, and activities provided to other students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1118. General Responsibility

A. Each local educational agency (LEA) shall establish and implement procedural safeguards that meet the requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§§1119-1128. Reserved.

§1129. Gifted and Talented Students Enrolled by their Parents in Private Schools

A. Definitions

Private School Students—students enrolled by their parents in private schools or facilities.

B. Private school gifted and talented students shall be identified, located, and evaluated through prescribed procedures.

1. Each LEA shall locate, identify, and evaluate all private school gifted and talented students, including religious-school students residing in the jurisdiction of the LEA.

2. The activities undertaken to carry out this responsibility for private school gifted and talented students shall be comparable to activities undertaken for gifted and talented students in public schools.

C. The provision of services to gifted and talented students shall follow basic requirements.

1. No LEA is required to provide services for gifted and talented students enrolled in private schools or in home school programs.

D. Complaints are limited to the conditions listed below.

1. The due process procedures in §1507 of these regulations apply to complaints that an LEA has failed to meet the child find requirements, including the procedures for evaluation and determination of eligibility found in these regulations.

2. Complaints that an LEA has failed to meet the requirements of §1129 of these regulations may be filed under the procedure established in §1151 of Bulletin 1706, Subpart 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1130. General LDE Responsibilities and Authorities

A. The state Superintendent of Public Elementary and Secondary Education (the superintendent) and the state

Department of Education (the LDE) shall administer those programs and policies necessary to implement R.S. 17:1941 et seq. Responsibilities of the state superintendent and the department are listed below.

1. The department shall approve, in accordance with standards approved by the state board, each public school program that delivers special education.

2. The department shall recommend to the state board, in accordance with standards approved by the state board, each participating private school program that delivers special education.

3. The department shall receive, administer, and direct the distribution of federal funds for the education of students with exceptionalities in gifted or talented in visual arts, music or theatre, except those received directly by LEAs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1131. Reserved.

§1132. Personnel Qualifications

A. General. The LDE shall establish and maintain qualifications of personnel through Bulletin 746—*Louisiana Standards for State Certification of School Personnel*, to ensure that personnel necessary to carry out the purposes of these regulations are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students identified as gifted or talented.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§1133. Improvement Strategies

A. The department will describe the strategies the state will use to address the needs identified. The strategies will include how the state will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with gifted and talented students (including professional personnel who provide special education, general education and related services), have the skills and knowledge necessary to meet the needs of gifted and talented students. The plan will include a description of how the department will accomplish the following.

1. The department shall prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of gifted and talented students including how the state will work with other states on common certification criteria.

2. The department shall work with institutions of higher education and other entities that (on both a pre-service and an in-service training basis) prepare personnel who work with gifted and talented students to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet state and local needs.

3. The department shall develop collaborative agreements with other states for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of such a program of preparation.

4. The department shall work in collaboration with other states, particularly the departments of education of neighboring states, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel.

5. The department shall acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, concerning how the state will, if appropriate, adopt promising practices, materials, and technology.

6. The department shall encourage LEAs to recruit, prepare, and retain qualified personnel, including personnel with exceptionalities and personnel from groups that are under-represented in the fields of regular education, special education, and related services.

7. The department shall develop a plan that is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other federal and state laws that address personnel recruitment and training.

8. The department shall provide for the joint training of parents and special education, related services, and general education personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2012 (September 2010).

§§1134-1148. Reserved.

§1149. General Supervision

A. The Division of Special Populations is established within the department to provide general supervision of all education programs for gifted and talented students within the state. *General supervision* is defined as the responsibility to perform functions prescribed by the state board.

1. The Division of Special Populations shall ensure that any state standards affecting other state agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

2. The Division of Special Populations shall disseminate such standards and revisions to all public agencies bound by them and provide parents and all citizens with information requested regarding implementation of such state standards.

3. The Division of Special Populations shall provide technical assistance to all public agencies bound by such standards in their proper implementation.

4. The Division of Special Populations shall monitor according to written procedures the implementation of state standards in each public agency. Such monitoring shall include child identification and programmatic, administrative, and fiscal issues.

5. The Division of Special Populations shall institute a system for complaint management regarding the implementation of state standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2013 (September 2010).

§1150. Reserved.

§1151. Adoption of State Complaint Procedures and Early Resolution Program

A. General. The LDE adopts written procedures herein and in Bulletin 1573—*Complaint Management Procedures*, for:

1. the purpose of resolving any complaint alleging that a public agency has violated the *Louisiana Children with Exceptionalities Act*, R.S. 17:1941, including a complaint filed by an organization or individual from another state, that meets the requirements of §§1151 through 1153 by providing:

a. for the implementation of an Early Resolution Process (ERP); and/or

b. the filing of a formal written complaint with the LDE.

B. The LDE shall widely disseminate to parents and other interested individuals and other appropriate entities:

1. the state procedures under §§1151 through 1153 and Bulletin 1573—*Complaint Management Procedures*; and

2. the appropriate contact information for LEAs and other public agencies serving students.

C. Informal Complaints. It is the policy of the LDE to encourage and support prompt and effective resolution of any complaint described in §1151.A.1 in the least adversarial manner possible. The LDE shall effect such policy to promote dispute prevention and the swift resolution of disputes by implementing an Early Resolution Process.

1. Early Resolution Process (ERP). An ongoing and systematic, informal dispute resolution process.

a. ERP shall include a systematic, local level process for the prompt and orderly resolution of complaints by each public educational agency;

b. Each LEA in the state shall establish an internal ERP in accordance with standards outlined in Bulletin 1573—*Complaint Management Procedures*, which shall include:

i. the designation of a local ERP representative and notice of the name, address, telephone number; and

ii. other contact information for the LEA's designated ERP representative.

c. The implementation of the ERP by each LEA draws on the traditional model of parents and schools working cooperatively in the educational interest of the student to achieve their shared goal of meeting the educational needs of students with an exceptionality.

d. To promote the cooperative resolution of complaints at the local level, the LDE shall not be involved in the informal resolution process (ERP) implemented at the local level, but shall route to the public agency's ERP representative, verbal and other informal complaints or allegations received by the LDE.

2. Requesting ERP. A parent, adult student, individual, or organization shall initiate a request for ERP on one or more issues described in §1151.A.1 by contacting the local level ERP representative or the LDE's ERP Intake Coordinator(s).

a. Informal complaints to the LDE shall only be made through the LDE's Intake Coordinator(s) who shall refer the complaint to the ERP representative of the LEA

immediately, if possible, but not later than two calendar days after receiving the complaint.

b. The LDE's intake coordinator(s) shall:

i. be the LDE's only designated individual(s) to perform complaint intake duties and responsibilities;

ii. not have a *juris doctorate* degree;

iii. have completed specific training in accepted methods and practices for recording information in a neutral and confidential manner; and

iv. perform duties consisting of receipt of informal complaints and request for ERP; providing local agency ERP contact information to the complainant(s); and referral of such informal complaint or ERP request to the local agency's ERP Representative in accordance with Subsection C of this Section.

3. Early Resolution Period. If a resolution of the informal complaint cannot be achieved within 15 calendar days of the public agency's receipt of the complaint, or an extended period agreed upon by the parties in writing, the LEA's ERP representative shall advise the complainant of the availability of other dispute resolution processes available through the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2013 (September 2010).

§1152. Formal Written Complaints Filing and Content Requirements

A. An organization or individual, including those from another state, may file a signed written complaint under the procedures described in §§1151 through 1153.

B. The complaint shall include:

1. a statement that a public agency has violated a requirement of these regulations;

2. the facts on which the statement is based;

3. the signature and contact information for the complainant; and

4. if alleging violations with respect to a specific student:

a. the name and address of the residence of the student;

b. the name of the school the student is attending;

c. in the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

i. a description of the nature of the problem of the student, including facts relating to the problem; and

ii. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

C. The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §§1151 through 1153.

D. The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the student, at the same time the party files the complaint with the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2014 (September 2010).

§1153. Formal Written Complaint Procedures

A. Time Limit; Minimum Procedures. Upon receipt of a signed written complaint filed under §1152, the LDE shall refer the complaint to the ERP representative in accordance with §1151.

1. The LDE shall:

a. not commence investigation of a complaint until the expiration of the informal resolution period described in §1151.C.3; but

b. shall complete its investigation of unresolved allegations and issue a decision within 45 days after the expiration of the early resolution period in accordance with the procedures contained in this Section.

2. Upon expiration of the resolution period, the LDE shall review the allegations contained in the complaint and shall provide written notice to the LEA or public agency serving the student, including the following:

a. a request for specific information needed by the LDE to carry out its independent investigation of the complaint;

b. reasonable timelines established for providing such information to the LDE;

c. a statement of the opportunity to respond to the complaint, including at a minimum:

i. the opportunity to provide a proposal to resolve the complaint, at their discretion; and

ii. the opportunity to offer to the parent who has filed a complaint, mediation consistent with §1504 or neutral IEP facilitation as available through the LDE.

B. The LDE shall provide written notice to the complainant including a statement of the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

C. All information relevant to the complaint shall be reviewed by the LDE, and a decision shall be made as to whether an independent on-site investigation is needed.

D. The LDE shall review all relevant information and make an independent determination as to whether the public agency is violating a requirement of R.S. 17:1941 et seq. or these regulations.

E. Decision. Within 45 days of expiration of the early resolution process, the LDE shall issue a written decision to the complainant and the public agency that addresses each remaining allegation of the complaint and contains:

1. findings of fact and conclusions; and

2. the reasons for the LDE's final decision.

F. Time Extension; Final Decision; Implementation. The LDE shall permit an extension of the time limit under Subsection A of this Section only if:

1. exceptional circumstances exist with respect to a particular complaint; or

2. the parent (or individual or organization) and the public agency involved agree to extend the time to engage in mediation, IEP facilitation, or other alternative means of dispute resolution.

G. Complaints Filed under this Section and Due Process Hearings Under §1507

1. If a written complaint received is also the subject of a due process hearing under §1507 or, if it contains multiple

issues, of which one or more is part of that hearing, the LDE shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue of the complaint that is not a part of the due process action shall be resolved, using the time limit and procedures described in Subsections A and B of this Section.

2. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:

- a. the due process hearing decision shall be binding on that issue; and
- b. the LDE shall inform the complainant to that effect.

3. A complaint alleging an agency's failure to implement a due process hearing decision shall be resolved by the LDE.

H. Remedies for Denial of Appropriate Services. In resolving a complaint in which it has found a failure to provide appropriate services, the LDE, pursuant to its general supervisory authority under these regulations, shall address:

1. the failure to provide appropriate services including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement); and

2. appropriate future provision of services for all students with exceptionalities.

I. Reconsideration Requests. If either the public agency or the complainant believes that the LDE has made an error in one or more findings of fact and/or law, a reconsideration of the investigative findings and decision may be requested, in writing, to the LDE's legal division in accordance with the following procedures:

1. the request shall be simultaneously submitted to the LDE and the other party subject to the complaint; and

2. for each error submitted for reconsideration, the requestor shall provide the reference number assigned by the LDE to the complaint at issue; the page number of the written decision where such alleged error can be found; highlighted sections of data submitted for investigation that would assert a fact contrary to what is reflected in the written decision; and citations to applicable law, regulations, or jurisprudence, where applicable, to support the alleged error of law; and

3. the requestor shall provide a written explanation that indicates how originally-submitted documentation changes the respective finding(s) of fact or law and/or how the alleged error impacts the conclusion of the LDE with respect to the allegation(s) at issue;

4. documents and other information not originally submitted regarding the allegation(s) shall not be accepted for review; and

5. reconsideration requests, including all documentation relevant to the reconsideration request, shall be received by the LDE no later than 10 calendar days after the date of receipt of the investigative report. Should the other party to the complaint wish to respond to the reconsideration request, the response shall be received by the LDE no later than 10 calendar days after the LDE received the original reconsideration request; and

6. reconsideration requests received by the LDE after the 10 calendar day deadline shall not be reviewed;

7. reconsideration requests received timely and that meet criteria established by this subsection shall be reviewed by a panel of individuals appointed by the division director and the LDE shall inform the complainant and the public agency of its determinations, in writing, within 30 calendar days from the date the LDE receives the written reconsideration request;

8. reconsideration requests by third parties shall not be accepted;

9. reconsideration requests shall not be used to delay or deny implementation of FAPE for a student with an exceptionality.

10. implementation of any corrective actions required in the state's initial (pre-reconsideration) decision shall not be delayed pending the reconsideration process.

J. The LDE shall ensure effective implementation of the final decision, if needed, including:

1. technical assistance activities;
2. negotiations; and
3. corrective actions to achieve compliance.

K. Correction of Non-Compliance. If a complaint results in a finding of non-compliance, the public agency shall be required to document that it has taken corrective action as required by the complaint decision.

1. The LDE shall refer and recommend to BESE the delay or denial of funding or an offset of future funding for any LEA that, after due notice:

- a. refuses or fails to submit requested documentation of corrective action; or
- b. refuses or fails to take or complete required corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2014 (September 2010).

§§1154-1155. Reserved.

§1156. Adequate Supply of Qualified Personnel

A. The department will analyze state and local needs for professional development for personnel to serve gifted and talented students: the number of personnel providing special education and related services; relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification); and the training or retraining necessary to eliminate the shortages based, to the maximum extent possible, on existing assessments of personnel needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1579 (August 2000).

§§1157-1166. Reserved.

§1167. Appointment of a Gifted/ Talented Program Contact Person

A. Each LEA shall designate a contact person for the gifted and talented programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2015 (September 2010).

§§1168-1172. Reserved.

§1173. Nondiscrimination

A. The department shall comply with all statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, disability and age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2015 (September 2010).

§1174. Disproportionality

A. Consistent with the purposes of these regulations, the LDE establishes the following policies and procedures to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of students as students with exceptionalities.

1. The LDE shall annually collect and analyze data described in Subsection A above.

2. When data described in Subsection A. above indicate over-identification or disproportionate identification, the LDE shall review the policies, procedures, and practices of the LDE or the affected LEA.

3. When the review indicates an inappropriate identification process, the LDE shall require the revision of the LDE's or the affected LEAs policies, procedures, and practices to ensure compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2016 (September 2010).

§§1175-1199. Reserved.

Chapter 12 Local Educational Agency Eligibility

§§1201-1229. Reserved.

§1230. LEA Jurisdiction

A. Each LEA shall identify, locate, and evaluate each student suspected of having an exceptionality as gifted or talented in visual arts, music or theatre 3 through 21 years of age, residing within its jurisdiction.

B. Each LEA is responsible for making available a free appropriate public education to each eligible student with an exceptionality, 3 through 21 years of age, who resides within its jurisdiction except those students enrolled by their parents in a private school program.

1. LEAs are not required to provide services to students whose parents choose not to enroll them in a program operated by the LEA.

2. Services do not have to be provided to gifted or talented students who have been suspended or expelled.

C. Students who are eligible to receive a free appropriate public education are described as follows.

1. LEAs shall make available a free appropriate public education to all gifted and talented students located in their jurisdictions from the age of three years, regardless of when the birthday occurs during the school year.

2. A student with an exceptionality shall remain eligible for services until reaching age 22 unless the student has graduated from high school with a regular high school diploma. A student with an exceptionality whose twenty-second birthday occurs during the course of the regular school year (as defined by the LEA) may be allowed to remain in school for the remainder of the school year.

D. Jurisdiction is the right and obligation of an LEA to exercise authority over all students residing within its geographic area and over each student placed by the LEA in an educational program within the geographic area of another LEA.

1. For city/parish school systems, the geographic area is the boundary of the school district as defined in the Louisiana Revised Statutes.

2. For SSD, the geographic area is the boundary of the state-operated treatment and care residential facilities.

3. For a state board special school, the geographic area is the boundary of the educational facility.

4. For a charter school that is considered an LEA, the geographic area is the boundary of the educational facility.

5. If an LEA places a student in another LEA or an approved private school, the student so placed remains within the jurisdiction of the placing LEA. The responsibility for a FAPE remains with the placing LEA.

a. All students sent to a board special school by another LEA are considered "placed" by the sending LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2016 (September 2010).

§§1231-1299. Reserved.

Chapter 13 Evaluation, Eligibility, Determinations, Individual IEPs and Educational Placements

§1301. Parental Consent

A. Parental Consent for Initial Evaluation

1. a. The public agency proposing to conduct an initial evaluation to determine if a student qualifies as a gifted or talented student as defined in §1904 shall, after providing notice consistent with §1503, obtain written informed consent consistent with the definition of consent in §1904, from the parent of the student before conducting the evaluation.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The public agency shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality.

2. For initial evaluations only, if the student is a ward of the state and is not residing with the student's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality, if:

a. despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the student;

b. the rights of the parents of the student have been terminated in accordance with state law; or

c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

3. If the parent of a student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the public agency;

a. may not use the procedures in Chapter 15 of these regulations (including the mediation procedures under §1504 or the due process procedures under §§1507 through 1516) in order to obtain agreement or a ruling that the services may be provided to the student;

b. will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with special education and related services for which the parent refuses to or fails to provide consent; and

c. is not required to convene an IEP Team meeting or develop an IEP under §1320 and §1324 for the student.

B. Parental Consent for Services

1. A public agency that is responsible for making FAPE available to a student with an exceptionality shall obtain informed written consent from the parent of the student before the initial provision of special education and related services to the student.

2. The public agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

3. If the parent of a student fails to respond or refuses to consent to services under Subsection B of this Section, the public agency may not use the procedures in Chapter 15 of these regulations (including the mediation procedures under §1504 or the due process procedures under §§1507 through 1516) in order to obtain agreement or a ruling that the services may be provided to the student.

4. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

a. will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

b. is not required to convene an IEP Team meeting or develop an IEP under §1320 and §1324 for the student for the special education and related services for which the public agency requests such consent.

C. Parental Consent for Reevaluations

1. Subject to Paragraph C.2 of this Section, each public agency:

a. shall obtain informed written parental consent, in accordance with §1301, prior to conducting any reevaluation of a student with an exceptionality;

b. if the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in Paragraph A.4 of this Section;

c. the public agency does not violate its obligation under §1107 and §1305 if it declines to pursue the evaluation or reevaluation.

2. The informed parental consent described in Paragraph C.1 of this Section need not be obtained if the public agency can demonstrate that:

a. it made reasonable efforts to obtain such consent; and

b. the student's parent has failed to respond.

D. Other Consent Requirements

1. If the parent's decision is to withhold consent for the initial evaluation, a reevaluation or initial placement of the student in gifted and talented services, the LEA may not request a due process hearing following the procedures outlined in §1507 of these regulations.

2. The parent may refuse special education services and subsequent reevaluations.

3. Parental consent is not required before:

a. reviewing existing data as part of an evaluation or a reevaluation; or

b. administering a test or other evaluation that is administered to all students, unless, before administration of that test or evaluation, consent is required of parents of all students.

4. A public agency may not use a parent's refusal to consent to one service or activity under Paragraph A of this Section to deny the parent or student any other service, benefit, or activity of the public agency, except as required by these regulations.

5. If a parent of a student who is home schooled or placed in a private school by the parent at his or her own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in Paragraphs A.3 and C.1 of this Section); and

6. To meet the reasonable efforts requirement in Paragraphs A.1.c, A.2.a, B.2, and C.2.a of this Section, the public agency shall document its attempts to obtain parental consent using the procedures in §1322.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2016 (September 2010).

§1302. Reserved.

§1303. Nonbias of Testing and Evaluation Materials

A. The department shall, with the approval of the SBESE, establish procedures as found in §1305 to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or gender bias.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2017 (September 2010).

§1304. Reserved.

§1305. Evaluation and Re-evaluation Procedures

A. Refer to Bulletin 1508—*The Pupil Appraisal Handbook*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2017 (September 2010).

§§1306-1319. Reserved.

§1320. Definition of Individualized Education Program

A. General. As used in these regulations, the term *individualized education program* or IEP, is a written statement for each student with an exceptionality that is developed, reviewed, and revised in a meeting in accordance with §§1320 through 1325 and that shall include the following provisions.

1. Each LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of gifted and talented students in accordance with all the requirements in Bulletin 1530—*Louisiana's IEP Handbook for Students with Exceptionalities*.

2. An IEP that is consistent with FAPE shall be developed and implemented for eligible students.

3. The IEP shall be developed using a format approved by the department.

4. The LEA shall provide a copy of each completed IEP/Placement document signed by the officially designated representative of the LEA at no cost to the student's parent(s).

5. At the beginning of each school year, each LEA shall have in effect an IEP for every gifted and talented student receiving special education and related services in that LEA.

6. When the student's IEP is in effect, it shall be accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

a. Each teacher shall be informed of his or her specific responsibilities.

B. Each LEA shall comply with the prescribed time lines as described below.

1. A meeting to develop an IEP for a student is conducted within 30 days of a determination that the student needs special education and related services.

2. Implementation of educational placement shall begin as soon as possible but no later than ten school days following receipt by the LEA of formal parental approval.

C. IEPs shall be reviewed and revised following prescribed procedures described below:

1. each LEA shall ensure that the team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

2. each LEA shall revise the IEP, as appropriate, to address concerns in any areas noted in §1324;

3. more than one IEP Team review meeting may be conducted at the discretion of the school system. If a parent makes a written request for an IEP/Placement review meeting, the school system shall respond in ten calendar days in writing to that request.

4. Agreement

a. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with an exceptionality and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.

b. If changes are made to the student's IEP in accordance with Paragraph C.4 of this Section, the public agency shall ensure that the student's IEP Team is informed of those changes.

5. Consolidation of IEP Team Meetings. To the extent possible, the public agency shall encourage the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student.

6. Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as

provided in Paragraph C.4 of this Section, by amending the IEP rather than by redrafting the entire IEP. A parent shall be provided with a revised copy of the IEP with the amendments incorporated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2017 (September 2010).

§1321. IEP Team Participants

A. Each LEA shall ensure that the IEP team for each student with an exceptionality includes all of the required participants, as listed below:

1. one or both of the parents of the student;

2. input from at least one regular education teacher of the student to the extent appropriate, in the development, review and revision of the student's IEP;

3. at least one special education teacher of the student;

4. an officially designated representative of the LEA;

5. an individual who can interpret the instructional implications of evaluation as designated by the district;

6. at the discretion of the parent or LEA, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by either the parent or the LEA, whoever invited the individual to be a member of the IEP team;

7. whenever appropriate, the student identified as gifted or talented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2018 (September 2010).

§1322. Parent Participation

A. LEAs shall take steps to ensure that one or both of the parents of the gifted and talented student are present at each IEP Team meeting or are afforded an opportunity to participate. LEAs shall contact the parent(s) in writing regarding each meeting early enough to ensure that they will have an opportunity to attend and shall schedule the meeting at a mutually agreed upon time and place.

1. This notice shall indicate the purpose, time, and location of the meeting, as well as who shall be in attendance.

2. This notice shall inform the parents of the participation of other individuals on the IEP team who have knowledge or special expertise about the student.

B. If neither parent can attend a scheduled IEP Team meeting for which arrangements have been made in accordance with these regulations, other methods shall be used by the LEA to ensure parental participation, including making individual or conference telephone calls.

C. The meeting may be conducted without a parent in attendance provided that certain procedures are followed, as described below:

1. another method for parental participation is used and documented; or

2. the LEA has documented attempts to arrange a mutually agreed on time and place, such as:

a. detailed records of telephone calls made or attempted and the results of those calls;

b. copies of correspondence sent to the parents and any responses received;

c. detailed records of visits to the parents' home or place of employment and the results of those visits.

D. The LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including arranging for an interpreter for parent(s) who are deaf or whose native language is other than English.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2018 (September 2010).

§1323. Reserved.

§1324. Gifted and Talented IEP Content and Format

A. Each completed IEP shall contain a general overview of the student's instructional needs. Required components are listed below:

1. the student's strengths and interests;
2. the concerns of the parents for enhancing the education of their child;
3. the results of the initial evaluation or most recent re-evaluation of the student;
4. as appropriate, the results of the student's performance on any general state or district wide assessment program;
5. the student's present levels of educational performance;
6. pertinent social/emotional information;
7. Input from a regular education teacher (if enrolled in general education).

B. The IEP team shall also consider the language needs of the student as those needs relate to the student's IEP, in the case of a student with limited English proficiency.

C. The IEP shall contain a statement of measurable annual goals that relates to meeting the student's needs that result from the student's exceptionality and progress in an accelerated and enriched curriculum.

D. The IEP shall contain a statement of the special education and related services to advance appropriately toward attaining the annual goals.

E. The projected date for the beginning of the services and the anticipated frequency, location, and duration of those services shall be specified in the IEP.

F. The IEP shall contain a statement of how the student's progress toward the annual goals will be measured.

G. The IEP shall contain a statement of how the student's parents will be regularly informed with at least 1 progress report each grading period. The progress report will show:

1. their child's progress toward the annual goals; and
2. the extent to which the progress is sufficient to enable the student to achieve the goals by the end of the year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1325. IEP Accountability

A. The LEA shall provide special education and related services to gifted and talented students in accordance with the student's IEP.

B. The LEA shall make a good faith effort to assist the student to achieve the goals listed in the IEP.

C. No state agency, teacher, or other person shall be held accountable if a student does not achieve the growth projected in the annual goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1326. Students in an Educational Program Operated by the LEA

A. LEA shall identify a student as suspected of being gifted and talented by the School Building Level Committee (SBLC) according to Bulletin 741—*The School Administrator's Handbook*. This committee shall coordinate and document the results, as appropriate, of educational screening, intellectual screening, talent screening, or other types of screening as needed, as defined in Bulletin 1508—*the Pupil Appraisal Handbook*.

B. Within 10 LEA business days after receipt of the referral by the pupil appraisal office for an individual evaluation, pre-referral activities as listed in the Bulletin 1508—*Pupil Appraisal Handbook* under "Initial Responsibilities" of the evaluation coordinator shall be conducted.

C. For an initial evaluation and the re-evaluation, the LEA shall obtain informed parental consent according to §1301 of Bulletin 1706, Subpart 2. Receipt of parental consent for an individual evaluation by pupil appraisal personnel begins the 60 business days timeline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1327. Gifted/Talented Students Transferring from one LEA to another LEA within Louisiana

A. Students who have been receiving gifted and talented services in one LEA in Louisiana and who transfer to another LEA within Louisiana shall be enrolled in the appropriate special education program in the new LEA with the current IEP or the development of a review IEP within five school days of the transfer.

B. Transmittal of Records. To facilitate the transition for a student transferring from one LEA to another LEA within the state:

1. the new public agency in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled, pursuant to 34 CFR 99.31(a)(2); and

2. the previous public agency in which the student was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2019 (September 2010).

§1328. Students Out of School and/or Gifted and Talented Students Residing in the State

A. Students out of school, including students ages 3 through 22 years who are suspected of being gifted or talented who have left a public school without completing their public education by obtaining a state diploma, shall be referred to Child Find, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Gifted or talented students may be enrolled with the development of an interim IEP based on their individual need, following the enrollment process according to Bulletin 1530.

B. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five school days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§§1329-1399. Reserved.

Chapter 15 Procedural Safeguards

§1501. Discipline Procedures for Gifted and Talented Students

A. Discipline procedures for students identified as gifted or talented are the same as for regular education students.

B. Discipline information remains with the regular education records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§1502. Opportunity to Examine Records and Parental Participation in Meetings

A. Parents of gifted and talented students shall be afforded an opportunity to inspect and review all educational records with respect to the identification, evaluation and educational placement of the student and with respect to the provision of a FAPE to the student.

B. Parents of gifted and talented students shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the student and the provision of a free appropriate public education to the student.

1. Each LEA shall provide notice consistent with §1503 of these regulations to ensure that parents of Gifted and Talented students have the opportunity to participate in meetings described in paragraph §1502.B.

2. A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities in which public agency personnel engage to develop a proposal or response to parents' proposal that will be discussed at a later meeting.

3. Each LEA shall ensure that the parents of each gifted and talented student are members of any group that makes decisions on the educational placement of their child (see §1322 of these regulations).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§1503. Prior Notice and Procedural Safeguard Notice

A. Written notice shall be given to the parents of gifted and talented students a reasonable time before the LEA:

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. The prior notice shall include prescribed information as listed below:

1. a description of the action proposed (or refused) by the school, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered with the reasons why those options were rejected;

2. a description of each evaluation procedure, test, record or report the LEA used as a basis for the proposed or refused action;

3. a description of any other factors that are relevant to the LEA's proposal or refusal;

4. a statement assuring that the parents of gifted and talented students have protections under the procedural safeguards; and

5. sources for parents to contact to obtain assistance in understanding the provisions of the procedural safeguards.

C. The notice shall be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so; and

1. if the native language or other mode of communication of the parents is not a written language, the department and the LEA shall take steps to ensure that:

a. the notice is translated orally or by other means to the parents in their native language or other mode of communication;

b. the parents understand the content of the notice;

c. the LEA shall maintain written evidence that the requirements of Paragraph C of this Section have been met.

D. Notices scheduling Individualized Education Program (IEP) Team meetings shall contain not only a description of the purpose, date, time, and location of the meeting, but also a list of who will be in attendance.

E. If the notice relates to an action proposed by the LEA and requires parental consent under these regulations, the LEA may give notice at the same time it requests parental consent.

F. Requirements for procedural safeguards notice are noted below:

1. A copy of the procedural safeguards shall be given to the parents of gifted and talented students, at a minimum:

a. upon the initial referral of the student for evaluation;

b. upon each notification of an IEP meeting;

c. upon re-evaluation of the student; and

d. upon receipt of a request for a due process hearing.

2. The procedural safeguards notice shall include a full explanation of all procedural safeguards available including the state's complaint procedures available in Chapter 11 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2020 (September 2010).

§1504. Mediation

A. General. Mediation shall be available to allow parties to disputes involving any matter under these regulations. At a minimum, mediation shall be offered whenever a due process hearing is requested. However, mediation is available at any time, whether or not a request for due process has been made.

1. Mediation, which is voluntary on the part of both parties, shall be conducted by a qualified and impartial mediator trained in effective mediation techniques and assigned by the department.

2. Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights.

3. The department shall maintain a list of individuals who are qualified mediators knowledgeable in laws and regulations relating to the provision of special education and related services.

4. The impartial mediator may not be an employee of any LEA or state agency that is providing direct services to the student. The mediator shall not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator shall not be an employee of a LEA solely because he or she is paid by the agency to serve as a mediator.

5. The department shall bear the cost of the mediation process.

6. The mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

7. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement that:

a. states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

b. is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

c. shall be enforceable in any court of competent jurisdiction.

8. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2021 (September 2010).

§§1505-1506. Reserved.

§1507. Filing a Request for Impartial Due Process Hearing

A. General

1. A parent or public agency may file a request for due process hearing on any of the matters under these regulations (relating to the identification, evaluation, or educational placement of a student with an exceptionality, or the provision of FAPE to the student).

2. Prescription. The due process hearing request shall allege a violation that occurred not more than one year before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for due process hearing, except that the exceptions to the timeline described in §1511.G apply to the timeline in this Section.

B. Information for Parents. The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

1. the parent requests the information; or

2. the parent or the agency files a request for due process hearing under this Section; or

3. a parent who is not literate in English or has an exceptionality that limits his or her ability to communicate in writing shall be afforded the opportunity for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2021 (September 2010).

§1508. Due Process Hearing Request

A. General

1. A party, or the attorney representing a party, files a request for due process hearing by sending to the other party a written request for due process hearing (which shall remain confidential).

2. The party filing a request for due process hearing shall forward a copy to the LDE.

B. Content of Request for Due Process Hearing. The written request for due process hearing required in Paragraph A.1 of this Section shall include:

1. the student's name;

2. the address of the residence of the student;

3. the name of the school the student is attending;

4. in the case of a homeless student or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

5. a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and

6. a proposed resolution of the problem to the extent known and available to the person requesting the hearing at the time.

C. Notice Required before a Hearing on a Request for Due Process Hearing. A party may not have a hearing on a request for due process hearing until the party, or the attorney representing the party, files a request for due process hearing that meets the requirements of Subsection B of this Section.

D. Sufficiency of Request for Due Process Hearing

1. The request for due process hearing required by this section shall be deemed sufficient unless the party receiving the request for due process hearing notifies the hearing officer and the other party in writing, within 15 days of receipt of the written request for due process hearing, that the receiving party believes the written request does not meet the requirements in Subsection B of this Section.

2. Within five days of receipt of notification under Paragraph D.1 of this Section, the hearing officer shall make a determination on the face of the written request for due process hearing, whether the due process hearing request meets the requirements of Subsection B of this Section, and shall immediately notify the parties in writing of that determination.

E. Amendments to Written Request

1. A party may amend its request for due process hearing only if:

a. the other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a meeting held pursuant to §1510.A; or

b. the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than 5 days before the due process hearing begins.

2. If a party files an amended request for a due process hearing, the timelines for the resolution meeting in §1510.A and the time period to resolve in §1510.B begin again with the filing of the amended due process hearing request.

F. LEA's Response to Request for Due Process Hearing

1. If the LEA has not sent a prior written notice under §1504 to the parent regarding the subject matter contained in the parent's request for due process hearing, the LEA shall, within 10 days of receiving the request for due process hearing, send to the parent a response that includes:

a. an explanation of why the agency proposed or refused to take the action raised in the request for due process hearing;

b. a description of other options that the IEP Team considered and the reasons why those options were rejected;

c. a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

d. a description of the other factors that are relevant to the agency's proposed or refused action.

2. A response by an LEA under Paragraph F.1 of this Section shall not be construed to preclude the LEA from asserting that the parent's request for due process hearing was insufficient, where appropriate.

G. Other Party Response to a Request for Due Process Hearing. Except as provided in Subsection F of this Section, the party receiving a written request for due process hearing shall, within 10 days of receiving the written request, send to the other party a response that specifically addresses the issues raised in the request for due process hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2021 (September 2010).

§1509. Model Forms

A. The LDE will develop model forms to assist parents and public agencies in filing a request for due process hearing in accordance with these regulations and to assist parents and other parties in filing a state complaint under these regulations. The forms may be found on the LDE website. The use of the model forms shall not be required.

B. Parents, public agencies, and other parties may use the appropriate model forms described in Paragraph A of this Section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in these regulations for filing a request for due process hearing, or the requirements in these regulations for filing a state complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2022 (September 2010).

§1510. Resolution Process

A. Resolution Meeting

1. Within 15 days of receiving notice of the parent's request for due process hearing, and prior to the initiation of a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the request for due process hearing that:

a. includes a representative of the public agency who has decision-making authority on behalf of that agency; and

b. may not include an attorney of the LEA unless the parent is accompanied by an attorney.

2. The purpose of the meeting is for the parent of the student to discuss his or her request for due process hearing, and the facts that form the basis of the request for due process hearing, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process hearing request.

3. The meeting described in Paragraph A.1 and 2 of this Section need not be held if:

a. the parent and the LEA agree in writing to waive the meeting; or

b. the parent and the LEA agree to use the mediation process described in §1504.

4. The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

B. Resolution Period

1. If the LEA has not resolved the issues contained in the request for due process hearing to the satisfaction of the parents within 30 days of the receipt of the written request for due process hearing, the due process hearing may occur.

2. Except as provided in Subsection C, the timeline for issuing a final decision under §1515 begins at the expiration of this 30-day period.

3. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding Paragraphs B.1 and 2 of this Section, the failure of a parent filing a due process request to participate in the resolution meeting shall delay the timelines for the resolution process and due process hearing until the meeting is held.

4. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's request for due process hearing.

5. If the LEA fails to hold the resolution meeting specified in Subsection A of this Section within 15 days of receiving notice of a parent's request for due process hearing or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

C. Adjustments to 30-Day Resolution Period. The 45-day timeline for the due process hearing in §1515. A starts the day after one of the following events:

1. both parties agree in writing to waive the resolution meeting;

2. after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;

3. if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

D. Written Settlement Agreement. If a resolution to the dispute is reached at the meeting described in Paragraphs A.1 and 2 of this Section, the parties shall execute a legally binding agreement that is:

1. signed by both the parent and a representative of the agency who has the authority to bind the agency; and

2. enforceable in any court of competent jurisdiction or, by the LDE, through the state complaint procedures.

E. Agreement Review Period. If the parties execute an agreement pursuant to Subsection C of this Section, a party may void the agreement within three business days of the agreement's execution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2022 (September 2010).

§1511. Impartial Due Process Hearing and Hearing Officer Appointments

A. General. Whenever a request for due process hearing is received, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in these regulations.

B. Agency Responsible for Conducting the Due Process Hearing. The due process hearing described in Paragraph A of this Section shall be conducted by the LDE.

C. Impartial Hearing Officer. The LDE shall appoint hearing officers, who:

1. meet the minimum qualifications stipulated below:

a. shall have earned a *juris doctorate* degree;

b. shall possess knowledge of, and the ability to understand, the provisions of the state law pertaining to the provision of services to gifted and talented students and legal interpretations of those laws;

c. shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

d. shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

e. shall possess other qualifications established by the LDE;

2. shall not:

a. be an employee of a public agency that is involved in the education or care of the student;

b. have a personal or professional interest that would conflict with the person's objectivity in the hearing; or

c. have represented an LEA or a parent as an attorney in education litigation within a three year period prior to appointment by the LDE;

3. a person who otherwise qualifies to conduct a hearing under Paragraph C.1 of this Section is not an employee of the agency solely because the person is paid by the agency to serve as a hearing officer;

4. the LDE shall keep the LDE generated list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers;

5. the LDE shall ensure that impartial due process hearing officers appointed pursuant to this Section have successfully completed a training program approved by the LDE. Additional training shall be provided by the LDE whenever warranted by changes in applicable legal standards or educational practices or as determined necessary by the LDE;

6. appointments are renewed at the discretion of the LDE;

7. the LDE shall assign the hearing officer on a rotational basis from the LDE's list of qualified hearing officers.

D. Challenge to Impartiality of Due Process Hearing

1. The parent or LEA shall submit written information to the LDE within three business days of receipt of the notice of the assigned hearing officer, in order to challenge the impartiality of the hearing officer.

2. The LDE shall review any written challenge to the impartiality of the hearing officer and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

3. If the LDE determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

E. Subject Matter of Due Process Hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the request for due process hearing, unless the other party agrees otherwise.

F. Timeline for Requesting a Hearing. A parent or agency shall request an impartial hearing on their request for due process hearing within one year of the date the parent or agency knew or should have known about the alleged action that forms the basis of the request for due process hearing.

G. Exceptions to the Timeline. The timeline described in Subsection F of this Section does not apply to a parent if the parent was prevented from filing a request for due process hearing due to:

1. specific misrepresentations by the LEA that it had resolved the problem forming the basis of the request for due process hearing; or

2. the LEA's withholding of information from the parent that was required under these regulations to be provided to the parent.

H. Procedures for conducting a hearing are stipulated below.

1. The hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the LDE of the date, time and place of the hearing.

2. The hearing shall be conducted in accordance with these regulations as well as procedural guidelines developed by the LDE.

3. At the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2023 (September 2010).

§1512. Hearing Rights

A. General. Any party to a hearing conducted pursuant to these regulations has the right to:

1. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with exceptionalities;

2. present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

4. obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing at no cost; and

5. obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

B. Additional Disclosure of Information

1. At least five business days prior to a hearing conducted pursuant to these regulations, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

2. A hearing officer may bar any party that fails to comply with Paragraph B.1 of this Section from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

C. Parental Rights at Hearings. Parents involved in a hearing shall be given the right to:

1. have the student who is the subject of the hearing present;

2. have the hearing open to the public; and

3. have the record of the hearing and the findings of fact and decisions described in Paragraphs A.4 and A.5 of this Section provided at no cost to parents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1513. Hearing Decisions

A. Decision of Hearing Officer on the Provision of FAPE

1. Subject to Paragraph A.2 of this Section, a hearing officer's determination of whether the student received FAPE shall be based on substantive grounds.

2. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

a. impeded the student's right to FAPE;

b. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

c. caused a deprivation of educational benefit.

3. Nothing in Subsection A of this Section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements in these regulations.

B. Separate Request for a Due Process Hearing. Nothing in these regulations shall be construed to preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1514. Reserved.

§1515. Timelines and Convenience of Hearings and Reviews

A. A final hearing decision shall be reached and a copy of the decision mailed to each of the parties not later than 45 days after the expiration of the 30-day period under §1510.B or the adjusted time periods described in §1510.C.

B.1.A hearing officer may grant specific extensions of time beyond the periods set out in Paragraph A of this Section at the request of either party.

2. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the LDE in writing, stating the date, time, and location of the rescheduled hearing.

C. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1516. Civil Action

A. General. Any party aggrieved by the decision of the hearing officer has the right to bring a civil action in a court of competent jurisdiction.

B. Time Limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1517. Costs

A. The department shall bear the cost of the hearing officer and the court reporter. Each party shall bear its own costs, including witness costs, unless otherwise agreed or ordered by the hearing officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2024 (September 2010).

§1518. Student Status During Proceedings

A. During the pendency of any administrative or judicial proceeding regarding a request for due process hearing under §1507, unless the state or local agency and the parents of the student agree otherwise, the student involved in the complaint shall remain in his or her current educational placement.

B. If the request for due process hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

C. If the hearing officer in a due process hearing conducted by the LDE agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the state and the parents for the purposes of Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary

Education, LR 36:2025 (September 2010).

§1519. Surrogate Parents

A. General. Each public agency shall ensure that the rights of a student are protected when:

1. no parent (as defined in §1904) can be identified;
2. the public agency, after reasonable efforts, cannot locate a parent;
3. the student is a ward of the state (including a ward of the court or of a state agency); or
4. the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance-Act [42 U.S.C. 11434a(6)].

B. Procedures

1. Procedures for determining whether a student needs a surrogate parent are contained in the *Surrogate Parent Handbook*.

2. Procedures for assigning a surrogate parent shall be developed and implemented by each LEA.

C. Duties of Public Agency. The duties of a public agency under Subsection A of this Section include the assignment of an individual to act as a surrogate for the parents. This shall include a method:

1. for determining whether a student needs a surrogate parent; and
2. for assigning a surrogate parent to the student.

D. Wards of the State. In the case of a student who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements in Subparagraph E.2.a and Subsection F of this Section.

E. Criteria for Selection of Surrogate Parents

1. The public agency may select a surrogate parent in any way permitted under state law.

2. Public agencies shall ensure that a person selected as a surrogate parent:

- a. is not an employee of the LDE, the LEA, or any other agency that is involved in the education or care of the student;
- b. has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and
- c. has knowledge and skills that ensure adequate representation of the student.

F. Non-Employee Requirement; Compensation. A person otherwise qualified to be a surrogate parent under Subsection E of this Section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

G. Unaccompanied Homeless Youth. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to Subparagraph E.2.a of this Section, until a surrogate parent can be appointed who meets all of the requirements of Subsection E of this Section.

H. Surrogate Parent Responsibilities. The surrogate parent may represent the student in all matters relating to:

1. the identification, evaluation, and educational placement of the student; and
2. the provision of FAPE to the student.

I. LDE Responsibility. The LDE shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent.

J. Any person appointed as a surrogate parent shall be protected by the "limited liability" provisions set forth in R.S. 17:1958.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§1520. Transfer of Parental Rights at the Age of Majority

A. When gifted or talented students reach the age of majority (18 years of age), which applies to all students, they shall be afforded those rights guaranteed at such age.

1. The LEA shall provide any notice required by these regulations to both the individual and the parent; and all rights accorded to parents under these regulations transfer to the student.

2. All rights accorded to parents under these regulations shall transfer to students who are incarcerated in adult or juvenile, state or local correctional institutions.

3. Whenever rights transfer under these regulations pursuant to Paragraphs A.1 and 2 of this Section, the LEA shall notify the individual and the parent of the transfer of rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§§1521-1599. Reserved.

Chapter 16. Monitoring, Enforcement, Confidentiality, and Program Information

§1601. Reserved.

§1602. Monitoring, Complaint Management and Investigation

A. The Division of Special Populations is authorized to establish a system of monitoring, complaint management and investigatory provisions of these regulations.

B. The Division of Special Populations shall monitor in accordance with the procedures established through a self-

study conducted by the LEAs, resulting in goals adopted by the local school systems to improve their gifted and talented services.

C. The Division of Special Populations shall receive and review complaints concerning suspected noncompliance of regulations concerning the education of gifted and talented students. It shall conduct this requirement through prescribed procedures.

1. The Division of Special Populations shall address allegations of failure to comply with any provision of these regulations and other applicable state or federal laws, regulations or state standards.

2. The Division of Special Populations, in carrying out its responsibilities, may require LEAs to keep certain records and to submit to the Division of Special Populations complete and accurate reports at such time and in such form and containing such information as are determined necessary to enable the Division of Special Populations to fulfill its responsibilities for ensuring compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2025 (September 2010).

§1603. Review of Enforcement Recommendations

A. If outstanding deficiencies occur and remain, the LDE will refer and recommend corrective action to BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:1577 (August 2000), amended LR 36:2026 (September 2010).

§1604. Confidentiality of Information

Refer to The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR part 99).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§§1605-1699. Reserved.

Chapter 17. Allotment of Funds

§1701. Administration of Funds

A. The division, in concert with other divisions within the department, shall ensure the proper receipt and disbursement of all state and federal funds administered by the department specifically for the provision of special education and related services for gifted and talented students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1702. Preparation of Annual Budget

A. The department shall prepare and submit to the state board for review and approval for the next fiscal year a comprehensive budget that at a minimum proposes the appropriations by the Louisiana Legislature of whatever state funds are needed by the department, special school districts, and city/parish LEAs to comply fully with all of the requirements established by R.S. 17:1941 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1703. Procedure for Determination of Eligibility for State or Federal Funds

A. Each LEA requesting state or federal funds administered by the department shall do so according to the procedures established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§§1704-1799. Reserved.

Chapter 19. General

§1901. Terms

A. The terms defined in §§1902-1999 of this Chapter are used throughout these regulations. Unless expressly provided to the contrary, each term used in these regulations shall have the meaning established by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1902. Abbreviations/Acronyms Used in These Regulations

- A. DSS—state Department of Social Services.
- B. DHH—state Department of Health and Hospitals.
- C. DPS and C—state Department of Public Safety and Corrections.
- D. FAPE—free appropriate public education.
- E. FERPA—Family Educational Records and Privacy Act of 1974.
- F. G/T—gifted and/or talented in visual arts, music, and/or theatre arts.
- G. IEP—the individualized education program required by §1320 of these regulations.
- H. LEA—local education agency.
- I. LRE—least restrictive environment.
- J. ODR—officially designated representative.
- K. SBESE—state Board of Elementary and Secondary Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1903. Abbreviated Terms

A. *The Act*—Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended.

B. *The Department*—the State Department of Education (LDE).

C. *The Division*—the Division of Special Populations of the Louisiana Department of Education.

D. *The State*—the state of Louisiana.

E. *The State Board*—the state Board of Elementary and Secondary Education

F. *The Superintendent*—the state Superintendent of Public Elementary and Secondary Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2026 (September 2010).

§1904. Definitions

Age of Majority—eighteen years of age.

At No Cost—all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to regular education students or their parents as a part of the regular educational program.

Business Day—see *Day*.

Child Find—see §1107 of these regulations.

Combination Self-Contained and Resource Classroom—an alternative education placement in which the same teacher provides special education instruction for students who receive instruction in various special education alternative placements. These placements may include self-contained, resource, and regular class.

Confidentiality of Information—involves the storage, disclosure to third parties, retention and destruction of personally identifiable information.

Consent—the parent:

1. has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2. understands and agrees in writing to the carrying out of activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. understands that the granting of consent is voluntary.

Counseling Services—services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

Day; Business Day; School Day—

1. *Day*—calendar day unless otherwise indicated as business day or school day.

2. *Business Day*—Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day).

3. *School Day*—any day, including a partial day that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without exceptionalities.

Destruction—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Due Process—see Chapter 15 of these regulations.

Early Resolution Process (ERP)—a systematic informal process for dispute resolution available prior to or in connection with state administrative complaints in accordance with §1151 of these regulations.

Education Records—the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Elementary School—a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

Evaluation—procedures used in accordance with Bulletin 1508 to determine whether a student has an exceptionality

and the nature and extent of the special education and related services that the student needs.

Free Appropriate Public Education (FAPE)—special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;

2. meet the standards of the LDE;

3. include preschool, elementary school, or secondary school education in the state; and

4. are provided in conformity with an Individualized Education Program (IEP) that meet the requirements of these regulations.

Foster Parent—see *Parent*.

Gifted—children or youth who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude according to Bulletin 1508.

Highly Qualified Special Education Teachers—refer to Bulletin 746.

Homeless Students—has the meaning given the term homeless students and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

Individual Education Plan Facilitation—an alternative dispute resolution method developed by the LDE. This option is available to parents and school districts when both agree that it would be valuable to have a neutral person (IEP facilitator) present at an IEP team meeting to assist them in discussing issues regarding an IEP. The role of the IEP facilitator is to assist in creating an atmosphere for fair communication and the successful drafting of an IEP for the student. Either parent or district can request IEP facilitation; however, since the process is voluntary, both sides shall agree to participate in the IEP facilitation process. Like mediation, the IEP facilitation is initiated by request to the LDE, and is at no cost to the parents or districts.

Individualized Education Program or IEP—a written document for each gifted or talented student developed, reviewed, and revised in a meeting in accordance with §§1320-1325.

Individualized Education Program Team or IEP Team—a group of individuals described in §1321 of these regulations that is responsible for developing, reviewing, or revising an IEP for a student with an exceptionality.

Instruction in Regular Class—an alternative education placement for eligible gifted and talented students who receive special education and related services less than 21 percent of the school day outside the regular classroom.

Least Restrictive Environment—an environment that allows for depth and breadth of curricula appropriate for the gifted or talented student as determined by the IEP team.

Local Education Agency or LEA—

1. General. *Local Education Agency or LEA*—a public board of education or other public authority legally constituted within the state for either administrative control or direction of or to perform a service function for public elementary schools or secondary schools in a city, parish, school district, or other political subdivision of the state or for a combination of school districts or parishes as are recognized in the state as an administrative agency for its public elementary or secondary schools.

2. Educational Service Agencies and Other Public Institutions or Agencies. The term includes:

a. an *educational service agency*, as defined in this Section; and

b. any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

Native Language—

1. when used with respect to an individual who is limited English proficient, has the following meaning:

a. the language normally used by that individual, or in the case of a student, the language normally used by parents of the student, except as provided in Paragraph A.2 of this definition;

b. in all direct contact with the student, (including the evaluation of the student), the language is the one normally used by the student in the home or learning environment.

2. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Parent—

1.a. a biological, or adoptive parent of a child;

b. a foster parent;

c. a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, but not the state if the student is a ward of the state;

d. an individual acting in the place of a biological or adoptive parent (including a grandparent, or stepparent or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare; or

e. a surrogate parent who has been appointed in accordance with §1519.

2.a. Except as provided in Subparagraph 2.b of this definition, the biological or adoptive parent, when attempting to act as the parent under these regulations and when more than one party is qualified under this definition to act as a parent, shall be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the student.

b. If a judicial decree or order identifies a specific person or persons under this definition to act as the "parent" of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the parent for purposes of this definition, except that an employee of a public agency that provides education or care for a student may not act as the parent pursuant to §1519.

Personally Identifiable—information includes:

1. the name of the student, the student's parent, or other family member;

2. the address of the student;

3. a personal identifier, such as the student's social security number or student number; or

4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Prior Notice—see §1503 of these regulations.

Pupil Appraisal Personnel—personnel who meet the certification requirements for school personnel for such

positions and who are responsible for the delivery of pupil appraisal services included in Bulletin 1508.

Qualified Personnel—personnel who have met state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education and related services.

Related Services—transportation and counseling needed to assist gifted and talented students to benefit from special education:

1. transportation-services provided to and from school and /or from one school to another during the school day for the provision of gifted or talented services;

2. counseling-services provided by qualified personnel.

Resource Center—an instructional setting in which Gifted and Talented students from two or more schools receive services. The pupil/ teacher ratio shall be consistent with those listed in Chapter 20 of these regulations.

Resource Departmentalized—is an instructional setting in which students receive instruction from more than one special education teacher and each teacher teaches only a single content or subject matter area. The pupil/teacher ratio shall be consistent with those listed in Chapter 20 of these regulations. Instruction is provided for not more than the maximum allowed for that exceptionality in a self-contained class at any given period.

Resource Room—a type of alternative education placement for special education and related services designed or adapted as a location where gifted and or talented students may receive all or a part of the special education required by their IEPs, and in which all of the following exist:

1. the pupil/teacher ratios established in Chapter 20 are used;

2. only gifted and talented students are enrolled;

3. instruction is provided for not more than 12 students per period;

4. special education is provided by a teacher certified generically or in the area of exceptionality for which special education is provided;

5. students receive special education instruction for at least 21 percent, but no more than 60 percent, of the school day outside the regular classroom.

School Building Level Committee—refer to Bulletin 741.

School Day—see *Day*.

Secondary School—a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

Self-Contained Departmentalized—an instructional setting in which students receive instruction more than 60 percent of the school day from more than one gifted or talented teacher and in which each teacher teaches only one content area or subject matter. Pupil/teacher ratios shall be consistent with those listed in Chapter 20 of these regulations. Instruction is provided for not more than the maximum number allowed for that exceptionality in a self-contained class at any given period.

Self-Contained Special Education Class—a type of alternative education placement in which special education instruction and related services is provided inside the regular classroom less than 40 percent of the school day.

Special Education—specially designed instruction, at no cost to the parent, to meet the unique needs of the student with an exceptionality through an IEP.

Specially Designed Instruction—adapting, as appropriate, to the needs of an eligible student under these regulations, the content, methodology or delivery of instruction to address the unique needs of the student.

Student with an Exceptionality—a student who, when evaluated according to Bulletin 1508—*Pupil Appraisal Handbook* is found to have an exceptionality that significantly affects educational performance to the extent that special education is needed.

Surrogate Parent—refer to §1519 of these regulations.

Talented—has possession of measurable abilities that give evidence of unique talent in visual arts, music, or theatre

Transportation—see *related services*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2027 (September 2010).

§§1905-1999. **Reserved.**

Chapter 20. State Program Rules for Special Education

§2001. Pupil/Teacher and Pupil Appraisal Ratios for Public Education

A. In providing services to identified gifted and talented students, the number of students in each instructional setting shall not exceed the following numbers.

Setting	Preschool	Elementary	Secondary
Self-Contained		25	27
Resource Center		55	55
Resource Departmentalized or Self-Contained Departmentalized		93	98
Instruction in Regular Class		25	27
Resource		30	30
Pre-school			
A. Full Day	19		
B. Half Day	23		
Combination			

B. Pupil appraisal members shall be employed by LEAs at the following rate:

1. public school ratios based on membership educational diagnosticians 1:2,400 or major fraction thereof;
2. school psychologists 1:2,400 or major fraction thereof;
3. social workers 1:3,200 or major function thereof;
4. LEAs may substitute one pupil appraisal professional for another provided that all pupil appraisal services are provided in accordance with these regulations and the *Pupil Appraisal Handbook*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2029 (September 2010).

§§2002-2099. **Reserved.**

Jeanette Vosburg
Executive Director

1009#025

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs
(LAC 28:IV.1009, 1011, 1013, 1015, and 1017)

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). (SG10114R)

**Title 28
EDUCATION**

Part IV. Student Financial Assistance—Higher Education

**Chapter 10. TOPS-Tech Early Start Award
§1009. Responsibilities of LOSFA**

A. Upon receipt of bills from institutions submitted in accordance with §1903.B, LOSFA will reimburse the institution for each eligible student in accordance with §1903.

B. LOSFA shall conduct audits of participating Louisiana public postsecondary institutions to ensure compliance with program requirements.

C. LOSFA shall provide the information necessary to fully inform Louisiana public high school students and their parents on the requirements of and procedures for applying for and maintaining the award.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 31:3110 (December 2005), amended LR 36:2029 (September 2010).

§1011. Responsibilities of High Schools

A. The high school shall comply with the reporting requirements of §1703 for all students enrolled in high school.

B. The high school shall determine whether the student is eligible to participate in the TOPS-Tech Early Start program and approve or disapprove the student's participation in the program.

C. The high school's approval of a student's participation in the program by signing the student's application certifies that the student meets the eligibility criteria provided in §1005.A.1-5, and, if applicable, §1007.A.2 and 3.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 31:3110 (December 2005), amended LR 36:2029 (September 2010).

§1013. Responsibilities of Louisiana Public Postsecondary Institutions

A. Each Louisiana public postsecondary institution that offers an industry based occupational or vocational education credential in a top demand occupation shall:

1. determine whether an eligible student has applied for enrollment in a course at that institution to pursue an industry based occupational or vocational education credential in a top demand occupation in accordance with §1903.D;
2. determine whether the student has met the requirements to maintain an award as required by §1007.A.4-6;
3. submit bills to LOSFA in accordance with §1903.B for each eligible student so enrolled;
4. comply with the reporting and records retention requirements of §1903.A and F.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 31:3110 (December 2005), amended LR 36:2030 (September 2010).

§1015. Responsibilities of the Board of Regents

A. The Board of Regents shall define, maintain, and make available to LOSFA and public postsecondary institutions a list of industry based occupational or vocational education credentials.

B. In the event that the funds appropriated for the TOPS-Tech Early Start Award are insufficient to pay all awards for all eligible students, the Board of Regents shall develop, approve and deliver a plan to LOSFA to limit the awards to the amount appropriated.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 31:3110 (December 2005), amended LR 36:2030 (September 2010).

§1017. Responsibilities of the Board of Elementary and Secondary Education (BESE) and the Louisiana Department of Education (LDE)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 31:3111 (December 2005), repealed LR 36:0000 (September 2010).

George Badge Eldredge
General Counsel

1009#004

RULE

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

**START Savings Program—Miscellaneous Provisions
(LAC 28:VI.315)**

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.). (ST10113R)

Title 28

EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A. - B.20. ...

21. For the year ending December 31, 2009, the Louisiana Education Tuition and Savings Fund earned an interest rate of 3.22 percent.

22. For the year ending December 31, 2009, the Savings Enhancement Fund earned an interest rate of 3.08 percent.

C. - S.2. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 33:443 (March 2007), LR 34:1885 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010).

George Badge Eldredge
General Counsel

1009#003

RULE

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

**Organic Solvents and Solvent Degreasers
(LAC 33:III.111 and 2123)(AQ307)**

Editor's Note: This Section is being repromulgated to correct a typographical error. The original Rule may be viewed in its entirety on pages 1773-1778 of the August 2010 edition of the *Louisiana Register*.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.111 and 2123 (Log #AQ307).

The Rule will update and add new emission limitation and control technique efficiency requirements for organic solvent and solvent degreaser volatile organic compound (VOC) emissions. It will also add definitions to the general provisions to clarify letterpress and lithographic printing process terms. This action is required by the Clean Air Act (CAA) which provides that state implementation plans (SIPs) for ozone nonattainment areas include "reasonably available control measures" (RACT), including "reasonably available control technology" (RACT), for sources of emissions. The CAA provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of volatile organic compound (VOC) emissions

covered by a control technique guidelines (CTG) document issued after November 15, 1990, and prior to the area's date of attainment. Since EPA has issued new control technique guidelines, the state regulations need to be revised to reflect EPA's new guidelines. The basis and rationale for this Rule are to mirror the control technique guidelines issued by the EPA. 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 21. Control of Emission of Organic Compounds
Subchapter B. Surface Coatings
§2123. Organic Solvents**

A. Except as provided in Subsections B and C of this Section, any emissions of volatile organic compounds resulting from the application of surface coatings equal to or more than 15 pounds (6.8 kilograms) per day, or an equivalent level of 2.7 tons per 12-month rolling period, shall control emissions of volatile organic compounds through the use of low solvent coatings, as provided in Subsection C of this Section, or, where feasible, by incorporating one or more of the following control methods:

A.1. - B.2. ...

C. Surface Coating Industries. No person may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating of any materials affected by this Subsection to exceed the emission limits as specified in this Section.

3. Surface Coating of Coils		
Prime and Topcoat or Single Coat Operation	2.6	0.31
4. Surface Coating of Fabrics		
Fabric Facility	2.9	0.35
Vinyl Coating Line (Except Plasticol Coatings)	3.8	0.45
5. Surface Coating—Magnet Wire Coating		
Coating Line	1.7	0.20
6. Surface Coating of Metal Furniture		
General, One Component (Baked/Air Dried)	2.3 / 2.3	0.275 / 0.275
General, Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.275 / 0.340
Extreme High Gloss (Baked/Air Dried)	3.0 / 2.8	0.360 / 0.340
Extreme Performance	3.0	0.360
Heat Resistant	3.0	0.360
Metallic	3.0	0.360
Pretreatment Coatings	3.0	0.360
Solar Absorbent	3.0	0.360

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
1. Large Appliance Coating Industry		
General, One Component	2.3	0.275
General, Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.275 / 0.340
Extreme High Gloss	2.8	0.340
Extreme Performance	2.8	0.340
Heat Resistant	2.8	0.340
Metallic	2.8	0.340
Pretreatment Coatings	2.8	0.340
Solar Absorbent	2.8	0.340
2. Surface Coating of Cans		
Sheet Basecoat (Exterior and Interior) and Over-Varnish: Two-Piece Can Exterior (Basecoat and Over-Varnish)	2.8	0.34
Two and Three-Piece Can Interior Body Spray, Two-Piece Can Exterior End (Spray or Roll Coat)	4.2	0.51
Three-Piece Can Side-Seam Spray	5.5	0.66
End Sealing Compound	3.7	0.44

Table 1. Surface Coating Industries				
Affected Facility	Daily Weighted Average VOC Emission Limitation			
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Lbs. per Gal. of Solids	Kgs. per Liter of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Solids
7. Surface Coating of Miscellaneous Metal Parts and Products				
General, One Component or Multi-Component (Baked/Air Dried)	2.3 / 2.8	3.35 / 4.52	0.28 / 0.34	0.40 / 0.54
Camouflage	3.5	6.67	0.42	0.80
Electric Insulating Varnish	3.5	6.67	0.42	0.80
Etching Filler	3.5	6.67	0.42	0.80
Extreme High Gloss (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
Extreme Performance (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
Heat Resistant (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
High Performance Architectural	3.5	6.67	0.42	0.80
High Temperature	3.5	6.67	0.42	0.80
Metallic	3.5	6.67	0.42	0.80
Military Specification (Baked/Air Dried)	2.3 / 2.8	3.35 / 4.52	0.28 / 0.34	0.40 / 0.54
Mold Seal	3.5	6.67	0.42	0.80
Pan Baking	3.5	6.67	0.42	0.80

Prefabricated Architectural, One Component or Multi-Component (Baked/Air Dried)	2.3 / 3.5	3.35 / 6.67	0.28 / 0.42	0.40 / 0.80
Pretreatment Coatings	3.5	6.67	0.42	0.80
Repair and Touch Up (Baked/Air Dried)	3.0 / 3.5	Does not apply	0.36 / 0.42	Does not apply
Silicone Release	3.5	6.67	0.42	0.80
Solar Absorbent (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
Vacuum Metalizing	3.5	6.67	0.42	0.80
Drum Coating, New, Exterior	2.8	4.52	0.34	0.54
Drum Coating, New, Interior	3.5	6.67	0.42	0.80
Drum Coating, Reconditioned, Exterior	3.5	6.67	0.42	0.80
Drum Coating, Reconditioned, Interior	4.2	9.78	0.50	1.17
Powder Coating	0.4	Does not apply	0.05	Does not apply
8. Surface Coating of Miscellaneous Plastic Parts and Products				
General, One Component	2.3	3.35	0.28	0.40
General, Multi-Component	3.5	6.67	0.42	0.80
Electric Dissipating Coatings and Shock-Free Coatings	6.7	74.7	0.80	8.96
Extreme Performance	3.5 (2-pack coatings)	6.67 (2-pack coatings)	0.42 (2-pack coatings)	0.80 (2-pack coatings)
Metallic	3.5	6.67	0.42	0.80
Military Specification	2.8 (1 pack) 3.5 (2 pack)	4.52 (1 pack) 6.67 (2 pack)	0.34 (1pack) 0.42 (2pack)	0.54 (1pack) 0.80 (2pack)
Mold Seal	6.3	43.7	0.76	5.24
Multi-Colored Coatings	5.7	25.3	0.68	3.04
Optical Coatings	6.7	74.7	0.80	8.96
Vacuum Metalizing	6.7	74.7	0.80	8.96
9. Surface Coating of Automotive/Transportation Plastic Parts				
a. High Bake Coatings–Interior and Exterior Parts				
Flexible Primer	4.5	11.58	0.54	1.39
Non-Flexible Primer	3.5	6.67	0.42	0.80
Base Coat	4.3	10.34	0.52	1.24
Clear Coat	4.0	8.76	0.48	1.05
Non-Base Coat/Clear Coat	4.3	10.34	0.52	1.24
b. Low Bake/Air Dried Coatings–Exterior Parts				
Primer	4.8	13.80	0.58	1.66
Base Coat	5.0	15.59	0.60	1.87

Clear Coat	4.5	11.58	0.54	1.39
Non-Base Coat/Clear Coat	5.0	15.59	0.60	1.87
c. Low Bake/Air Dried Coatings–Interior Parts	5.0	15.59	0.60	1.87
d. Touch Up and Repair Coatings	5.2	17.72	0.62	2.13
For red, yellow, and black auto coatings, except touch up and repair coatings, the limit is determined by multiplying the appropriate limit in Item 9 of this Table by 1.15.				
10. Surface Coating of Business Machine Plastic Parts				
Primer	2.9	4.80	0.35	0.57
Topcoat	2.9	4.80	0.35	0.57
Texture Coat	2.9	4.80	0.35	0.57
Fog Coat	2.2	3.14	0.26	0.38
Touch Up and Repair	2.9	4.80	0.35	0.57
11. Surface Coating of Pleasure Craft				
Extreme High Gloss Topcoat	4.1	9.2	0.49	1.10
High Gloss Topcoat	3.5	6.7	0.42	0.80
Pretreatment Wash Primer	6.5	55.6	0.78	6.67
Finish Primer/Surfacer	3.5	6.7	0.42	0.80
High Build Primer Surfacer	2.8	4.6	0.34	0.55
Aluminum Substrate Antifoulant Coating	4.7	12.8	0.56	1.53
Other Substrate Antifoulant Coating	2.8	4.4	0.33	0.53
All Other Pleasure Craft Surface Coatings (for Metal or Plastic)	3.5	6.7	0.42	0.80

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
12. Surface Coating of Motor Vehicle Materials		
Motor Vehicle Cavity Wax	5.4	0.65
Motor Vehicle Sealer	5.4	0.65
Motor Vehicle Deadener	5.4	0.65
Motor Vehicle Gaskets/Gasket-Sealing Material	1.7	0.20
Motor Vehicle Underbody Coating	5.4	0.65
Motor Vehicle Trunk Interior Coating	5.4	0.65
Motor Vehicle Bedliner	1.7	0.20

Motor Vehicle Lubricating Wax/Compound	5.8	0.70
The limits in Items 7-12 of this Table do not apply to operations covered in Items 1-6 or 13-17 herein, or to aerosol coatings, architectural coatings, or automobile refinish coatings.		
13. Factory Surface Coatings of Flat Wood Paneling with VOC Emissions Greater Than 15 Pounds Per Day Before Controls		
All Inks, Coatings, and Adhesives	2.1	0.25
14. Surface Coatings for Marine Vessels and Oilfield Tubulars and Ancillary Oilfield Equipment		
a. Except as otherwise provided in this Section, a person shall not apply a marine coating with a VOC content in excess of the following limits:		
Baked Coatings	3.5	0.42
Air-Dried, Single-Component Alkyd or Vinyl Flat or Semi-Gloss Finish Coatings	3.5	0.42
Two Component Coatings	3.5	0.42
b. Except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, in which the VOC limitations in Item 14.a of this Table may not be exceeded, specialty marine coatings and coatings on oilfield tubulars and ancillary oilfield equipment with a VOC content not in excess of the following limits may be applied:		
Heat Resistant	3.5	0.42
Metallic Heat Resistant	4.42	0.53
High Temperature (Fed. Spec. TT-P-28)	5.41	0.65
Pre-Treatment Wash Primer	6.5	0.78
Underwater Weapon	3.5	0.42
Elastomeric Adhesives With 15 Percent by Weight Natural or Synthetic Rubber	6.08	0.73
Solvent-Based Inorganic Zinc Primer	5.41	0.65
Pre-Construction and Interior Primer	3.5	0.42
Exterior Epoxy Primer	3.5	0.42
Navigational Aids	3.5	0.42
Sealant for Wire-Sprayed Aluminum	5.4	0.648
Special Marking	4.08	0.49
Tack Coat (Epoxies)	5.08	0.61
Low Activation Interior Coating	4.08	0.49
Repair and Maintenance Thermoplastic	5.41	0.65
Extreme High Gloss Coating	4.08	0.49
Antenna Coating	4.42	0.53
Antifoulant	3.66	0.44
High Gloss Alkyd	3.5	0.42
Anchor Chain Asphalt Varnish (Fed. Spec. TT-V-51)	5.2	0.62
Wood Spar Varnish (Fed. Spec. TT-V-119)	4.1	0.492
Dull Black Finish Coating (DOD-P-15146)	3.7	0.444

Tank Coating (DOD-P-23236)	3.5	0.42
Potable Water Tank Coating (DOD-P-23236)	3.7	0.444
Flight Deck Markings (DOD-C-24667)	4.2	0.504
Vinyl Acrylic Top Coat	5.4	0.648
Antifoulant Applied to Aluminum Hulls	4.5	0.55

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Kgs. VOC/Kgs. Solids (Lbs. VOC/Lbs. Solids)	Kgs. VOC/Kgs. Coating (Lbs. VOC/Lbs. Coating)
15. Surface Coating of Paper, Film, Foil, Pressure-Sensitive Tape, and Labels		
Paper, Film, and Foil	0.40	0.08
Pressure-Sensitive Tape and Labels	0.20	0.067

Table 1. Surface Coating Industries			
Affected Facility	Daily Weighted Average VOC Emission Limitation		
	Lbs. per Gal. of Deposited Solids	Kgs. per Liter of Deposited Solids	
16. Surface Coating of Assembly Line Automobiles and Light Duty Trucks			
Primer-Surfacer Operations (Including Application Area, Flashoff Area, and Oven)	12.0	1.44	
Topcoat Operations (Including Application Area, Flashoff Area and Oven)	12.0	1.44	
Final Repair Operations (Including Flashoff Area and Oven)	4.8	0.58	
Combined Primer-Surfacer and Topcoat Operations	12.0	1.44	
Electrodeposition Primer Operations (Including Application Area, Spray/Rinse Stations, and Curing Oven)	When Solids Turnover Ratio is $R_T \geq 0.16$	When $0.040 \leq R_T < 0.160$	When $R_T < 0.040$
	0.084 kgs./liter (0.7 lbs./gal.) coating solids applied	$0.084 \times 350^{0.160-R_T}$ kgs./liter (0.084 x $350^{0.160-R_T} \times 8.34$ lbs./gal.) coating solids applied	No VOC emission limit

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. VOC per Gal. of Adhesive or Adhesive Primer (minus water and exempt compounds)	Grams VOC per Liter of Adhesive or Adhesive Primer (minus water and exempt compounds)
17. General and Specialty Adhesive Application Processes		
a. General Adhesive Application Process		
Reinforced Plastic Composite	1.7	200
Flexible Vinyl	2.1	250
Metal	0.3	30

Porous Material (Except Wood)	1.0	120
Rubber	2.1	250
Wood	0.3	30
Other Substrates	2.1	250
b. Specialty Adhesive Application Processes		
Ceramic Tile Installation	1.1	130
Contact Adhesive	2.1	250
Cove Base Installation	1.3	150
Floor Covering Installation (Indoor)	1.3	150
Floor Covering Installation (Outdoor)	2.1	250
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	5.5	660
Metal to Urethane/Rubber Molding or Casting	7.1	850
Motor Vehicle Adhesive	2.1	250
Motor Vehicle Weather Strip Adhesive	6.3	750
Multipurpose Construction	1.7	200
Plastic Solvent Welding (ABS)	3.3	400
Plastic Solvent Welding (Except ABS)	4.2	500
Sheet Rubber Lining Installation	7.1	850
Single-Ply-Roof Membrane Installation/Repair (Except EPDM)	2.1	250
Structural Glazing	0.8	100
Thin Metal Laminating	6.5	780
Tire Repair	0.8	100
Waterproof Resorcinol Glue Application	1.4	170
c. Adhesive Primer Application Processes		
Motor Vehicle Glass Bonding Primer	7.5	900
Plastic Solvent Welding Adhesive Primer	5.4	650
Single-Ply Roof Membrane Adhesive Primer	2.1	250
Other Adhesive Primer	2.1	250

Table 1. Surface Coating Industries		
18. Fiberglass Boat Manufacturing Materials		
For this material —	And this application method —	This weighted average monomer VOC content (weight percent) limit is —
Production resin	Atomized (spray)	28
Production resin	Nonatomized	35
Pigmented gel coat	Any method	33
Clear gel coat	Any method	48
Tooling resin	Atomized	30
Tooling resin	Nonatomized	39
Tooling gel coat	Any method	40

D. Control Techniques

1. If add-on controls such as incinerators or vapor recovery systems are used to comply with the emission limitation requirements, in terms of pounds per gallon of solids as applied (determined in accordance with Paragraph D.8 of this Section), the volatile organic compound capture

and abatement system shall be at least 80 percent efficient overall (85 percent for industrial cleaning solvents, and miscellaneous industrial adhesive operations; and 90 percent for factory surface coating of flat wood paneling, surface coating of metal furniture, large appliance coating, surface coating of miscellaneous metal parts and products, surface coating of miscellaneous plastic parts and products, surface coating of automotive/transportation plastic parts, surface coating of business machine plastic parts, surface coating of pleasure craft, surface coating of paper, film, foil, pressure-sensitive tape, and labels, and surface coating of motor vehicle materials). All surface coating facilities shall submit to the Office of Environmental Services, for approval, design data for each capture system and emission control device that is proposed for use. The effectiveness of the capture system (i.e., capture efficiency) shall be determined using the procedure specified in Paragraph E.6 of this Section.

2. - 3. ...

4. Compliance with the emission limits established in Table 1, Item 16 of Subsection C of this Section shall be determined in accordance with EPA's "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations", EPA 453/R-08-002, September, 2008.

5. ...

6. Surface coating facilities on any property in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes that when controlled have a potential to emit, at maximum production, a combined weight (total from the property) of VOCs less than 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C of this Section. Surface coating facilities on any property in parishes other than Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that when uncontrolled have a potential to emit a combined weight of VOCs less than 100 pounds (45 kilograms) in any consecutive 24-hour period or 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C of this Section. Any surface coating facility with VOC emissions of less than or equal to 15 pounds (6.8 kilograms) per day is exempt from the provisions of Table 1, Items 1, 7, and 15 of Subsection C of this Section.

7. - 9. ...

10. Control techniques for use of industrial cleaning solvents include:

- covering open containers and used applicators;
- minimizing air circulation around cleaning operations;
- properly disposing of used solvent and shop towels;
- implementing equipment practices that minimize emissions (e.g., keeping arts cleaners covered, maintaining cleaning equipment to repair solvent leaks, etc.); and
- employing cleaning material with a VOC content limit of 50 grams VOC per liter (0.42 lb./gal.), or a composite vapor pressure of 8 millimeters of mercury at 20 degrees Celsius.

11. Cleaning operations in the course of the following categories are excluded from the requirements of Paragraph D.10 of this Section:

- aerospace coating;

- b. wood furniture coating;
 - c. application of coatings in shipbuilding and ship repair;
 - d. flexible packaging printing;
 - e. lithographic printing;
 - f. letterpress printing;
 - g. flat wood paneling coating;
 - h. large appliance coating;
 - i. metal furniture coating;
 - j. paper, film and foil coating;
 - k. plastic parts coating;
 - l. miscellaneous metals parts coating;
 - m. fiberglass boat manufacturing;
 - n. application of miscellaneous industrial adhesives;
- and
- o. auto and light-duty truck assembly coating.

12. VOC content and vapor pressure limits applicable in cleaning activities in fiberglass boat manufacturing are as follows:

- a. VOC cleaning solvents for routine application equipment cleaning shall contain no more than 5 percent VOC by weight, or have a composite vapor pressure of no more than 0.50 millimeters of mercury at 20 degrees Celsius.
- b. Non-VOC solvents shall be used to remove cured resin and gel coat from application equipment.

13. When applying adhesives, one of the following application methods must be used:

- a. electrostatic spray;
- b. HVLP spray;
- c. flow coat;
- d. roll coat or hand application, including non-spray application methods similar to hand application or mechanically powered caulking gun, brush, or direct hand application;
- e. dip coat (including electrodeposition);
- f. airless spray;
- g. air-assisted airless spray; and
- h. other adhesive application methods capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

E. - F.4. ...

G. Mandatory Work Practices for Surface Coating. The owner/operator of any facility performing factory surface coating shall comply with the following mandatory work practices:

G.1. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1240 (July 1999), LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005),

LR 33:2086 (October 2007), LR 35:1102 (June 2009), LR 36:1773 (August 2010), repromulgated LR 36:2031 (September 2010).

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Executive Counsel

1009#011

RULE

Department of Health and Hospitals Board of Dentistry

Mobile Dentistry; Relicensure of Dentists, Hygienists
(LAC 46:XXXIII.312, 313, 314, 1611, 1613 and 1713)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.312, 313, 314, 1611, 1613 and 1713. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§312. Mobile Dental Clinics

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1497 (August 1998), repealed LR 36:2035 (September 2010).

§313. Portable and Mobile Dentistry

A. Definitions

Mobile Dental Clinic or Mobile Dental Unit—any self-contained facility in which dentistry will be practiced which may be moved, towed, or transported from one location to another using fixed dental equipment and plumbing.

Mobile Operator—a dentist licensed in Louisiana who has registered a Mobile Dental Clinic or Mobile Dental Unit with the dental board pursuant to these rules and who provides dental services in a Mobile Dental Clinic or Mobile Dental Unit either directly and/or through Louisiana licensed dentist associates.

Mobile Operator Permit—an authorization given to a Louisiana licensed dentist for the physical use of a mobile dental clinic or mobile dental unit in which to provide dental services. The Mobile permit is required of the owner of the operation and does not apply to any dentist employed or contracted with the owner of the Operation.

Operation—the activity conducted by Mobile or Portable Operators.

Operator—a licensed Louisiana dentist that has a current Mobile or Portable Operator Permit.

Portable Dental Clinic—the use of portable dental delivery equipment which is set-up on site to provide dental services at locations other than a Mobile Dental Clinic or

Mobile Dental Unit and other than a dental office and uses non-fixed dental equipment and plumbing.

Portable Operator—a dentist licensed in Louisiana providing dental services at a location other than a Mobile Dental Clinic or Mobile Dental Unit and other than a fixed dental office either directly and/or through Louisiana licensed dentist associates.

Portable Operator Permit—an authorization given to a Louisiana licensed dentist to provide dental services at locations other than a Mobile Dental Clinic or Mobile Dental Unit and other than a dental office. The Portable Operator Permit is required of the owner of the Operation and does not apply to any dentist employed or contracted with the owner of the Operation.

B. Exemptions

1. Exempt from the requirements of these regulations for portable or mobile dentistry and for the use of a *mobile dental clinic*, *mobile dental unit*, or *portable dental clinic* are all federal, state, or local governmental agencies.

2. Dentists licensed to practice in Louisiana who have not registered with the board to operate a mobile dental facility or a portable dental operation may provide dental services through the use of dental instruments, materials, and equipment taken out of a dental office without registering if the service is provided as emergency treatment for their patients of record.

3. The services are limited to dental sealants, screenings, cleanings, radiographs, and fluoride treatments provided that such services are performed at no charge to the patient, the patient's parent or guardian, or any third-party payor.

C. Application and Criteria for Permit

1. To own mobile or portable operations a dentist must be licensed in Louisiana, in good standing with the dental board, and must have a *mobile operator permit*, a *portable operator permit*, or both.

2. A dentist licensed in Louisiana desiring to obtain a *mobile operator permit* from the dental board in order to provide dental services in a *mobile dental clinic* or *mobile dental unit*, shall apply to the dental board for a *mobile operator permit* on an application form to be provided by the dental board and by providing evidence of compliance with the requirements of this section and paying all appropriate fees.

3. A dentist licensed in Louisiana desiring to obtain a *portable operator permit* to provide dental services at locations other than his office, shall apply to the dental board for a *portable operator permit* on an application form to be provided by the dental board and by providing evidence of compliance with the requirements of this section and paying all appropriate fees.

4. Any Louisiana licensed dentist with an existing portable or mobile dental practice shall be entitled to continue operating their portable or mobile dental practice under the prior existing dental board regulations until the necessary permits are granted so long as all application and supporting documentation are submitted for the new permits within 60 days of this rule taking effect.

5. All mobile or portable operations must conform to all existing and applicable Dental Practice Act rules and regulations, federal, state, and local laws, regulations, and ordinances including those relative to radiographic equipment, flammability, construction, sanitation, zoning,

OSHA regulations, and applicable Federal Centers for Disease Control Guidelines and Prevention, Louisiana Department of Health and Hospital regulations including those for medical waste transportation, and the applicant possesses any applicable parish and city licenses or permits to operate the unit.

6. Each *mobile dental clinic* or *mobile dental unit* shall have:

- a. ready access to a ramp or lift if necessary;
- b. a properly functioning sterilization system;
- c. ready access to an adequate supply of potable water;
- d. ready access to toilet facilities if necessary;
- e. a covered galvanized, stainless steel, or other non-corrosive container for deposit of refuse and waste materials;
- f. an emergency kit available at all times;
- g. portable oxygen available at all times;
- h. sharps containers and red biohazard bags available on site;
- i. properly functioning radiograph equipment producing fully developed x-rays of diagnostic quality;
- j. suction equipment to achieve a minimum level of 3 cubic feet per minute.

7. Each *portable dental clinic* shall have:

- a. ready access to an adequate supply of potable water;
- b. ready access to toilet facilities if necessary;
- c. a covered galvanized, stainless steel, or other non-corrosive container for deposit of refuse and waste materials;
- d. an emergency kit available at all times;
- e. portable oxygen available at all times;
- f. sharps containers and red biohazard bags available on site;
- g. a properly functioning sterilization system;
- h. properly functioning radiograph equipment producing fully developed x-rays of diagnostic quality;
- i. suction equipment to achieve a minimum level of 3 cubic feet per minute.

8. The *mobile dental clinic*, *mobile dental unit*, or *portable dental clinic* shall be inspected in a timely fashion by a dental board member or a staff evaluator prior to receiving approval to operate.

9. During operations the *mobile dental clinic*, *mobile dental unit*, or *portable dental clinic* shall prominently display all applicable licenses and permits in compliance with §104 of these rules. These documents may be kept in a notebook labeled Licenses and Permits. Copies of licenses and permits are acceptable.

10. Transferability. Neither the mobile or portable permits are transferable.

11. Renewal. Mobile or portable permits expire at the same time as the operator's dental license but shall be renewed at the time the operator renews his or her dental license by completing the renewal form and paying all applicable fees.

D. Record Keeping. The *operator* or *operation* shall maintain an official business or mailing and actual, physical address of record which shall not be a post office box except where mail is deliverable to a post office box only and a 24 hour emergency telephone number which shall be filed with

the board. The dental board shall be notified within 30 days of any change in the address of record. All written or printed, or electronic documents available from or issued by the *operator* or *operation* shall contain the official address of record of the *operator* or *operation*. When not in transit, all dental and official records, printed or electronic shall be maintained or available at the official office address of record, in conformity with all record-keeping requirements and provide at no cost within 24 hours via electronic means or 72 hours by other means upon receipt of a HIPAA compliant request with a satisfactory release.

E. Practice Standards

1. All *operators* and dentists providing care in *mobile dental clinics, mobile dental units, or portable dental clinics* shall maintain and uphold the prevailing standard of dental care.

2. Anesthesia in all operations shall be limited to local anesthetics only.

3. An *operator* or *operation* must have communication facilities immediately available which will enable the *operator* thereof to contact necessary parties in the event of a medical or dental emergency including 911 capabilities.

4. An *operator* or *operation* which accepts a patient and provides preventative treatment, including prophylaxis, radiographs, and fluoride shall make appropriate referrals for follow-up treatment when indicated in the dentist's professional judgment and is subject to the prevailing standard of dental care.

5. An *operator* or *operation* must ensure that all dental services are provided in a clean, sanitary place, and in compliance with applicable Federal Centers for Disease Control and Prevention Guidelines, the Dental Practice Act and regulations, federal, state, and local laws, regulations, and ordinances including those relative to radiographic equipment, flammability, construction, sanitation, zoning, Louisiana Department of Health and Hospital regulations including those for medical waste transportation, and the applicant possesses any applicable parish and city licenses or permits to operate the unit.

6. An *operator* shall identify and advise the dental board within 30 days of any personnel change relative to all licensed dentists and dental hygienists, associated with the provision of dental services by providing their full names, addresses, telephone numbers, and license numbers.

7. At all times the mobile or portable dental activities shall be under the supervision of the dentist with the *operator* permit or any dentist working in that practice subject to direct and general supervision stipulations found in §701. Any dentist or dental hygienist rendering services shall be licensed and in good standing with the dental board.

8. Although the *operator* and *operation* is responsible for providing emergency follow-up care, the *operator* or *operation* must certify and provide the dental board a copy of a written agreement for emergency follow-up care for patients treated at said locations and the agreement is to include identification of and arrangements for treatment in a dental facility which is permanently established within 25 miles of the treatment site. When the *operator* has demonstrated no emergency facility is available within the area, the board may grant a distance waiver of this rule to promote and foster access to dental care.

9. When radiographs are to be made by the *operator* or *operation*, a lead apron which includes a thyroid collar shall be utilized and adequate protection for the x-ray technician shall be utilized.

10. There shall be a designated room with a minimum of 100 square feet where portable dentistry will occur and other children will not be present either during or immediately after dental procedures. Also prior to providing treatment a surgical preprocedural rinse shall be administered to the patient.

F. Cessation of Operations

1. Upon cessation of the operation, the *operator* shall notify the dental board within 30 days of the last day of *operation* in writing of the final disposition of patient records and charts.

2. If the *operation* is sold, a new registration application must be filed with the board.

3. Upon choosing to discontinue practice or services, the *operator* or *operation* shall notify within 30 days all patients where and how they may obtain their dental records.

4. The *operator* or *operation* shall make reasonable arrangements with the active patients of the operation for the transfer of the patients' records, including radiographs or diagnostic quality copies thereof, to the succeeding practitioner or, at the written request of the patient, to the patient.

5. As used in this section "active patient" applies and refers to a person whom the *operation* has examined, treated, cared for, or otherwise consulted with during the two-year period prior to discontinuation of practice, or moving.

G. Consent Forms for Minors. No services may be performed on minors without a signed consent form from the parent or guardian, which includes the following:

1. a statement that if the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider;

2. a statement that a parent or guardian may attend all dental visits and the form provides a telephone number and address where the parent or guardian can contact the *operator's* office if they wish to be at the school, facility or site when the minor is being treated. If the parent or guardian contacts the *operator's* office requesting to be present at the dental visit when their child is being treated, then the *operator* shall notify the parent or guardian when dental care is to be rendered so the parent or guardian can be present;

3. a telephone number for emergency services;

4. the telephone number of the parent or guardian. If the parent or guardian fails to include a contact phone number, then no dental services can be provided to that minor;

5. the consent form shall be provided in duplicate in order for the parent or guardian to be provided a copy;

6. confirmation that the patient, parent or legal guardian further understands treatment through such mobile dental or portable dental providers may affect future Medicaid and insurance benefits for the patient for one year.

H. Information for Patients

1. When appropriate, during or at the conclusion of each patient's visit to the *operation*, the patient shall be provided with an information sheet and a mailed copy shall be sent to the patient's home. If the minor patient has

provided consent to an institutional facility to access the patient's dental health records, the institution shall also be provided with a copy of the information sheet. An institutional facility includes, but is not limited to, a long-term care facility or school.

2. The information sheet as required herein shall include the following:

a. 24-hour toll-free as well as an in-state telephone number and address where the parent, guardian, or patient can contact the *operator's* office for questions or emergency dental care;

b. the name of the dentist who provided services;

c. a description of the treatment rendered;

d. referral information if necessary.

I. Standards for Equipment

1. The equipment and supplies shall be of a type and condition that allows the dentist providing dental services to meet the prevailing standard of dental care.

2. The equipment and supplies shall be subject to inspection by any dental board member, staff member or agent of the dental board.

J. Inspection of Mobile and Portable Operations

1. Inspections of *mobile dental clinics*, *mobile dental units*, or a *portable operator* location of service may be conducted by any dental board member, staff member, or agent of the dental board.

2. The *operator* shall provide notice to the board no later than 24 hours before providing dental services at a school. Said notice shall disclose the date, time, identity of all dental health care providers and the location. If the location is a school, the *operator* shall notify the principal of the school in writing before services are commenced that the dental team is required by law to allow board inspectors on campus in order to conduct unannounced inspections. That notification letter will include the principal's name and phone number and a copy of it will be sent to the board prior to commencing services at any given school.

3. The dental board shall be provided with a list of all sites, including addresses where the *operator* shall conduct mobile or portable activities, at the time the permit is applied for and it shall be updated as necessary every 30 days.

K. Disposal of Infectious Waste. An *operator* or *operation* must handle and dispose of all waste in accordance with §1001 of the board's rules. The transporting of any biohazardous wastes shall be done in compliance with the Louisiana Department of Health and Hospital regulations for the handling and transportation of medical waste.

L. Non-resident Management and Administration Rules

1. Any *operator* or *operation* that contracts with or engages any company or entity ("administrative company") to provide management or administrative services shall not enter into a relationship which causes the dentist or his business entity to be in violation of R.S. 37:776(A)(9) which provides as follows:

(a) Division of fees or other remuneration or consideration with any person not licensed to practice dentistry in Louisiana, or an agreement to divide and share fees received for dental services with any non-dentists in return for referral of patients to the licensed dentists, whether or not the patient or legal representative is aware of the arrangement. However, this Paragraph shall not forbid dentists licensed in Louisiana from practicing in a partnership or professional corporation and sharing professional fees or forbid a dentist licensed in Louisiana from employing another dentist licensed in Louisiana. In

addition, no dentist licensed in Louisiana shall share professional fees with a dentist whose license is either suspended or revoked during said period of suspension or revocation.

and R.S. 37:776(A)(10) which provides as follows:

(a) Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry or to possess an ownership interest of any kind in a dental practice, but the person practiced upon shall not be an accomplice, employer, procurer, inducer, aider, or abettor within the meaning of this provision.

2. The *operator* must provide to the board proof that the administrative company is authorized to conduct business in the State and has a valid Certificate of Good Standing issued by the Louisiana Secretary of State.

3. An administrative company shall not be permitted to perform any duties or services that are exclusively a Louisiana licensed dentist's responsibility under the Louisiana Dental Practice Act, including the following:

a. own a mobile or portable dental practice;

b. provide dental care;

c. determine what dental services should or should not be offered to a patient;

d. establish infection control procedures and standards;

e. determine patient charges and collection policies;

f. determine when a patient should or should not be referred and where the patient shall be referred;

g. establish HIPAA standards;

h. select and employ associated dentists and dental staff.

M. Miscellaneous Provisions

1. All dental health care providers of mobile or portable dentistry shall wear in a conspicuous place on their person a name tag identifying them and their position (D.D.S., R.D.H., EDDA, or D.A.).

2. All mobile or portable dentistry providers shall have written protocols for each of the following areas which shall be kept at the operator's office and with all applicable licenses and permits:

a. sterilization procedures, including where dedicated and observable sterilization areas are located;

b. transportation of all waste materials, instruments and equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8), and Act 429 of the Regular Legislative Session of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 36:2035 (September 2010).

§314. Provision of Dental Services at Locations other than Dental Office

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 23:1525 (November 1997), amended LR 25:513 (March 1999), LR 27:1891 (November 2001), repealed LR 36:2038 (September 2010).

Chapter 16. Continuing Education Requirements §1611. Continuing Education Requirements for Relicensure of Dentists

A. ...

B. At least one-half of the minimum credit hours (20) must be attained through clinical courses pertaining to the

actual delivery of dental services to patients. At least 10 of these 20 hours must be attained by personally attending clinical courses. Ten of these twenty hours may be attained by completing ADA or AGD certified internet or correspondence courses which are clinical in nature and require successful completion of a written examination at the conclusion of said course.

C. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010).

§1613. Continuing Education Requirements for Relicensure of Dental Hygienists

A. ...

B. At least one-half of the minimum credit hours (12) must be attained through clinical courses pertaining to the actual delivery of dental or dental hygiene services to patients. At least six of these twelve hours must be attained by personally attending clinical courses. Six of these twelve hours may be attained by completing ADA, AGD, or ADHA certified internet or correspondence courses which are clinical in nature and require successful completion of a written examination at the conclusion of said course.

C. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 24:1118 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:245 (February 2006), LR 35:1237 (July 2009), LR 36:2039 (September 2010).

Chapter 17. Licensure Examinations

§1713. Board Approved Regional or National

Independent Third Party Clinical Examinations

A. The board may accept passing scores from board approved testing agencies which administer reliable, accurate, and valid examinations and in which the board has the option of representation on both the board of directors and the examination review committee or equivalent committees and allow for the board's input into the examination development and administration.

B.1. The clinical examination shall include procedures performed on human subjects as part of the assessment of restorative and periodontal clinical competencies and shall have included evaluations in at least four of the following subject matter areas:

- a. periodontics, clinical abilities testing;
- b. endodontics, clinical abilities testing;
- c. amalgam preparation and restoration;
- d. anterior composite preparation and restoration;
- e. posterior ceramic or composite preparation and restoration;
- f. cast gold, clinical abilities testing;
- g. prosthetics, written or clinical abilities testing;
- h. oral diagnosis, written or clinical abilities testing;

or

- i. oral surgery, written or clinical abilities testing.
2. In addition to the foregoing requirements, the examination shall include:
 - a. anonymity between candidates and examination raters;
 - b. standardization and calibration of raters; and
 - c. a mechanism for post examination analysis.
3. The board shall accept scores upon such examination for a period of three years following the date of such examinations. Each applicant shall arrange for and ensure the submission to the board office the applicant's scores.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 36:63 (January 2010), amended LR 36:2039 (September 2010).

C. Barry Ogden
Executive Director

1009#010

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Adult Dentures Program
Denture Replacement and Reline Limits
(LAC 50:XXV.503)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXV.503 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 XXV. Adult Dentures

Chapter 5. Covered Services

§503. Denture Replacement and Denture Reline

A. Effective for dates of service on or after January 22, 2010, only one complete or partial denture per arch is allowed in an eight-year period. The eight-year time period begins from the date that the previous complete or partial denture for the same arch was delivered. A combination of two complete or partial denture relines per arch or one complete or partial denture and one reline per arch is allowed in an eight-year period, as prior authorized by the bureau or its designee.

B. - C. ...

AUTHORITY NOTE: Promulgated in 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 31:81 (January 2005), repromulgated LR 31:1589 (July 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2039 (September 2010).

Anthony Keck
Secretary

1009#076

RULE

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XV.6905 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.

As a result of a budgetary shortfall in state fiscal year

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 69. Dental Services

§6905. Reimbursement

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement fees for EPSDT dental services shall be reduced to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 73 percent for diagnostic oral evaluation services;
2. 70 percent for the following periodic diagnostic and preventive services:
 - a. radiographs—periapical, first film;
 - b. radiograph—periapical, each additional film;
 - c. radiograph—panoramic film;
 - d. prophylaxis—adult and child;
 - e. topical application of fluoride, 0-15 years of age (prophylaxis not included); and
 - f. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age); and
3. 65 percent for the remainder of the dental 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 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), amended LR 36:2040 (September 2010).

Anthony Keck
Secretary

1009#077

RULE

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XI.6901 and §6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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 XI. Clinic Services

Subpart 9. End Stage Renal Disease Facilities

Chapter 69. Reimbursement

§6901. Non-Medicare Claims

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement to ERSD facilities shall be reduced by five percent of the rates in effect on January 21, 2010.

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

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

§6903. Medicare Part B Claims

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement to ERSD facilities for Medicare Part B claims shall be reduced by five percent of the rates in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1891 (September 2009), amended LR 36:2040 (September 2010).

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

Anthony Keck
Secretary

1009#078

RULE

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

Home Health Program
Durable Medical Equipment
Reimbursement Reduction
(LAC 50:XIII.10301)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XIII.10301 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 XIII. Home Health Program

Subpart 3. Medical Equipment, Supplies and Appliances

Chapter 103. Reimbursement Methodology

§10301. General Provisions

A. - D.2. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement paid for medical equipment, supplies and appliances shall be reduced by five percent of the rates on file as of January 21, 2010.

1. The following medical equipment, supplies and appliances are excluded from this rate reduction:

- a. enteral therapy, pumps and related supplies;
- b. intravenous therapy and administration supplies;
- c. apnea monitor and accessories;
- d. nebulizers;
- e. hearing aids and related supplies;
- f. respiratory care (other than oxygen);
- g. tracheostomy and suction equipment and related supplies;
- h. ventilators and related equipment;
- i. vagus nerve stimulator and related supplies; and
- j. augmentative and alternative communication devices.

2. Effective for dates of service on or after February 20, 2010, oxygen, equipment and related supplies shall also be excluded from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), amended LR 36: (June 2010), LR 36:2041 (September 2010).

Anthony Keck
Secretary

1009#079

RULE

**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 50:V.5313, 5317, 5513, 5517, 5713,
5719, 5913, 5917, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.5313, §5513, §5713, §5913 and §6115 and adopted §5317, §5517, §5719, §5917 and §6119 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 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5313. Non-Rural, Non-State Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital’s outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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), LR 36:2041 (September 2010).

§5317. Children's Specialty Hospitals

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital surgery services shall be as follows.

1. Qualifying hospitals shall receive an interim payment equal to the Medicaid fee schedule amount on file for each service.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

1. Final reimbursement shall be 92.15 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 36:2042 (September 2010).

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5513. Non-Rural, Non-State Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered

during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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), LR 36:2042 (September 2010).

§5517. Children's Specialty Hospitals

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital clinic services shall be the Medicaid fee schedule amount on file for each service.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010).

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5713. Non-Rural, Non-State Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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), LR 36:2042 (September 2010).

§5719. Children's Specialty Hospitals

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010).

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5913. Non-Rural, Non-State Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for

purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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), LR 36:2043 (September 2010).

§5917. Children's Specialty Hospitals

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for rehabilitation services shall be as follows.

1. Qualifying hospitals shall receive an interim payment equal to the Medicaid fee schedule amount on file for each service.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

1. Final reimbursement shall be 92.15 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 36:2043 (September 2010).

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6115. Non-Rural, Non-State Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries and rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying

hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

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

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 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 five percent of the rates effective as of February 2, 2010. Final reimbursement shall be at 74.56 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010).

§6119. Children's Specialty Hospitals

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be as follows.

1. Qualifying hospitals shall receive an interim payment that is equal to 97 percent of the hospital's cost to charge ratio as calculated from the latest filed cost report.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be reduced by five percent of the rates effective as of February 2, 2010.

1. Final reimbursement shall be 92.15 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).

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.

Anthony Keck
Secretary

1009#080

RULE

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 has amended 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. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 13. Pregnant Women Extended Services

Chapter 161. Dental Services

§16107. Reimbursement

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 73 percent for the comprehensive periodontal evaluation exam;

2. 70 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. 65 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 planing (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), LR 36:2044 (September 2010).

Anthony Keck
Secretary

1009#081

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Video Draw Poker
(LAC 42:XI.2403, 2405, 2407, and 2415)

The Louisiana Gaming Control Board hereby gives notice that it has amended LAC 42:XI.2403, 2405, 2407, and 2415.

Title 42

LOUISIANA GAMING

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2403. Definitions

A. ...

Advertise or Advertising—to issue an advertisement.

Advertisement—public notice or announcement of gaming activities, gaming promotions, or of a gaming establishment. Public notice or announcement includes, but is not limited to, all written communication, signage, and radio or television broadcasts.

Encourage Play—see *Promote or Promoting*.

Promote or Promoting—To engage in a *Promotion*.

Promotion—An activity, prize, or event offered or held on the premises of a licensed video poker establishment for

the purpose of directly encouraging or rewarding the play of video poker devices at the establishment. For the purpose of this part, *promotion* does not include on-premises advertising of the promotional activity, prize, or event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:266 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 32:108 (January 2006), LR 36:2045 (September 2010).

§2405. Application and License

A.1. - 4. ...

5. Except as otherwise provided in this Paragraph, all licensed establishment applications submitted to the division shall be for an existing and operating business.

a.i. An entity that intends to build a truck stop facility and apply for a Type V video gaming license is eligible to submit a notice of intent to build a truck stop facility on a form prescribed by the division if it either:

(a). provides proof of application to the local governing authority of the parish where the truck stop is to be located for a certificate of compliance with applicable zoning ordinances and building codes, a statement of approval for the operation of video draw poker devices at a truck stop facility as required by R.S. 27:324(C), and has published the public notices required by R.S. 27:306(A)(6); or

(b). has applied with the appropriate authority for a building permit, and has published the public notices required by R.S. 27:306(A)(6).

ii. The notice of intent to build a truck stop facility shall include:

(a). proof of application for a certificate of compliance with applicable zoning ordinances and a statement of approval of the operation of video poker devices from the applicable local governing authority or a statement that local approval is not required; or proof of application for a building permit filed with the appropriate governing authority; and

(b). proof of publication of the notice of intent to build a qualified truck stop facility as required by R.S. 27:306(A)(6)(a);

(c). proof of issuance of the press release required by R.S. 27:306 (A)(6)(d); and

(d). a plat showing the location of the truck stop facility and the surrounding area identifying schools, churches, playgrounds, synagogues, public libraries, residences, and buildings on the National Historic Registry.

b. Once accepted by the division, a notice of intent to build a truck stop facility shall expire after one year.

i. - v. Repealed.

c.i. - B.9.e. ...

10.a. Within 15 days following a force-majeure event which has not affected video poker operation but necessitates closing any part of the licensed entity in order to make repairs, a licensee shall notify the division which may, following an on-site inspection to evaluate damage to the

premises, grant the licensee a 60 day waiver from the provisions of LAC 42:XI.2405.B.9.a.

b. The division may grant one 60 day extension if it determines that the licensee has made substantial progress towards completing the necessary repairs within the original 60 day waiver period and the applicant can demonstrate a reasonable likelihood of completing the necessary repairs within the next 60 days.

c. Under no circumstances shall a licensee continue video poker operations without completing the necessary repairs and resuming normal operations for a period longer than 120 days.

C. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 29:362 (March 2003), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 34:1037 (June 2008), LR 35:82 (January 2009), repromulgated LR 35:480 (March 2009), amended LR 36:2045 (September 2010).

§2407. Operation of Video Draw Poker Devices

A. - A.7. ...

8. An establishment licensee and/or the device owner who owns and/or operates the video draw poker devices at the licensed establishment may only promote or encourage the play of the video draw poker devices in compliance with the following:

a. All promotions shall comply with the Act and these regulations as well as all federal and state laws and regulations and municipal ordinances including, but not limited to, R.S. 27:402 and the Louisiana Charitable Raffles, Bingo and Keno Licensing Law, R.S. 4:701 et seq. The establishment licensee, and/or the device owner conducting the promotion is/are responsible for ensuring that all promotions are in compliance with this Paragraph.

b. A promotion requiring either a purchase, fee, or video poker play styled as either a raffle, drawing, sweepstakes, or any other event which utilizes a ticket, entry form, registration, or other mechanism used to determine the winner based on either the winner's name or corresponding ticket, entry form, registration, or other identification mechanism being chosen by virtue of a randomizing event shall not offer a prize or prize package valued over \$250.

c. A promotion shall not require the participant to be present at any time in order to win.

d. All rules, terms, and conditions of the promotion shall be displayed in a prominent manner inside the licensed establishment at all times during the promotion.

e. If the promotion requires participants to engage in the play of video poker, the value of the prize or prize package awarded shall not exceed the maximum payout set by the internal mechanism of the video draw poker device and shall not be based solely upon the value of a single winning hand played on the video draw poker device.

f. Giveaway promotions designed to promote the overall business may offer prizes valued in excess of the limits listed in Subparagraphs (b) and (e) provided that participation:

- i. is open to the general public;
- ii. does not require a purchase;
- iii. does not require video poker play or entrance to gaming areas.

g. Notwithstanding the provisions of this Section, or any other provision of law to the contrary, no prize for any promotion may provide food to any patron free of charge or below the cost to the licensee or the device owner.

A.9. - D. ...

1. Except for a uniform logo which has been adopted by the division or other advertisement allowed by this Subsection, no other advertising of video gaming activities shall be displayed anywhere on the exterior of any licensed establishment.

2. The word "casino" may be used (with or without including the problem gambler toll-free telephone number) either alone, as part of the d/b/a name of the licensed establishment, or in printed advertisements on the exterior of the licensed establishment and premises provided that:

a. the establishment is a Type IV or Type V licensee; and

b. use of the word "casino" on the premises is in compliance with all applicable local and state zoning and/or signage ordinances.

3. With the exception of the word "casino" as set forth in subsection 2, Type IV and V licensees may advertise freely on the exterior of the licensed establishment provided that all such printed advertisements display the problem gambler toll-free telephone number in a manner consistent with these rules and is in compliance with all applicable local and state zoning and/or signing ordinances.

4. Electronic displays capable of displaying moving characters or type, such as video monitors, video display panels, and LED reader boards, shall, if used to advertise video gaming activities, display the problem gambler toll-free telephone number every five minutes in a size, font, speed, brightness, and contrasting color scheme so that the toll-free number and accompanying letters are clearly visible and discernable by viewers.

5. Duplication of the uniform logo shall be identical to the design and colors of the approved uniform logo.

6. The size of the uniform logo shall not exceed 6 feet in height and 6 feet in width.

7. The uniform logo may be displayed alone or in conjunction with advertisement by the licensed establishment of other activities that do not pertain to video gaming.

8. For purposes of advertising prohibitions, a licensed establishment which is a qualified truck stop facility shall include the entire area which comprises the qualified truck stop facility.

9. The logo format may be obtained for duplication by all licensed establishments from their respective device owners.

10. The division shall enforce the prohibition of all other video gaming advertising on licensed premises that are not permitted by these rules or the Act.

11. All letters accompanying the toll-free telephone number shall be in capital letters and the same size as the toll-free telephone number. The toll-free telephone number and letters shall appear in conspicuous and legible type in

contrast by typography, layout, or color with all other printed material on the advertisement.

12. Notwithstanding Subparts 2 and 4, exterior print advertising, including but not limited to billboards, shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/10 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle. In the case of billboards, the rectangle containing the toll-free telephone number shall be a part of the billboard itself and not a separate add-on to the frame.

13. Notwithstanding Subparts 2 and 4, interior print advertising, including but not limited to posters, banners and other forms of advertising intended to be viewed from within the licensed establishment, but not the designated gaming area, shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

14. The problem gambler toll-free telephone number shall be prominently displayed at all interior and exterior entrances to all gaming areas. The letters and numbers shall be fully visible, at least 2 inches in height and contrast with the background.

15. Print advertising which is handheld or which is customarily viewed by the person holding the advertisement, including but not limited to newspapers, flyers, coupons and other forms of advertising shall display the toll-free telephone number and all accompanying letters in a rectangle. The rectangle shall comprise an area equal to 1/20 of the entire advertisement's height and extend across the entire width of the advertisement. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within the rectangle.

16. A licensee which is required to display the toll-free telephone number may seek approval from the division for particular forms of print advertising on an individual basis. In those instances where the licensee seeks approval, the division may in its discretion, approve the print advertisement in writing. The approved advertisement shall conform to the division's written approval.

17. The Penalty for any violation of this Paragraph shall be \$500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004), amended LR 33:857 (May 2007), LR 36:2046 (September 2010).

§2415. Gaming Establishments

A. - D.4.d. ...

5. Each qualified truck stop facility filing a new application, including a change in ownership, on or after January 1, 2011, shall comply with the following requirements.

a. The parking lot area shall be paved and striped so as to clearly indicate where drivers are to park their tractor-trailers and shall provide sufficient maneuvering room to allow for proper parking.

b. The parking lot area shall be clearly marked with indicators directing drivers to the proper lanes for ingress and egress.

c. All two-way truck travel lanes, if paved with concrete or asphalt, shall be striped so as to indicate lane division.

6. The licensee has a continuing responsibility to maintain the dimensions of the parking area, minimum number of required parking spaces, access to all parking spaces, and travel lanes in accordance with the Act and these rules. The licensee shall upon request provide to the division applicable documentation supporting the design and construction of the parking area in accordance with the Act and these rules.

E. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:1504 (August 1998), LR 26:1321 (June 2000), LR 36:2047 (September 2010).

Dane K. Morgan
Chairman

1019#031

RULE

Department of Revenue Policy Services Division

Income Tax Credits for Wind or Solar Energy Systems (LAC 61:I.1907)

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

Act 467 of the 2009 Regular Session of the Louisiana Legislature amended R.S. 47:6030 to expand the existing credit to taxpayers who do not own the structures into which the wind or solar energy systems are installed. This amendment to the Rule clarifies the application of the credits for those taxpayers who purchase and install wind or solar energy systems.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered By the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions

§1907. Income Tax Credits for Wind or Solar Energy Systems

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana taxpayer, the owner of a residential rental apartment project, or by a taxpayer who purchases and installs such a system in a residence or a residential rental apartment project which is located in the state. In order for costs associated with the purchase and installation of a wind or solar energy system to qualify for this credit, the expenditure must be made on or after January 1, 2008. The amount of the credit is equal to 50 percent of the first \$25,000 of the cost of each wind or solar energy system.

B. Definitions

Charge Controller—an apparatus designed to control the state of charge of a bank of batteries.

Grid-Connected, Net Metering System—a wind or solar electric system interconnected with the utility grid in which the customer only pays the utility for the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the Louisiana Public Service Commission's, the New Orleans City Council's, or other Louisiana utility regulatory entities, as appropriate, established Net Metering rules and procedures.

Inverter—an apparatus designed to convert direct current (DC) electrical current to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

Photovoltaic Panel—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

Residence—a single family dwelling, one dwelling unit of a multi-family, owner occupied complex, or one residential dwelling unit of a rental apartment complex. To be considered a residence, the physical properties of the space must provide the basic elements of a home, including appropriate and customary appliances and facilities and the occupant must use the facilities as a home with the intent to remain for a period exceeding thirty days. All eligible residences must be located in Louisiana.

Solar Electric System—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load.

Solar Thermal System—a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

Supplemental Heating Equipment—a device or apparatus installed in a solar thermal system that utilizes

energy sources other than wind or sunlight to add heat to the system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

Wind Energy System—a system of apparatus and equipment with the primary purpose of intercepting and converting wind energy into mechanical or electrical energy and transferring this form of energy by a separate apparatus to the point of use or storage.

C. Eligibility for Wind and/or Solar Energy Systems Tax Credits

1. Each residence or apartment project in the state is eligible for tax credits for the number of separate complete wind, solar electric, and solar thermal energy systems necessary to ensure that the residence or apartment project is supplied with all of its energy needs. For a residential rental apartment project, a single apartment unit may include in its energy needs the energy required to service the apartment unit and its proportionate energy needs with respect to a separately metered common load.

2. All wind or solar energy systems must be installed in the immediate vicinity of the residence or apartment project claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence or apartment project.

3. In order to claim a tax credit(s) for a wind energy system, solar electric energy system, or solar thermal energy system, the components for each system must be purchased and installed at the same time as a system.

4. For a taxpayer other than the owner of the residence or residential rental apartment project to claim a tax credit for a wind energy system, solar electric energy system, or solar thermal energy system, the taxpayer must provide the department with a copy of the contract in which the owner of the residence has clearly and unambiguously stated that he is not entitled to and will not claim the tax credit. Absent such a contract, the owner of the residence or residential rental apartment project is the only taxpayer eligible to claim the credit and the installer or developer shall have no right to the credit.

D. Claiming the Wind and Solar Energy Systems Tax Credit

1. The credit for the purchase and installation of a wind energy system or solar energy system by a taxpayer at his residence shall be claimed by the taxpayer on his Louisiana individual income tax return.

2. The credit for the purchase and installation of a wind energy system or solar energy system by the owner of a residential rental apartment project shall be claimed by the owner on his Louisiana individual, corporate or fiduciary income tax return.

3. The credit for the purchase and installation of a wind energy system or solar energy system by a taxpayer who purchases and installs such a system in a residence or a residential rental apartment project of which he is not the owner shall be claimed by the taxpayer on his Louisiana individual, corporate or fiduciary income tax return.

E. Wind and Solar Energy Systems Eligible for the Tax Credit

1. The credit provided by R.S. 47:6030 is only allowed for complete and functioning wind energy systems or solar energy systems. Local and state sales and use taxes

are an eligible system cost. Uncapitalized financing costs are not an eligible system cost.

a. Exceptions to General Rule Allowing Credit Only for Complete Systems

i. Exception in the Case of a Multi-Family Residence

(a). In order to be eligible to receive the credit, the owner of a single unit in a multi-family residence project must have an undivided interest in the wind or solar energy system that is being installed.

(b). If a component of a wind or solar energy system is shared, documentation must be supplied dividing up the costs of the component between all those eligible for the credit.

(c). Subsequent purchasers of units in the multi-family residence not in possession of an undivided interest at the time of installation, will not be eligible for the credit.

ii. Exception Allowing Shared Inverters

(a). Shared inverters are permitted when two or more systems are being installed at the same time.

(b). Any equipment added at a later date can not use existing system components and has to have every element of a complete system in order to qualify for the credit.

2. Wind Energy Systems. Eligible wind energy systems under the tax credit include systems designed to produce electrical energy and systems designed to produce mechanical energy through blades, sails, or turbines and may include the following.

System Type	Eligible System Components
DC Wind Electric Generation Systems	DC output wind turbine, controllers, towers & supports, charge controllers, inverters, batteries, battery boxes, DC and AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
AC Wind Electric Generation Systems	AC output wind turbine, controllers, towers and supports, charge controllers, power conditioners/grid interconnection devices, batteries, battery boxes, AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
Mechanical Wind Systems	Mechanical output wind turbine, towers and supports, mechanical interconnection between turbine and mechanical load

3. Solar Electric Systems. Eligible solar electric systems under the tax credit include grid-connected net metering systems, grid-connected net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	Photovoltaic panels, mounting systems, inverters, AC and DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC and DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC and DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric DC Systems	Photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

4. Solar Thermal Systems. Solar thermal systems eligible under the tax credit include systems designed to produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and solar pool heating systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Solar Pool Heating System	Solar pool heating collectors, mounting systems and devices, controllers, actuators, valves, pool covers, air elimination devices, sensors, piping and other related materials from solar pool heating collectors to interconnection with pool filtration system

5. All wind and solar energy systems for which a tax credit is claimed shall include an operations and maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be UL listed and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

7. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with manufacturer specifications and all applicable building and plumbing codes.

8. Applicants applying for the tax credit on any system(s) must provide proof of purchase to the Louisiana Department of Revenue detailing the following as applicable to your particular solar or wind energy system installation:

- a. type of system applying for the tax credit;
- b. output capacity of the system:
 - i. Solar Electric Systems—total nameplate listed kW of all installed panels;
 - ii. Solar Thermal Systems—listed SRCC annual BTU or equivalent kWh output;
 - iii. Wind Electric Systems—total rated kW of all alternators and generators;
 - iv. Wind Mechanical Systems—shaft horsepower as rated by manufacturer, licensed contractor or licensed professional engineer;
- c. physical address where the system is installed in the state;
- d. total cost of the system as applied towards the tax credit separated by:
 - i. equipment costs;
 - ii. installation costs;
 - iii. taxes;
- e. make, model, and serial number of generators, alternators, turbines, photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit;
- f. name and Louisiana contractor's license number of installer;
- g. if applicable, copy of the modeled array output report using the PV Watts Solar System Performance Calculator developed by the National Renewable Energy Laboratory and available at the website www.nrel.gov/rredc/pvwatts. The analysis must be performed using the default PV Watts de-rate factor;
- h. copy of a solar site shading analysis conducted on the installation site using a recognized industry site assessment tool such as a Solar Pathfinder or Solmetric demonstrating the suitability of the site for installation of a solar energy system.

F. Eligible Costs

1. Eligible Costs. Eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the wind and solar energy systems defined in Subsection B and described in Subsection E above which costs shall include any capitalized expenditures incurred in connection with the acquisition or installation thereof. Equipment costs must be in accordance with Subsection E above.

a. All installations must be performed by a contractor duly licensed by and in good standing with the Louisiana Contractors Licensing Board with a classification of Solar Energy Equipment and a certificate of training in the design and installation of solar energy systems from an industry recognized training entity, or a Louisiana technical college, or the owner of the residence.

2. Ineligible Costs. Labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. For purposes of this Paragraph, "individuals" shall mean natural persons as defined in Civil Code Article 24. Supplemental heating equipment costs used with solar collectors are not eligible for inclusion under the tax credit.

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips or any other thing of value given by the installer to the customer as an inducement to purchase an eligible wind or solar energy system.

4. Only one wind or solar energy systems tax credit is available for each eligible system. Once a wind or solar energy systems tax credit is claimed by a taxpayer for a particular system, that same system is not eligible for any other tax credit pursuant to this Section. If the residential property or system is sold, the taxpayer who claimed the tax credit must disclose his use of the tax credit to the purchaser.

G. Other Tax Benefits Disallowed

1. A taxpayer shall not receive any other state tax credit, exemption, exclusion, deduction, or any other tax benefit for wind and solar property for which the taxpayer has received a wind energy system, solar electric energy system, or solar thermal energy system credit under R.S. 47:6030.

a. Taxpayers claiming a wind energy system, solar electric energy system, or solar thermal energy system credit may not claim a state depreciation deduction for capitalized system costs.

2. Exception. The credit may be used in addition to any federal tax credits earned for the same system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:2206 (October 2008), amended LR 36:2048 (September 2010).

Cynthia Bridges
Secretary

1009#030

RULE

Department of Treasury State Employees' Retirement System

DROP Excess Benefit Arrangement (LAC 58:I.3117)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has adopted LAC 58:I.3117, regarding a means of adjusting DROP benefits in accordance with the limits established by Section 415(b) of the Internal Revenue Code. This Rule is needed to keep LASERS tax qualified status under the Internal Revenue Code. This rule change complies with and is enabled by La. R.S. 11:515. No preamble for these Rules has been prepared.

Title 58 RETIREMENT

Part I. Louisiana State Employees' Retirement System Chapter 31. Excess Benefit Arrangement §3117. DROP Benefits

A. The DROP benefit of any member may not exceed the annual benefit authorized by Section 415(b) of the Internal Revenue Code. For purposes of determining whether a

member's benefit exceeds the limitations of this Subsection, the following shall apply:

1. Adjustment if benefit not a straight life annuity.

a. If the form of benefit is other than a straight life annuity, such benefit shall be adjusted actuarially to the equivalent of a straight life annuity to determine whether the limitations set forth in this Subsection are met.

b. For the purposes of this Subsection, no adjustment shall be taken into account for any ancillary benefit which is not directly related to retirement income benefits.

2. Adjustment if benefit commences before age 62.

a. If the benefit distribution commences before age 62, the actual retirement benefit shall not exceed the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under Section 415(b)(2)(E) of the Internal Revenue Code, of \$160,000, as of January 1, 2002, adjusted annually pursuant to Section 415(d) of the Internal Revenue Code, commencing at age 62. For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

b. No adjustment shall be required under this Subsection if the member is a "qualified participant" as that term is defined in Section 415(b)(2)(H) of the Internal Revenue Code.

c. No adjustment shall be required under this Subsection if the benefit is payable due to the member's disability or preretirement death.

3. If the benefit distribution commences after age 65, the adjusted dollar limitation shall be the equivalent, determined in a manner consistent with the adjustments under Section 415(b)(2)(E) of the Internal Revenue Code, of \$160,000, as of January 1, 2002, adjusted annually pursuant to Section 415(d) of the Internal Revenue Code, commencing at age 65. For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

B. The maximum retirement benefit payable under this Section to any member who has completed less than 10 years of credited service shall be the number determined under Subsection A multiplied by a fraction, the numerator of which shall be the number of years of service, and the denominator of which shall be 10.

C. Notwithstanding the foregoing, the benefit payable to a member shall not be deemed to exceed the limits of Subsection A if the total benefits payable to a member under all defined benefit plans maintained by the state, its agencies, or its political subdivisions do not exceed \$10,000 and the state, its agencies, or its political subdivisions have never maintained a defined contribution plan in which the member has participated.

D. Any benefit that, as a result of an election made under R.S. 11:447(A), would exceed the limitations on benefits imposed by Section 415(b) of the Internal Revenue Code shall be paid into the excess benefit arrangement established under R.S. 11:454.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 36:2050 (September 2010).

Cindy Rougeou
Executive Director

1009#041

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Physically Challenged Hunters Permit
(LAC 76:XIX.105)**

The Wildlife and Fisheries Commission does hereby promulgate rules and regulations governing the Physically Challenged Hunters Permit.

Title 76

WILDLIFE AND FISHERIES

PART XIX. HUNTING AND WMA REGULATIONS

Chapter 1. Resident Game Hunting Season

§105. Physically Challenged Hunters Permit

A. Definitions

ATV—an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight-750 lbs; length-85"; width-48". ATV tires are restricted to those no larger than 25 x 12 with a maximum 1" lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

Commission—the Louisiana Wildlife and Fisheries Commission.

Commission Approved Physician—any physician licensed to practice medicine by the Louisiana State Board of Medical Examiners who evaluates permit applicants to determine the physically challenged hunter rule classification of permanent disability. Also, includes any Louisiana licensed optometrist or ophthalmologist to determine visual impairment.

Department—the Louisiana Department of Wildlife and Fisheries.

Enforcement Division—the Enforcement Division of the Louisiana Department of Wildlife and Fisheries.

Helper—an individual who accompanies a permitted physically challenged hunter to assist the physically challenged hunter in accessing a hunting area, carrying hunting gear, and retrieving harvested game.

Permanent Disability—a qualifying disability that a *commission approved physician* has determined will not improve over time or with medical treatment.

Physically Challenged ATV Permit—a permit issued by the Wildlife Division to certain physically challenged hunters to allow access to the specially designated ATV trails on *wildlife management areas*.

Physically Challenged Hunter Permit—a permit issued by the Department of Wildlife and Fisheries to qualified physically challenged individuals.

Special Deer Season—a special deer season only for individuals with valid physically challenged hunter permits established by the Louisiana Wildlife and Fisheries Commission.

Special Physically Challenged Hunt—special hunt or hunts on certain *WMAs* only for individuals with valid physically challenged hunter permits.

WMA—a tract of land managed by the Louisiana Department of Wildlife and Fisheries and proclaimed as a Wildlife Management Area by the governor of Louisiana.

Wildlife Division—the Wildlife Division of the Louisiana Department of Wildlife and Fisheries.

B. Wheelchair Bound

1. Qualifications

a. *Permanent Disability*. The disability must permanently confine the applicant to the use of a wheelchair. If the Applicant may eventually recover enough to not require the use of a wheelchair, he or she does not qualify for this class permit. If the future prognosis is uncertain, the applicant does not qualify at this time.

b. Certification by *Commission Approved Physician*

i. Applicants must be certified *permanently disabled* and confined to a wheelchair by:

(a). a *commission approved physician*;

ii. Should the *commission approved physician* determine the applicant is not permanently confined to a wheelchair for medical reasons, the application is rejected and no permit shall be issued. If approved by the physician, the *Enforcement Division* must complete a wildlife criminal history check. The application must then be forwarded to the *Wildlife Division* administrator for approval or disapproval.

c. Disqualification

i. Applicants not disabled sufficiently to meet the confined to a wheelchair criterion shall not qualify for this class permit.

ii. Applicants with felony convictions or with Class Two or above wildlife convictions, *WMA* or littering violations within the last five years, as determined by the *Enforcement Division*, shall not be issued permits. Fishing and boating violations are excluded.

2. Approved Applicants Receive the Following Considerations

a. *Special Physically Challenged Hunts*. May participate in special *WMA* hunts.

b. Special Deer Seasons

i. May participate in special statewide *physically challenged hunts*.

c. Access To Wildlife Management Areas. Permittees of this class shall receive a *physically challenged ATV permit* for access to specially designated ATV trails on *WMAs*.

d. Hunting From Vehicles. May hunt resident game from a stationary vehicle or stationary boat statewide, provided that this activity does not violate state or parish laws.

e. Helpers. Permittee may be accompanied by helpers (no more than two) as necessary to get to and from a hunting area or stand and to assist in retrieving harvested game. Helpers may not use or possess firearms/bows/crossbows when acting as a *helper* unless the weapon is legal for the game hunted and the season is open to all licensed hunters in the area the *helper* is hunting. Permittee is allowed one extra *ATV* for his *helper(s)*. At no time will parked or unattended *helper's ATV* and permittee's *ATV* be placed at separate locations.

3. Conditions of Approval

a. Nontransferable. The *physically challenged hunter permit* is non-transferable and is valid for named permittee only.

b. Permit in Possession

i. The permit must be carried by named permittee at all times while hunting in the field or transporting game harvested under the permit.

ii. Permittee must, in addition to the permit, carry one other form of photo identification while hunting or transporting harvested game.

c. Helpers. Helpers accompanying physically challenged hunters are not permitted to carry firearms/bows/crossbows except as provided for by statewide or *WMA* regulations. (See Subparagraph B.2.e.)

d. All Terrain Vehicles

i. *ATVs* may be used only on regular public *ATV* trails and specially designated *ATV* trails on *WMA* maps.

ii. Approved individuals (permittees and helpers) may drive the *ATV* to a stand within 100 yards of an *ATV* trail. The *ATV* may also be used to retrieve the permittees harvested deer or hogs. Travel on an *ATV* beyond 100 yards of the designated trail, except to retrieve a deer or hogs, is prohibited.

e. Other Licenses Required. The issuance of a *physically challenged hunter permit* does not exempt the permittee from other license requirements. All applicable licenses required to hunt a particular species of game must be purchased and in the permittees possession while hunting.

f. Revocation

i. Any violation of the permit conditions by the permittee and/or helper of wildlife laws and/or regulations may result in cancellation of this permit.

ii. Should there be a change in the permittee's condition, the permittee must notify the *Wildlife Division* administrator. If said change is sufficient to make the permanent use of a wheelchair unnecessary, the permit shall be revoked.

g. Duration

i. This permit is valid for the lifetime of named permittee or until revoked by the *department*.

ii. The *department* shall retain the right to change the duration and/or conditions of the disabled hunter permits to comply with future commission or legislative actions.

h. Cost—None

C. Mobility Impaired

1. Qualifications

a. *Permanent Disability*

i. The disability must be permanent and impair the applicant sufficiently to preclude walking farther than very short distances (Cannot walk 200 feet without stopping to rest) even with mechanical aids. If the applicant may eventually recover, or if the future prognosis is uncertain, the applicant does not qualify at this time; provided however, individuals who are temporarily disabled for a minimum of one year duration may be issued this permit for a period of one year only. If the condition still exists after one year, the individual would have to reapply and be issued a new permit.

ii. Qualifying disabilities under this class may include, but are not limited to:

(a). permanent and continual use of artificial limbs, crutches, leg braces, or canes due to injury, disease, or birth defect. Cannot walk without the assistance of another person, walker, cane, crutches, braces, or prosthetic device, or temporary use of a wheelchair;

(b). defects of circulatory system, respiratory system, skeletal structure, or neurological disorders caused by disease, injury, or birth defect. Applicant must be restricted by a lung disease to such an extent that the person's forced (respiratory) volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest, or uses portable oxygen, or has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association, or has a diagnosed disease or disorder, including a severe arthritic, neurological, or orthopedic impairment, which creates a severe mobility limitation;

iii. Nonqualifying disabilities may include, but are not limited to:

- (a). vision impairment;
- (b). arm, hand, shoulder, or other impairments that do not affect walking;
- (c). any impairment considered to be a part of or resulting from the normal aging process;
- (d). any impairment resulting from or due to a lack of physical conditioning.

b. Certification by *Commission Approved Physician*

i. Applicants must be certified permanently disabled and mobility impaired by:

- (a). a *commission approved physician*;
- ii. Should the *commission approved physician* determine the applicant is not permanently mobility impaired, the application is rejected and no permit shall be issued. If approved by the physician, the *Enforcement Division* must complete a wildlife criminal history check. The application must then be forwarded to the *Wildlife Division* administrator for approval or disapproval.

c. Disqualification

i. Applicants not disabled sufficiently to meet the mobility impaired criterion shall not qualify for the class permit.

ii. Applicants with felony convictions or with Class Two or above wildlife convictions, *WMA* or littering violations within the last five years, as determined by the *Enforcement Division*, shall not be issued permits. Fishing and boating violations are excluded.

2. Approved Applicants Receive the Following Considerations

a. *Special Physically Challenged Hunts*. May participate in special *WMA* hunts.

b. *Special Deer Seasons*. May participate in special statewide physically challenged hunts.

c. Access To Wildlife Management Areas. Permittees of this class shall receive a *physically challenged ATV permit* for access to specially designated *ATV* trails on *WMAs*.

d. Helpers. Permittee may be accompanied by helpers (no more than two) as necessary to get to and from a hunting area or stand and to assist in retrieving harvested game. Helpers may not use or possess

firearms/bows/crossbows when acting as a *helper* unless the weapon is legal for the game hunted and the season is open to all licensed hunters in the area the *helper* is hunting. Permittee is allowed one extra *ATV* for his *helper(s)*. At no time will parked or unattended *helper's ATV* and permittee's *ATV* be placed at separate locations.

3. Conditions of Approval

a. Nontransferable. The *physically challenged hunter permit* is non-transferable and is valid for named permittee only.

b. Permit In Possession

i. The permit must be carried by named permittee at all times while hunting in the field or transporting game harvested under the permit.

ii. Permittee must, in addition to the permit, carry one other form of photo identification while hunting or transporting harvested game.

c. Helpers. Helpers accompanying physically challenged hunters are not permitted to carry firearms/bows/crossbows except as provided for by statewide or *WMA* regulations. (See Subparagraph C.2.d.)

d. All Terrain Vehicles

i. *ATVs* may be used only on regular public *ATV* trails and *ATV* trails on *WMA* maps.

e. Other Licenses Required. The issuance of a *physically challenged hunter permit* does not exempt the permittee from other license requirements. All applicable licenses required to hunt a particular species of game must be purchased and in the permittee's possession while hunting.

f. Revocation

i. Any violation of the permit conditions by the permittee and/or *helper* of wildlife laws and/or regulations may result in cancellation of the permit.

ii. Should there be a change in the permittee's condition, the permittee must notify the *Wildlife Division* administrator. If said change is sufficient to enable the permittee to walk more than 200 feet without stopping to rest the permit shall be revoked.

g. Duration

i. This permit is valid for the lifetime of named permittee or until revoked by the *department*.

ii. The *department* shall retain the right to change the duration and/or conditions of the *physically challenged hunter permits* to comply with future commission or legislative action.

h. Cost—None.

D. Amputee of the Upper Extremity

1. Qualifications

a. *Permanent Disability*. The applicant must have an amputation of at least one arm, hand, or all five fingers of one hand to qualify for a permit of this class.

b. Certification By *Commission Approved Physician*

i. Applicants must be certified permanently disabled as an amputee of the upper extremity by a *commission approved physician*.

ii. Should the *commission approved physician* determine the applicant is not an amputee of the upper extremity, the application shall be rejected. If approved by the physician, the *Enforcement Division* must complete a wildlife criminal history check. The application must then be

forwarded to the *Wildlife Division* Administrator for approval or disapproval.

c. Disqualification

i. Applicants not disabled sufficiently to meet the amputee of the upper extremity criterion shall not qualify for this class permit.

ii. Applicants with felony convictions or with Class Two or above wildlife convictions, *WMA* or littering violations within the last five years, as determined by the *Enforcement Division*, shall not be issued permits. Fishing and boating violations are excluded.

2. Approved Applicants Receive the Following Considerations

a. *Special Physically Challenged Hunts*. May participate in special *WMA* hunts.

b. *Special Deer Seasons*. May participate in special statewide physically challenged hunts.

c. Access To Wildlife Management Areas. Permittees of this class shall receive a *physically challenged ATV permit* for access to specially designated *ATV* trails on *WMAs*.

d. Helpers. Permittee may be accompanied by helpers (no more than two) as necessary to get to and from a hunting area or stand and to assist in retrieving harvested game. Helpers may not use or possess firearms/bows/crossbows when acting as a *helper* unless the weapon is legal for the game hunted and the season is open to all licensed hunters in the area the *helper* is hunting. Permittee is allowed one extra *ATV* for his *helper(s)*. At no time will parked or unattended helper's *ATV* and permittee's *ATV* be placed at separate locations.

3. Conditions of Approval

a. Nontransferable. The *physically challenged hunter permit* is nontransferable and is valid for named permittee only.

b. Permit In Possession

i. The permit must be carried by named permittee at all times while hunting in the field or transporting game harvested under the permit.

ii. Permittee must, in addition to the permit, carry one other form of photo identification while hunting or transporting harvested game.

c. Helpers. Helpers accompanying physically challenged hunters are not permitted to carry firearms/bows/crossbows except as provided for by statewide or *WMA* regulations. (See Subparagraph D.2.d.)

d. All Terrain Vehicles

i. *ATVs* may be used only on regular public *ATV* trails and physically challenged *ATV* trails as specially designated on *WMA* maps.

e. Other Licenses Required. The issuance of a *physically challenged hunter permit* does not exempt the permittee from other license requirements. All applicable licenses required to hunt a particular species of game must be purchased and in the permittees possession while hunting.

f. Revocation. Any violation of the permit conditions by the permittee and/or *helper* of wildlife laws and/or regulations may result in cancellation of this permit.

g. Duration

i. This permit is valid for the lifetime of named permittee or until revoked by the *department*.

ii. The *department* shall retain the right to change the duration and/or conditions of the *physically challenged hunter permits* to comply with future commission or legislative action.

h. Cost—None.

E. Visually Impaired

1. Qualifications

a. *Permanent Disability*. The applicant must have an impairment of visual functioning, even after treatment and/or standard refractive correction, and has a visual acuity of equal to or less than 20/200 to light perception, or a visual field of less than ten degrees from the point of fixation, as certified by a Louisiana licensed optometrist or ophthalmologist to qualify for a permit of this class.

b. Certification by *Commission Approved Physician*

i. Applicants must be certified permanently disabled as visually impaired by a *commission approved physician*.

ii. Should the *commission approved physician* determine the applicant is not visually impaired, the application shall be rejected. If approved by the physician, the *Enforcement Division* must complete a wildlife criminal history check. The application must then be forwarded to the *Wildlife Division* administrator for approval or disapproval.

c. Disqualification

i. Applicants not disabled sufficiently to meet the visually impaired criterion shall not qualify for this class permit.

ii. Applicants with felony convictions or with Class Two or above wildlife convictions, *WMA* or littering violations within the last five years, as determined by the *Enforcement Division*, shall not be issued permits. Fishing and boating violations are excluded.

2. Approved Applicants Receive the Following Considerations

a. *Special Physically Challenged Hunts*. May participate in special *WMA* hunts.

b. *Special Deer Seasons*. May participate in special statewide physically challenged hunts.

c. Access To Wildlife Management Areas. Permittees of this class shall receive a *physically challenged ATV permit* for access to specially designated *ATV* trails on *WMAs*.

d. Helpers. The permittee shall be accompanied by another licensed hunter and only the person holding the physically challenged hunter permit may discharge the firearm. Helpers may not use or possess firearms/bows/crossbows when acting as a *helper* unless the weapon is legal for the game hunted and the season is open to all licensed hunters in the area the *helper* is hunting. Permittee is allowed one extra *ATV* for his *helper(s)*. At no time will parked or unattended helper's *ATV* and permittee's *ATV* be placed at separate locations.

e. The permittee shall be permitted to use a laser sight or sighting device which projects a beam of light to the target only.

3. Conditions of Approval

a. Nontransferable. The *physically challenged hunter permit* is nontransferable and is valid for named permittee only.

b. Permit In Possession

i. The permit must be carried by named permittee at all times while hunting in the field or transporting game harvested under the permit.

ii. Permittee must, in addition to the permit, carry one other form of photo identification while hunting or transporting harvested game.

c. Helpers. Helpers accompanying physically challenged hunters are not permitted to carry firearms/bows/crossbows except as provided for by statewide or *WMA* regulations. (See Subparagraph E.2.d.)

d. All Terrain Vehicles

i. *ATVs* may be used only on regular public *ATV* trails and specially designated *ATV* trails on *WMA* maps.

e. Other Licenses Required. The issuance of a *physically challenged hunter permit* does not exempt the permittee from other license requirements. All applicable licenses required to hunt a particular species of game must be purchased and in the permittees possession while hunting.

f. Revocation. Any violation of the permit conditions by the permittee and/or *helper* of wildlife laws and/or regulations may result in cancellation of this permit.

g. Duration

i. This permit is valid for the lifetime of named permittee or until revoked by the department.

ii. The *department* shall retain the right to change the duration and/or conditions of the physically challenged hunter permits to comply with future commission or legislative action.

h. Cost. None

AUTHORITY NOTE: Promulgated in accordance with Act 1226 of the 1995 Louisiana Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 22:856 (September 1996), amended LR 34:1444 (July 2008), LR 36:2051 (September 2010).

Robert J. Barham
Secretary

1009#034

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Giant Salvinia (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act, (R.S. 49:950 et seq.), and under the authority of R.S. 3:3203, the Department of Agriculture and Forestry is intending on adopting these rules and regulations (proposed rules) for the implementation of a herbicide application program by the Sabine River Authority, State of Louisiana (SRA) to manage the noxious aquatic weed Giant Salvinia in the Toledo Bend Reservoir (Toledo Bend). The SRA's herbicide application program will allow Louisiana property owners whose property adjoins Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property.

The SRA, the Louisiana Department of Wildlife and Fisheries, (LDWF), the LSU Agricultural Center (Ag Center), the Toledo Bend Residents Association, and Bass Unlimited have requested the adoption of these rules to allow for the spraying and controlling Giant Salvinia at Toledo Bend. Giant Salvinia was first discovered on Toledo Bend in 1998 and has proliferated to the point that it threatens the native plants and animals that live in the lake, the biodiversity of that aquatic life, the continued commercial and recreational use of the lake and the productivity and usefulness of the lake itself. The proposed Rule will provide an effective program for controlling Giant Salvinia at Toledo Bend.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - L.2. ...

M. The commissioner hereby establishes a herbicide application permitting program for the Sabine River Authority, State of Louisiana (SRA) in, on and around the waters of the Louisiana portion of Toledo Bend Reservoir.

1. Any person who applies or uses any herbicide or incorporates the use of any herbicide, for the management, control, eradication or maintenance of Giant Salvinia in, on or around the waters of the Louisiana portion of Toledo Bend Reservoir, shall comply with all of the following requirements, prior to making any applications to Giant Salvinia in SRA waters.

a. Complete the SRA designated Giant Salvinia applicator training program.

b. Apply for and receive a herbicide application permit from the SRA which shall be good for the remainder of the calendar year in which issued, but may be renewed annually by contacting the SRA.

c. Apply, use, or incorporate herbicides to be applied to or used on or for Giant Salvinia only as prescribed by the SRA herbicide application program.

d. Prepare and maintain records of applications by recording accurate information as required on the Toledo Bend application log sheet provided by the SRA.

e. Deliver (mail, hand deliver, e-mail, fax, etc.) to the SRA office at Pendleton Bridge Office, 15091 Texas Highway, Many, LA 71449 a completed copy of each Toledo Bend application log sheet recording the information regarding an application or use of a herbicide on or for Giant Salvinia within 14 days of each application.

f. Keep a completed copy of the application record form for a period of three years after application.

g. Make application records available, during normal business hours, to any authorized person with the department, Department of Wildlife and Fisheries or the SRA.

2. Any person making applications to the Louisiana portion of Toledo Bend Reservoir under contract with the LDWF or SRA, authorized LDWF employees and any person conducting a research project on the Louisiana portion of Toledo Bend Reservoir with the LSU Agricultural Center, LDWF or SRA is exempted from the provisions of this Subsection, but are not excepted from any other provisions of this Part, except as may be provided therein.

N. - O.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), LR 35:628 (April 2009), LR 36:

Family Impact Statement

It is anticipated that the proposed Rule will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments on the proposed Rule to David Fields at P.O. Box 3596, Baton Rouge, LA 70806 or 5825 Florida Blvd., Baton Rouge, LA 70806. Written comments received after 4 p.m. on Monday, October 25, 2010 shall not be considered. No preamble regarding this Rule is available.

Mike Strain DVM,
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Giant Salvinia**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed action is not anticipated to have a direct material effect on governmental costs or savings. The proposed rule authorizes the implementation of a herbicide application program by the Sabine River Authority, State of Louisiana (SRA) to manage the noxious aquatic weed Giant Salvinia in the Toledo Bend Reservoir (Toledo Bend). The SRA's herbicide application program will allow Louisiana property owners whose property adjoins Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed action is not anticipated to have a direct material effect on governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Due to unknown variables including the number of property owners who will participate in the program, the number of recreational and commercial users of Toledo Bend, and the number of acres impacted, the cost or economic benefits of directly affected persons or non-governmental groups is indeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistant Commissioner
1009#087

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Agriculture and Forestry Office of the Commissioner

Louisiana Strawberries
(LAC 7:V.1901-1935)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:730.4 and 3:730.8, the Department of Agriculture and Forestry, is intending on amending, adopting and repealing rules and regulations to provide for the administration of the Louisiana Strawberry Marketing Board, to bring the rules and regulations regarding the assessment on strawberries sold in this state into line with current law and to implement Act 40 of the 2010 regular session of the legislature.

The proposed action will establish rules and regulations regarding administrative matters of the Strawberry Marketing Board, which current regulations do not provide for. The current regulations regarding the payment of assessments were promulgated in 1991 based on an assessment on pint containers of strawberries that was in existence at the time. That assessment was repealed by Act 1253 of 2003 and replaced by Act 1253 with the current assessment on strawberries produced or sold in this state. The proposed action repeals and amends the current rules and regulations to reflect the change in the assessment. The proposed action will also adopt rules and regulations implementing Act 40 of 2010 which requires identification of the farm of origin of strawberries offered for sale in this state.

Title 7

AGRICULTURE AND ANIMALS

Part V. Advertising, Marketing and Processing

Chapter 19. Louisiana Strawberries

Subchapter A. General Provisions

§1901. Definitions

A. The words and terms defined in R.S. 3:730.2 are applicable to this Chapter.

B. The following words and terms are defined for the purposes of this Chapter.

Container or Package—the receptacle in which strawberries are placed or held for retail sale.

Farm of Origin—the tract of land on which the strawberries in a container were raised.

Handler of Strawberries—a person, except for a producer and an ultimate purchaser, who, for a profit, processes, packs, distributes, markets, or sells strawberries in this state.

Louisiana Grown Strawberries—strawberries that are raised, processed, and packed entirely in Louisiana.

Producer—a person who commercially raises and harvests strawberries for sale.

Ultimate Purchaser—the person or consumer who will eat the strawberries and the last person in the chain of distribution who removes the strawberries from the container and prepares them to be eaten by a consumer. A restaurant shall be considered to be an ultimate purchaser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:249 (March 1991), amended by the Office of the Commissioner, LR 36:

§1903. Records Required; Inspections and Audits

A. Each Louisiana producer and each handler of fresh or frozen strawberries in this state shall maintain complete, separate and correct records and accounts pertaining to all lots of strawberries produced, processed, packed, distributed, marketed or sold in this state, including, but not limited to, bills of lading, warehouse receipts, invoices, sales receipts, the person the strawberries were received from, the person the strawberries were delivered to, the number or amount of strawberries, whether kept by weight, measure, or count, and any Louisiana strawberry assessment paid or collected.

B. Each producer and handler of strawberries in Louisiana shall permit any authorized officer, employee, or representative of the department or the board to enter and inspect all locations where strawberries or records are kept and to examine and audit all records, books, and accounts

relating to the producing and handling of strawberries in this state.

C. Any such inspection, examination or audit may be made on any business day, during normal working hours and the producer or handler shall provide the necessary assistance and cooperation required for the completion of the inspection, examination, or audit.

D. No person shall in any way interfere with an authorized officer, employee, or representative who is entering or inspecting, or attempting to do so, a location where strawberries or records relating to strawberries are kept or is examining or auditing, or attempting to do so, records, books, and accounts relating to the producing and handling of strawberries in this state.

E. All required records shall be kept for a period of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:250 (March 1991), amended by the Office of the Commissioner, LR 36:

§1905. Collection

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:475, repealed in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:250 (March 1991), amended LR 17:955 (October 1991), repealed by the Office of the Commissioner, LR 36:

§1907. Records

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:475, repealed in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:250 (March 1991), amended LR 17:956 (October 1991), repealed by the Office of the Commissioner, LR 36:

§1909. Authority of Agents to Enter Premises

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:475, repealed in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:250 (March 1991), amended LR 17:956 (October 1991), repealed by the Office of the Commissioner, LR 36:

§1911. Refunds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:475, repealed in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:250 (March 1991), amended LR 17:956 (October 1991), repealed by the Office of the Commissioner, LR 36:

§1913. Penalties

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:475 and R.S. 3:478, repealed in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, State Market Commission, LR 17:250 (March 1991), amended LR 17:956 (October 1991), repealed by the Office of the Commissioner, LR 36:

Subchapter B. The Strawberry Marketing Board

§1921. Compensation of Board Members

A. The board may waive the compensation provided by law for members by unanimous consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 36:

§1923. Board Meetings

A. The board shall meet at least once in every quarter of the year, but a meeting may be cancelled by the chairman if there is no business to consider at the meeting.

B. The board shall meet upon the call of the chairman or the commissioner or upon the written request of at least three board members.

C. The board shall not meet more than 12 times in any one year.

D. The meetings shall be conducted in accordance with Roberts Rules of Order, Newly Revised, 10th Edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 36:

Subchapter C. Farm of Origin Labeling

§1931. Labeling of Strawberries

A. Each container of fresh or frozen strawberries sold or offered for sale in this state to the ultimate purchaser shall have a stamp or label containing sufficient information from which the farm of origin may be identified, except as otherwise provided by these regulations.

B. The identifying information may be provided by one of the following methods.

1. Identification of the name and address of the producer, processor, or distributor pursuant to Section 101.5 of Title 21 the Code of Federal Regulations.

2. Placement of the name and address of the farm of origin on a stamp or label on the top or side of the container.

3. Use of a brand name along with a recordkeeping or traceability system that permits the identification of the farm of origin.

4. Providing a bar code on the stamp or label that permits the strawberries to be traced back to the farm of origin.

5. Any other method that provides a reasonable means of tracing the strawberries back to the farm of origin.

C. The identifying information shall be provided in indelible ink or print and in a form that is legible to a reasonable person and that will remain affixed to the container or covering until removed by the ultimate purchaser.

D. The stamp or label may also state "Louisiana Strawberries," "Product of Louisiana" or other words or phrases that indicate that the strawberries are Louisiana grown strawberries unless the use of the name or phrase would constitute a prohibited use of a logo of the department, or use a logo provided by the department if such use is authorized by these regulations.

E. Strawberries may be sold in open or unwrapped containers at a roadside stand, farmer's market, fair or festival, or other similar location without the identifying information being on each container only if:

1. a sign that is readable by a reasonable person, without strain, is posted with the strawberries stating the name and address of the farm of origin; and

2. a bill of sale, invoice, or some other document that would allow the strawberries to be traced back to the farm of origin is at the location and available for inspection by an

authorized office, employee, or representative of the board or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4 and 3:730.8.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 36:

§1933. Louisiana Grown Strawberries; Use of Department Logos

A. Louisiana grown strawberries may be eligible for labeling with a logo developed by the department for use on strawberries or other agricultural products raised, processed, and packed in this state.

B. Any producer, processor, packer, wholesaler, or distributor who desires to have a logo of the department placed on containers of Louisiana grown strawberries may register with the department for participation in a logo use program.

C. All farms of origin that provide the strawberries sold or offered for sale by the participating producer, processor, packer, wholesaler, or distributor shall be registered with the department before approval to use the logo is given by the department.

D. The application for participation shall be submitted in writing to the department on a form approved by the department.

E. Upon approval, the applicant shall have the right to affix a logo of the department on all containers of strawberries.

F. A logo of the department may not be placed on any container of strawberries that holds any strawberries that are raised, processed, or packed in another country or another state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4 and 3:730.8.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 36:

§1935. Use of Containers Ordered Prior to the Effective Date of these Regulations

A. Any person who prior to the effective date of these regulations ordered strawberry containers that do not meet the requirements of these regulations may use those containers for the 2011 strawberry season up to July 1, 2011 if documentation allowing the farm of origin to be determined is available for inspection by an authorized officer, employee, or representative of the board or the department.

B. In no event shall any container that does not comply with the labeling requirements of this Subchapter be used after July 1, 2011, except as allowed by §1931.E of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:730.4 and 3:730.8.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 36:

Family Impact Statement

It is anticipated that the proposed Rule will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed Rule. Written submissions are to be directed to Paul Blair, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on the 25th day of October 2010. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Strawberries**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units as a result of this proposed action. The proposed rule changes are intended to modify existing rules and regulations regarding administration of the Strawberry Marketing Board. The proposed changes further address both the assessment calculation established by Act 1253 of the 2003 Regular Session of the Legislature and Act 40 of 2010 which requires the identification of the farm of origin for strawberries offered for sale in this state.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated direct material effect on governmental revenues as a result of this proposed action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes regarding farm of origin identification are anticipated to impact the in-state producers, processors, and distributors of strawberries offered for sale in this state. The proposed action is not anticipated to have a direct material effect on the costs of out-of-state producers, processors, or distributors as those entities are believed to have existing procedures for tracking strawberries back to the farm of origin. Some in-state producers will incur an average cost of \$0.02 per container for compliance with Act 40 of 2010 (farm or origin). The total anticipated cost to these producers is \$1,744 in total (using 80% of 109,000 pints sold annually by 89 producers at \$0.02 per pint).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct material effect on competition or employment as a result of this proposed action.

Craig Gannuch
Assistant Commissioner
1009#88

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Agriculture and Forestry Structural Pest Control Commission

Structural Pest Control Commission
(LAC 7:XXV.Chapter 1)

In accordance with the Administrative Procedure Act, (R.S. 49:950 et seq.), and under the authority of R.S. 3:3366, the Department of Agriculture and Forestry, Structural Pest Control Commission is intending on adopting these amendments and revisions to the rules and regulations of the Commission to make technical corrections, define and clarify certain terms, provide homeowners and pest control operators a clearer understanding of the requirements for treating in all phases of pest control, and to modernize and update these rules and regulations to reflect changes in the structural pest control industry.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§101. Definitions

A. The definitions in R.S. 3:3362 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part.

Act—the Structural Pest Control Law, which is currently Part VII of Chapter 20 of Title 3 of the Louisiana Revised Statutes of 1950, (R.S. 3:3301 et seq.).

Adjudicatory Proceeding—an open public hearing by the commission to determine whether violations of the Act or these rules and regulations have occurred.

Applicant—any person making application for a license to engage in operations coming under the provisions of this Part.

Availability [with reference to *direct supervision*]—that the licensee must be able to reach the job site within three hours after receipt of a call or have established another licensee to supervise his operations (see definition of *direct supervision* in §101).

Bond—a written instrument issued or executed by a bonding, surety or insurance company licensed to do business in this state, guaranteeing the fulfillment of the agreement between the licensee or business entity and his customer and insuring against fraudulent practices by the licensee or business entity.

Branch Office—any site, i.e., office, store, warehouse, etc., where any kind of structural pest control services are offered to the general public.

Business—either a single person or a group of persons organized to carry on the business of structural pest control.

Certified Applicator (for purposes of these regulations)—any person who holds a valid license as herein provided or otherwise known as licensee.

Certified Fumigation Technician—a technician qualified to perform the following:

a. *Structural Fumigation*—apply fumigants to and clear fumigants from structures under the supervision of a licensed fumigator.

b. *Ship Fumigation*—shall only add additional fumigants to a ship fumigation after the initial amount of gas fumigants has been applied, under the supervision of a licensed fumigator.

c. *Commodity Fumigation*—apply fumigants to and clear fumigants from commodities under the supervision of a licensed fumigator.

Chain Wall—any wall constructed of any material that supports or skirts a structure.

Commodity Fumigation—the fumigation of food or non-food items stored in stacks, rail cars, containers, trucks, barges, boxes, bins, etc. that are not normally occupied by humans. No living quarters shall be in any of the above.

Construction—the act of building a structure from the start of the first stage of physical work until completion which is when either the structure is ready to be inhabited, final inspection and approval by an appropriate building inspector, or completion of the final grade.

Contract—a written agreement between two or more persons, one of whom is a pest control operator for services for the provision of a specific pest control service. Contracts for subterranean termites, dry wood termites, power post beetles or old house borers shall be approved by the Commission prior to use.

Curtain Wall — any non-supporting wall constructed of any material that skirts a structure.

Department—the Louisiana Department of Agriculture and Forestry.

Direct Supervision—physical contact at least twice within five consecutive working days by a licensee with all employees registered under his supervision, including giving routine and/or special instructions, prescribing pesticides, calculating volume of pesticides to be applied, calibrating equipment and being available, whenever and wherever needed, to handle any emergency situations which might arise (see definition of *availability* in §101).

Director—the director of the Division of Pesticide and Environmental Programs or his duly authorized representatives acting at his direction.

Division—the Department's Division of Pesticide and Environmental Programs.

Employee—any person employed by a permittee and working under the supervision of licensee with the exceptions of clerical, janitorial or office maintenance employees or those employees performing work completely disassociated with the use of pesticides, the control and inspection of insects, pests, rodents and the control of and inspection for wood-destroying insects.

Fumigation—the application of a fumigant in residential and commercial structures, ships, railcars, trucks, commodities such as dunnage on wharves, silos or conveyors, vaults or the like.

Gas—matter in a vapor state which diffuses readily and is capable of indefinite expansion in all directions moving from an area of high concentration toward an area of lower concentration. Aerosols should not be confused with gas as they are particulate suspensions.

Household Pest—all species of insects and other pests which infest residences and other types of buildings and their immediate premises, such as cockroaches, flies fleas, mosquitoes, clothes moths, spiders, carpenter ants, carpenter

bees, rodents and so forth, but does not include wood-destroying insects.

Label—the written, printed or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.

Labeling—all labels and other written, printed or graphic matter:

a. accompanying a pesticide or device at any time; or

b. to which reference is made on the label or in literature accompanying the pesticide or device, provided that the term does not apply to current official publications of the EPA; the U.S. Departments of Agriculture, Interior or Health, Education and Welfare; state experiment stations; state agriculture colleges; and other similar federal and state institutions and agencies authorized by law to conduct research in the field of pesticides.

License—a document issued by the commission which authorizes the practice and/or supervision of one or more phases of structural pest control work as follows:

a. *General Pest Control*—the application of remedial or preventive measures to control, prevent or eradicate household pests by use of pesticides used as sprays, dusts, aerosols, thermal fogs, barriers, traps and baits. Residential rodent control will be limited to the use of anticoagulant rodenticide and traps;

b. *Commercial Vertebrate Control*—the application of remedial or preventive measures to control, prevent or eradicate vertebrates, including baits, chemicals, barriers, gases and traps, in nonresidential establishments, but not including tarpaulin fumigation;

c. *Termite Control*—the application of remedial or preventive measures for the control, prevention or eradication of termites and other wood-destroying insects and the inspection of structures for wood-destroying insects;

d. *Fumigation*—the use of lethal fumigants and/or rodenticides in a gaseous form for the control, prevention or eradication of insect pests, rodents, or other pests in a sealed enclosure with or without a tarpaulin;

e. *Wood Destroying Insect Report (WDIR) Inspector*—the application of remedial or preventive measures for the control, prevention or eradication of termites and other wood-destroying insects and the inspection of structures for wood-destroying insects.

Licensee—the person who holds a valid license as herein provided.

Material Safety Data Sheet (M.S.D.S.)—a document which states chemical characteristics and safety precautions regarding a specific chemical.

Non-Residential Establishment—includes, but shall not be limited to, hotels, motels, schools, hospitals and nursing homes.

Permittee—any person who holds a place of business permit issued by the commission.

Pest Control Operator—any person conducting or performing structural pest control.

Place of Business—the entire premises to which the public generally is expressly or impliedly invited for the purpose of transacting business with the owner and is simply a location where business is transacted, or a shop, office, warehouse or commercial establishment, and shall be

indicated on the application and the license permit and any license issued for that place of business.

Registered Employee—an employee registered as provided by this Chapter.

Registered Wood Destroying Insect Report (WDIR) Technician—an employee qualified to conduct wood destroying insect report inspections.

Registration Certificate—a document issued by the commission staff to a non-licensed employee of a business engaged in structural pest control work.

Repellents—substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but generally employed because of their capacity for preventing the entrance or attack of pests.

Residential Structure—any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not, such as, single-family homes, multi-family, apartments, townhouses, condominiums, and/or co-ops but excludes any structure built for the temporary residence of a human such as hotels, motels.

Secretary or Secretary of the Commission—the Assistant Commissioner of Agricultural and Environmental Sciences (assistant commissioner).

Ship Fumigation—the fumigation of a vessel capable of transporting or housing people and/or products. It is normally self-powered and shall have a crew or living quarters.

Spot Treatment (when used in reference to termite control work)—a localized application of chemicals or other substances to control, prevent or eradicate termites in a residence or other structure that is not under a current contract.

Structural Fumigation—the fumigation by covering or sealing churches, schools, homes or any other buildings in which people are normally housed or work or is frequented by people. This also includes the covering or sealing of small boats or ships under 100 feet.

Termites—all species of the order *Isoptera* which infest timbers and/or other materials containing cellulose in buildings and/or contents thereof, subdivided into two groups according to their habits, as follows:

a. *Subterranean Termites*—all species of termites which make tubes, but not pellets, and normally require contact with soil; especially species of the genera *reticulitermes* and *coptotermes*;

b. *Dry-Wood Termites*—all species of termites which make pellets, but not tubes, and do not require contact with damp soil; especially species of the genera *kaloterms*, *cryptotermes* and *incisitermes*.

Termiticide—any substance applied to buildings, wood products or soil for the treatment of termites.

Termiticide Treatment—application of a termiticide.

a. *Pre-Construction Treatment*—a termiticide treatment for subterranean termites made with a commission approved termiticide prior to the stage of construction where a slab or concrete is poured or piers are being built or placed into position. Borate treatments during any stage of construction shall be considered a pre-construction treatment.

b. *New-Construction Treatment*—a termiticide treatment made with any commission approved termiticide(s) or baiting system that meets minimum specification requirements for that type of treatment and which is applied or installed during or after the stage of construction where a slab or concrete is poured or piers are being built or placed into position and up to 12 months after completion of construction. New-construction treatments are to be made in accordance with the post-construction treatment section of termiticide labels.

c. *Post-Construction Treatment*—a termiticide treatment made with any commission approved termiticide(s), using the post construction section of a label, which is applied after the time frame of new-construction.

Vertebrate—those pests, such as rodents, bats and birds, belonging to the phylum vertebrata.

Violation—any act which is prohibited by the Act or any of these rules and regulations. Violations shall be classified in accordance with degree of severity, as follows:

a. *Minor Violation*—any act prohibited by the Act or these rules and regulations which does not result in danger to human health or damage to personal property, including, but not limited to, clerical errors or failure to make timely reports to the commission;

b. *Moderate Violation*—any act of negligence in meeting the guarantees of an agreement for structural pest control work in the licensure phase where the violation occurs, such as failure to apply chemicals in accordance with label and labeling requirements and minimum specifications:

c. *Major Violation*—any act which may adversely affect human health and safety. Any act performed without having the proper permit, license, or registration; any intentional misrepresentation of any matter involved in or related to structural pest control work; or any false or misleading statement knowingly made in a wood-destroying insect report or any failure to timely pay any civil penalty imposed by the commission or any failure to timely pay any fee collected by the department.

Wood Destroying Insect Report—any document approved by the Structural Pest Control Commission issued by a pest control operator which pertains to wood-destroying insects, but not including a bid, a proposal or a contract for any structural pest control services.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:796 (May 2006), repromulgated LR 32:1015 (June 2006), amended LR 33:39 (January 2007), LR 35:204 (February 2009), LR 35:1468 (August 2009), LR 36:

§103. Administration of the Affairs of the Commission; Adoption of Rules and Regulations

A. As provided by R.S. 3:3364, the commissioner or his designee shall serve as permanent chairman of the commission.

B. The assistant commissioner shall serve as secretary of the commission.

C. In the absence of the chairman, the secretary shall preside at meetings of the commission.

D. The chairman shall designate a hearing officer, who may or may not be a member of the commission, to preside at all adjudicatory proceedings of the commission.

E. The commission shall serve as the hearing body in all adjudicatory proceedings and shall make the final decision with regard to the disposition of matters coming to adjudication.

F. The commission shall hold regular meetings at least once during each quarter.

G. Meetings of the commission shall normally be held in the domicile of the commission.

H. Meetings may be held at locations other than the domicile of the commission upon the determination of the chairman or at the written request of any three members of the commission.

I. Special meetings of the commission may be called at any time by the chairman.

J. Whenever at least three members of the commission desire to call a special meeting, the three members shall so advise the chairman in writing and the chairman shall call a special meeting to be held within 30 days after receipt of the members' request.

K. If the chairman fails or refuses to call a special meeting upon the proper request of three members, the members may convene a special meeting of the commission by written notice to the remaining members.

L. The secretary shall notify each member of the commission by in writing or by electronic means of any regular or special meeting at least one week prior to the meeting date.

M. The secretary shall provide clerical and other support services as may be required by the commission and shall maintain and distribute appropriate minute records of all meetings of the commission.

N. There shall be no voting by proxy.

O. Three members of the commission shall constitute a quorum, and no action shall be taken without three votes in accord.

P. Rules and regulations of the commission, and amendments thereto, shall be noticed, adopted and promulgated as required by the Administrative Procedure Act.

Q. In addition to the requirements of the Administrative Procedure Act, the commission shall also provide prior written notice of any public hearing for consideration for adoption and/or amendment of any rules and regulations to all licensees at the last address reported by each licensee at least seven days prior to any such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3363, R.S. 3:3364 and R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:325 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 20:644 (June 1994), LR 35:204 (February 2009), LR 36:

§105. Permit for Operation of Structural Pest Control Business; Changes in Structural Pest Control Business

A. Every place of business engaged in structural pest control work shall:

1. obtain a permit for operation from the commission prior to engaging in structural pest control work.

2. provide a certificate of insurance on a document provided by the department including but not limited to the following information:

a. not less than \$250,000, general liability coverage, per occurrence for the following:

i. all work performed under specific structural pest control license phases;

b. not less than \$100,000 coverage for property damage;

c. or combined single limits of \$350,000;

d. definitions for purposes of this Section:

i. *Public Liability*—general liability;

ii. *Accident*—occurrence;

e. provide at least 10 days prior written notice to the commission before cancellation and 10 days written notice to the commission when paid claims reach or exceed the aggregate limit.

3. Provide evidence of a surety or fidelity bond on a form provided by the department covering the business with which the applicant is connected, issued by a bonding, surety or insurance company authorized to do business in Louisiana, in the amount of \$2,000, of tenor and solvency satisfactory to a majority of the commission. An applicant who is not connected with a business covered by the required surety or fidelity bond shall secure the appropriate coverage prior to issuance of the license.

B. No permit for operation shall be issued by the commission unless there is a licensee for each phase of structural pest control work being conducted who is domiciled and designated as the primary licensee at the business location for which the permit is sought.

C. Each permit for operation shall be renewed annually, on or before June 30 of each year.

D. The fee for issuance of a permit for operation shall be \$125 for firms which employ two or less employees and \$175 for firms which employ three or more employees.

E. When two or more businesses which are separate legal entities, even though owned by the same individual or the same legal entity, are operated at one physical location, each separate entity shall obtain a permit for operation.

F. Whenever a license is suspended or revoked under §131, the commission may also revoke the permit to operate. In such cases, the commission shall recall the permit and require the licensee to immediately return the permit to the commission.

G. Whenever a permit is recalled by the commission as provided in §105.F, no structural pest control work of any kind shall be provided by persons domiciled at the location for which the recalled permit has been issued.

H. Except as provided in this Subsection, any change in the status of a permittee (e.g., death, retirement, prolonged illness, merger, sale, change of ownership, etc.) shall be reported to the commission, in writing, within 14 days after the change in status occurs.

1. If the change in the permittees status would result in the non-renewal of the place of business permit or would require the commission to issue a new place of business permit, then the notice shall be accompanied by the following information:

a. the reason for the change in the status and the effective date of the change;

b. the status of all licensee(s) and registered and certified technicians;

I. If a permittee sells or otherwise transfers any wood destroying insects contract then the commission and each customer whose contract was sold or transferred shall receive the following written notification.

1. The selling or transferring permittee and the person purchasing or receiving the wood destroying insects contract shall each provide the commission in writing the following information and statements.

a. If all the wood destroying insects contracts of the permittee selling or transferring such contracts are being purchased or transferred then a statement that all wood destroying insects contracts are being sold or transferred and that all the contracts shall remain in full force and effect in accordance with the terms and conditions of the customers' contracts shall be sufficient.

b. If all the wood destroying insects contracts are not being sold or transferred then the information provided to the commission shall include:

i. a statement that all wood destroying insects contracts are being sold or transferred except for the specific contracts listed;

ii. a list of the specific contracts that are not being sold or transferred;

iii. for each contract being sold or transferred, a statement that all contracts being sold or transferred shall remain in full force and effect in accordance with the terms and conditions of the customers' contracts.

2. The person acquiring a wood destroying insects contract by a sale or transfer shall notify the customer in writing, within 30 days after the sale or transfer of:

a. the effective date of the sale, transfer, or change in status; and

b. the name, address, and telephone number of the person acquiring the customer's wood destroying insects contract;

c. a statement that the customer's contract shall remain in full force and effect in accordance with the terms and conditions of the contract.

J. A permittee who is closing his business or is otherwise not going to honor or service existing wood destroying insects contracts shall, within 14 days of the time of the close of business or ceasing to honor or service existing wood destroying insects contracts shall provide certified written notification of the decision to affected customers along with the following information:

1. the commission's address and telephone number;

2. the date of closure or last date the contract will be honored or serviced;

3. a statement of bond coverage; and

4. the bond company's name, address, telephone number, and contact person.

K. Any person who fails to comply with the provisions of this Section shall personally come before the commission prior to that person being granted a registration, certification, license, or permit, or renewal thereof. The commission may deny or defer action on a request to grant a registration, certification, license or permit, or renewal thereof. The

commission may deny a renewal or impose civil penalties for violation of this Section only after the person has been brought to an adjudicatory proceeding and found guilty of violating the provisions of this Section.

L. All information and all documents relating to written contracts transmitted to the commission in accordance with the requirements of this Section shall be confidential and shall be exempt from the Public Records Law, R.S. 44:1 et seq., as provided in R.S. 3:3370.E.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:325 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), LR 33:40 (January 2007), LR 36:

§107. License to Engage in Structural Pest Control

Work Required

A. No person shall perform structural pest control work until licensed and permitted to do so by the commission.

B. Each applicant for license shall possess one of the following qualifications in order to take the examination(s):

1. general pest control, commercial vertebrate control and fumigation:

a. a degree from an accredited four-year college or university with a major in entomology; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

c. four years of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

d. four years of experience as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission;

2. termite control:

a. a degree from an accredited four-year college or university with a major in entomology and complete a commission approved comprehensive termite program; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a commission approved comprehensive termite program; or

c. four years of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a commission approved comprehensive termite program; or

d. four years of experience as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations and complete a commission approved comprehensive termite program. Experience with

an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission.

C. Each applicant for a ship fumigation license shall possess one of the following qualifications in order to take the examination:

1. a degree from an accredited four-year college or university with a major in entomology and 200 jobs in ship fumigation working under the supervision of a licensed ship fumigator; or

2. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in ship fumigation; or

3. four years of experience as a registered technician under the supervision of a licensee in ship fumigation; or

4. experience as a certified ship fumigation technician having completed 200 jobs in ship fumigation working under the supervision of a licensed ship fumigator; or

5. four years of experience as a technician under the supervision of a structural pest control operator in another state in ship fumigation. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission; or

6. 200 jobs in ship fumigation that the applicant has worked as a registered technician in ship fumigation working under the supervision of a licensed ship fumigator, during a two-year period.

D. Each applicant for licensure shall also demonstrate the following competencies:

1. knowledge of the practical and scientific facts underlying the practice of structural pest control, control of wood-destroying insects and/or fumigation; and

2. knowledge and ability to recognize and control hazardous conditions which might affect human life or health.

E. Each applicant shall successfully complete the appropriate examination for certification prior to issuance of the structural pest control license.

F. In addition to the qualifications required by §107.B-C, each applicant for licensure ~~must~~ shall:

1. submit a complete application for examination as required by §109 hereof;

2. be approved by the commission to take the examination for licensure;

3. have successfully completed a written examination for licensure no more than two years prior to the date of issuance of the license;

G. Out-of-state applicants for licensure shall meet the educational requirements shown in Paragraph B.1 or produce evidence satisfactory to the commission of four years of experience under the supervision of a recognized and reputable pest control operator. Experience in pest control work in another state will be verified with the appropriate regulatory agency of the other state before out-of-state applicant will be allowed to take the examination for licensure in Louisiana.

H. The commission shall consider each application for examination for licensure in open session. The commission may verify the contents of any application prior to taking final action to approve/disapprove the applicant to take the examination. The commission may disapprove an applicant,

or defer action on the application to take the examination, in any instance when the contents of the application cannot be verified. Action to grant/deny approval for the applicant to take the examination shall be taken only upon the affirmative vote of three members of the commission. No license shall be issued until the commission has approved the application.

I. All applicants who are approved by the commission will, upon successfully completing the examination for licensure as set forth in §109 hereof, receive a single license to engage in structural pest control work, which license shall specify on the face thereof the specific phase or phases of structural pest control work for which the license is issued, as follows:

1. general pest control;
2. commercial vertebrate control;
3. termite control;
4. structural fumigation;
5. ship fumigation;
6. commodity fumigation.

J. A license to engage in structural pest control work is permanent unless suspended or revoked by the commission as provided in §131.

K. A licensee shall perform or supervise structural pest control work only in the phase or phases of the license for which he is licensed by the commission.

L. Each license is personal to the holder and shall not be transferred to another for any purpose or for any period of time and may not be utilized in any way by any person other than the licensee whose name appears on the face of the license.

M. All licenses shall be displayed at the place of business at all times.

N. The commission may deny a license to any person proven to have committed any of the violations set forth in §127 hereof.

O. A licensee approved in one phase of pest control work may be licensed in additional phases by successfully completing the examination for the additional phase. However, the license for additional phase or phases of structural pest control work shall not be issued until the commission approves the licensee to take the examination for the additional phase or phases.

P. Any permittee/licensee desiring to utilize a telephone answering service other than at locations holding a place of business permit shall submit a written department.

Q. A licensee shall only have one license with all phases for which he possesses issued at one place of business.

R. When a license phase has not been recertified, the licensee shall comply with all requirements for initial licensing contained in §107 and §109 or in a written request to the department to retest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:955 (November 1989), LR 19:1009 (August 1993), LR 23:855 (July 1997), LR 23:1493 (November 1997), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 31:2761 (November 2005), amended by the Department of Agriculture and Forestry,

Structural Pest Control Commission, LR 32:796 (May 2006), repromulgated LR 32:1016 (June 2006), amended, LR 36:

§109. Application for Examination; Contents of Application

A. An application for examination for licensure may be made at any time by filing a complete application, on forms provided by the commission.

B. A complete application for examination shall be filed in the commission office at least 30 working days prior to any scheduled meeting of the commission to be routinely placed on the agenda for consideration by the commission.

C. Each applicant for examination shall pay a nonrefundable fee of \$50 per examination upon the commission's approval of the applicant's application for examination.

D. Each application for examination shall contain the following information:

1. business name, address and phone number of the business domicile of the applicant;

2. name and residence address of the applicant;

3. educational qualifications. For applicants seeking licensure on the basis of educational qualifications, a certified copy of the applicant's college or university transcript shall be provided;

4. proof of practical experience in pest control work:

a. upon request of the commission, the applicant shall submit from the said supervising licensee, a written statement that the jobs have been participated in by the applicant under his supervision and that the applicant has demonstrated the requisite knowledge to perform and supervise such work;

b. experience in pest control work. Information to be provided includes, but is not limited to, business name and address where employed under supervision, name of the licensee providing supervision to the applicant and evidence of registration while in the claimed employment. Applicants seeking licensure on the basis of experience shall provide a notarized statement from the licensee who supervised the applicant, attesting to the period of supervised employment and the capacity in which the applicant was employed, said affidavit to be executed on a form to be provided by the department;

c. if at the time of application, the licensee who provided supervision is deceased, his whereabouts are unknown, or fails or refuses to supply the statement, affidavit, or both, required under Subparagraphs a and b above, then the commission may waive the requirements for such statement, affidavit, or both upon:

i. submission by the applicant of a notarized statement signed by the applicant that the licensee who provided supervision is deceased, his whereabouts are unknown, or fails or refuses to supply the statement, affidavit, or both, required under Subparagraphs a and b above, and

ii. verification by the department to the commission of the applicant's experience in pest control work.

E. Any applicant who is not approved by the commission to take the examination will be notified of the commission's decision. An applicant who has not been approved by the commission to take an examination will not be admitted to the examination.

F. Copies of applications for examinations may be provided to the commission members for informational purposes during the interim between commission meetings.

G. Examinations will be given once during each quarter of the year by the director or the secretary only at the times or places which have been previously announced for each quarter.

H. The written examination shall be supplemented by oral examination and/or visual identification of specific pests and insects.

I. The minimum score required for successful completion of the examination is 70 percent.

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

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

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

i. The appeal shall be in writing, state the grounds for the appeal, and filed with the director or secretary within 30 days of the date of the action complained of.

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

iii. The appeal will be decided by the commission. The decision of the commission shall be the final administrative decision in the matter.

iv. An appeal from the decision of the commission shall be in accordance with the Administrative Procedure Act.

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

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

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

K. Each applicant shall be sent written notification of his or her examination results within 30 days after completing of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:955 (November 1989), LR 35:206 (February 2009), LR 36:

§111. Certified Fumigation Technician

A. A mandatory two-year registered technician in the fumigation phase under a licensed fumigator, as is required. After the two years, the licensed fumigator would have to submit a list of the following:

1. six jobs in structural fumigation that this particular applicant has worked from start to finish;

2. six jobs in commodity fumigation that this particular applicant has worked from start to finish;

B. Having met these requirements in §111.A, the applicant would be qualified to take a written test administered by the commission to demonstrate that the person has the necessary knowledge in the category or categories for which application is made. The minimum score required for successful completion of the examination is 70 percent.

C. The certified fumigation technician shall maintain his registration in current status by:

1. attending a continuing education program at least once every three years;

2. the continuing education program shall contain a minimum of six hours of technical training for the category of fumigation;

3. shall attend the entire approved continued education program for technicians, otherwise the certified fumigation technician would not maintain his registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3369.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, amended LR 17:251 (March 1991), LR 19:1010 (August 1993), LR 36:

§113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration

A. The permittee shall register, on a form to be provided by the commission, every employee under the supervision of a licensee with the commission within 30 days after the commencement of the employee's employment and shall test as required by R.S. 3:3369.H.

B. The registration application of each employee shall contain the following information:

1. name and address of the business location where the employee is domiciled;

2. name, address and phone number of the licensee providing supervision over the employee;

3. name and residence address of the employee to be registered;

4. phase(s) of pest control work in which the employee will work and be supervised;

5. date of employment of the employee;

6. one (2 inches by 2 inches) photographs of the employee; and

7. date of birth.

C. The fees for the registration of technician shall be as follows.

1. The fee of the administrative processing of the registration certificate shall be \$20. This fee shall be paid at the time of initial registration.

2. The administrative processing of change of registration each time a registered technician is employed by a different pest control operator shall be \$10.

3. The fee for the examination for the technician registration shall be \$25.

D. An employee's registration certificate shall be issued within 20 working days after the department receives the completed registration form or the technician has successfully passed the examination, whichever is later.

E. The requirements for the examination are as follows.

1. Each employee requesting to take the examination will be notified by the department of the date, time, and location of the next available examination.

2. The minimum score required for successful completion of the examination is 70 percent.

3. The consequences and procedures that apply as a result of cheating on an examination or using any written materials, electronic devices, or other means during an examination, which have not been authorized or allowed by the director or person administering the examination are the same as are provided for in §109.J of this Chapter.

4. Each employee who did not successfully pass the examination will be notified of the results in writing within twenty working days after the examination.

F. Each registration certificate is personal to the holder and shall not be transferred to another for any purpose or for any period of time and shall not be utilized in any way by any person other than the registered employee whose name appears on the certificate.

G. A registration certificate is valid only while the registered employee remains under the supervision of a licensee at this place of business.

H. The permittee\licensee shall require the registered employee to sign the registration certificate, in his presence, within five days after the permittee\licensee receives the registration certificate.

I. A registered employee shall have his registration certificate in his possession at all times while engaging in pest control work and shall display his registration certificate upon reasonable request by any employee of the department and to any person for whom pest control work is being performed.

J. A registered employee shall perform pest control work only in the phase of pest control work for which he is registered.

K. Upon termination of a registered employee, the licensee shall secure the employee's registration certificate, notify the department of the employee's termination and return the registration certificate to the department within five working days after the termination.

L. If the licensee is unable to retrieve the registration certificate of a terminated employee, the licensee shall notify the department of the employee's termination within five working days after the termination and provide written reasons for the failure to retrieve the terminated employee's registration certificate.

M. Each employee and/or registered technician shall remit to each employer all funds collected in connection with structural pest control work performed by the employee within 10 calendar days.

N. Each employer shall pay each employee and/or registered technician in accordance with the terms of the employment agreement between them.

O. Each employer shall keep complete records at the place of business establishment of all structural pest control work performed for a period of at least two years. These records shall include the address of the structure treated, the name of the technician who performed the treatment, the name of the person for whom the treatment was performed, and the common name of the pesticide applied.

P. Each registered technician shall participate in an entire continuing education program as a condition of maintaining his or her status as a registered technician at least once annually (July 1 to June 30).

1. Each continuing education program, minimum of four hours of technical training, shall be approved in advance by the department.

2. Each continuing education program shall be a minimum of one hour in length per category.

3. Documentation of the technician attendance and participation shall be forwarded to the department and a copy retained at the technician's place of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366, 3:3368 and R.S. 3:3369.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 32:797 (May 2006), repromulgated LR 32:1016 (June 2006), amended LR 35:207 (February 2009), LR 36:

§115. Certified WDIR Technician

A. Requirements of a Certified WDIR technician, prior to conducting WDIR inspections, are as follows:

1. shall be registered as a termite technician; and
2. complete department approved WDIR training; and
3. pass WDIR technician test with a score of 70 or greater; and

4. pay the fee for the examination for the WDIR technician registration which shall be \$25; and

5. complete application form provided by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3369.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:855 (July 1997), amended LR 32:797 (May 2006), repromulgated LR 32:1016 (June 2006), amended LR 36:

§117. Obligations of the Licensee\Permittee

A. The permittee or the primary licensee shall keep the bond and general liability insurance required under §107.F in full force and effect at all times.

B. The permittee or the primary licensee shall renew the permit for operation for each business location annually prior to June 30.

C. The permittee or the primary licensee shall apply for a registration certificate for each employee under his supervision within 30 days after the employee is hired and shall comply with all other requirements pertaining to registration of employees set forth in §113.

D. The primary licensee shall be responsible for training the employee in the kind of work which he will perform.

E. Maintenance of a commercial applicator certification by a licensee

1. A licensee shall maintain his commercial applicator certification in current status by:

a. attending a continuing educational program for recertification approved by the department;

b. recertification at least once every three years; such recertification shall be completed by December 31 of the year preceding the third anniversary of either the original certification or the most recent recertification;

c. a minimum of six hours of technical training which shall include but not limited to the phases of general pest control, termite control and commercial vertebrate control;

d. a minimum of six hours of technical training for the category of fumigation.

2. A licensee attending an approved recertification seminar shall attend the entire approved program; otherwise the licensee shall not be recertified at this approved seminar.

3. Time and location for each licensee recertification can be obtained by calling or writing to the department.

F. A licensee shall be available to provide direct supervision over all employees registered under his license on a regular, ongoing basis.

G. The permittee or the primary licensee shall report all termite contracts and all wood-destroying insect reports and pay all required fees as set forth in §119 hereof.

H. Any person applying pesticides for a fee and the permittee or the primary licensee shall maintain records according to LAC 7:XXV.117.I, at the physical address listed on the place of business permit of all applications of pesticides on a record keeping form or in a format approved by the director of Pesticide and Environmental Programs of the department. These records shall be retained for a period of two years after the date of the pesticide application for ship and commodity fumigation, general pest control and commercial vertebrate control and a period of two years after the expiration of applicable contracts for termite and other wood destroying insect control. The licensee shall make a copy of these records available to any employee of the department for inspection at a reasonable time during normal working hours.

1. Records for applications of pesticides for wood destroying insects shall contain the following information:

- a. place of business name, address, and number;
- b. primary licensee name, address, and department I.D. number;
- c. customer name and address;
- d. location of application;
- e. product\brand name;
- f. EPA registration number;
- g. restricted\general use pesticide;
- h. application date and time;
- i. target pest;
- j. type of application (pre-treat, post, spot, etc.);
- k. size of area treated (square feet or linear feet);
- l. mixture concentration;
- m. total amount of product mixture applied;
- n. applicator and department I.D. number.

2. Record keeping for applications of pesticides in the general pest and commercial vertebrate phases shall contain the following information:

- a. place of business name address, and number;
- b. primary licensee name, address, and certification department I.D. number;
- c. customer name and address;
- d. location of application;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated/type of application;
- j. mixture concentration (percent);
- k. applicator and department I.D. number.

3. Records for applications of pesticides in the fumigation phase shall contain the following information:

- a. place of business name, address, and number;
- b. primary licensee name, address, and department I.D. number;
- c. customer name and address;
- d. location of application;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated;
- j. type of application (ship, structure, commodity);
- k. size of area treated (cubic feet);
- l. rate applied;
- m. total amount of product applied;
- n. applicator, department I.D. number.

4. Records for using bait and baiting systems shall contain the following information:

- a. place of business name, address, and phone number;
- b. primary licensee name, address, and department I.D. number;
- c. customer name and address;
- d. physical address of contracted structure;
- e. product\brand name;
- f. EPA registration number;
- g. restricted\general use pesticide;
- h. linear feet of perimeter of the treated structure(s);
- i. date each monitoring stations installed or inspected;
- j. date each ground bait station installed, inspected or replaced;
- k. date each above ground bait station installed, inspected or replaced;
- l. number of monitoring, ground and above ground bait stations inspected during each inspection;
- m. name and certification\registration number of person inspecting;
- n. inspection diagram.

I. The licensee shall renew each category in which he is licensed annually by June 30.

J. The annual fee for licensed pest control operators shall be \$5 for each category in which the pest control operator is licensed.

K. The permittee or the primary licensee shall report to the department all termite contracts, termite perimeter

applications and wood destroying insect reports completed each month on the form provided by the department. The reports listed above are due in Division of Pesticide and Environmental Programs office in Baton Rouge on or before the tenth of the month following the contract or application or report.

L. The fee for each standard contract and wood-destroying insect report that has been issued is \$8. All such fees are due and payable to the department at the time the reports required by §119.E are due.

M. The permittee or the primary licensee shall have provisions for spill control including materials and tools on every vehicle transporting pesticides.

N. Signage of Vehicles

1. General. A motor vehicle being operated by a place of business that is engaged in the transport or application of pesticides shall be marked as specified below:

- a. magnetic or removable signs may be used;
- b. size, shape, location and color of marking. The marking shall contain the following:
 - i. appear on both sides of the vehicle;
 - ii. be in letters that contrast sharply in color with the background;
 - iii. be readily legible during daylight hours;
 - iv. lettering shall be a minimum of 2 inches in height;
 - v. be kept and maintained in a manner that retains the legibility of the information required by §117.O.1.c;
- c. nature of marking. The marking shall display the following information:
 - i. the name or trade name of the place of business operating the vehicle.

O. No employee shall use a telephone number, advertise or solicit business unless approved, in writing, by the permittee or licensee and reported in writing to the department.

P. The pest control operator shall record the nature of the completion and the date of completion that construction of a structure is completed, as found in §101.B within the definition of *construction*, and maintain the date as part of the application records.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), LR 29:1062 (July 2003), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 31:2761 (November 2005), LR 35:1468 (August 2009), LR 36:

§119. Contracts for Termite Control Work

A. The permittee or a licensee shall enter into a written contract for termite work with the property owner/agent employing him. The contract shall:

1. be in a form provided or approved by the commission;
2. guarantee performance for a period of not less than 1 year after the treatment is made;

3. guarantee treatment of the structure(s) in accordance with minimum specifications for termite control work set forth in §141 hereof;

4. provide for at least one inspection of all unobstructed or accessible areas outside of the structure(s) prior to expiration of the agreement;

5. include an inspection diagram;

6. provide for the treatment of all subterranean termites; and

7. include a damage repair warranty and be exclusive to the property owner for 5 years subject to the terms and conditions of the contract, if the contract is for pre construction or new construction termiticide treatment.

B. Each contract for termite control work shall cover only one unit or one individual property, provided that the contract may include a garage appurtenant to the unit or individual property.

C. Contracts for spot termite treatments shall guarantee the area treated for a period of one year.

D. The permittee or a licensee shall report to the commission, no later than the tenth day of each month, each termite contract and initial treatment for a pre-treatment contract for termite work which he has entered into, and performed or completed during the previous month. If no contracts were entered into or performed during the previous month, the permittee or a licensee shall report this fact to the commission no later than the tenth of each month.

E. A licensee or permittee shall pay to the department the required fee for each standard contract issued when the required monthly report is filed with the department.

F. Termite treatment contracts that include termite monitoring stations shall include a contract addendum that provides the number of monitoring station(s) and the frequency of inspection(s). The contract addendum shall be approved by the commission prior to its use.

G. A licensee or any technician working under the licensee's supervision shall enter into a written agreement for monitoring for subterranean termites with the structure owner/agent employing him/her, which agreement shall:

1. be in a form approved by the commission;
2. provide for the frequency of inspections that shall include at least one inspection of the structure prior to expiration of the agreement;
3. provide for the number of subterranean termite monitoring station(s);
4. provide for the owner name, address, city, state, zip code of the structure;
5. provide the name, address, city, state, zip code of the pest control company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and R.S. 3:3370.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 26:2437 (November 2000), LR 27:1179 (August 2001), LR 27:2084 (December 2001), LR 28:1171 (June 2002), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 30:1144 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture

and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 35:1468 (August 2009), LR 36:

§121. Wood Destroying Insect Report

A. A wood destroying insect report approved by the commission shall be issued when any inspection is made to determine the presence of wood destroying insects, specifically for acts of sale of structures, but not limited for this purpose.

B. Any wood destroying insect report or written instrument issued for the transfer of real property shall be issued by a person who is licensed by the commission in termite control or a certified WDIR technician, and is working under the supervision of a person who is licensed by the commission in termite control. This instrument shall carry a guarantee that the property will be treated without charge should live wood destroying insects with the exception, the presence of frass will be acceptable as evidence of a live infestation of powder post beetles; however, frass shall be exuding or streaming from the holes on the outside of the wood, covered by this report, and be found within 90 days from date of inspection.

1. A contract approved by the commission shall be issued on date of treatment.

2. This contract shall be reported to the commission and a fee paid as required by the Structural Pest Control Law.

C. Regulations for completing wood destroying insect reports LPCA-143 WDIR without the Arbitration clause and 143 A. with the Arbitration clause. The following numbered sections correspond to the numbered sections on WDIR Form LPCA 143 and 143 A. LPCA 143 and 143 A shall be completed as follows.

1. Enter HUD/FHA/VA Case number (if available).
2. Enter date of structure(s) inspection.
- 3.A. Enter name of inspection company.
- 3.B. Enter address (including street, city, state, and zip code) of inspection company.
- 3.C. Enter telephone number (include area code) of inspection company.
4. Enter pest control inspector license number.
- 5.A. Enter name and address of property owner\seller at the time of inspection.
- 5.B. Enter address of property inspected (including street, city, state, and zip code).
- 5.C. List only structures located at address in 5B that are part of this report.
- 5.D. Information only. This area shall not be checked, circled or marked in any way.
6. If any areas of the structure(s) were obstructed or inaccessible mark box YES. If no, mark box NO.
7. Check the appropriate block as to the construction of the structure(s) inspected. More than one block can be checked.
- 8.A. Check this block only when there is no visible evidence of wood destroying insects in accessible areas on the structure(s) inspected. Evidence includes but is not limited to: live or dead wood destroying insects, wood destroying insect parts, shelter tubes, shelter tube stains, frass, exit holes or damaged wood due to wood destroying insects.
- 8.B. Check this block if evidence of wood destroying insects is observed. Evidence includes but is not limited to: live or dead wood destroying insects, wood destroying insect parts, shelter tubes, shelter tube stains, frass, exit holes or evidence of damage due to wood destroying insects. If live wood destroying insects are observed, identify and list the insect(s) observed and the location(s) in this Section.
- 8.C. Check this box if visible evidence of damage due to wood destroying insects was observed. Evidence of damage is defined as obvious feeding or removal of wood by wood destroying insects including "etching" or "scabbing" marks on

the wood surface(s). Identify the wood destroying insect and list the location(s) of evidence of damage caused by wood destroying insects in this Section.

8.D. Treatment was or will be performed by inspection company? YES or No; If YES, explain as follows:

a. Inspecting company with a current treatment contract on the structure(s) inspected: list the original treatment date for all structures treated and the contract type.

b. Inspecting company without a current treatment contract on the structure(s) inspected: list the structure(s) to be treated and the type of treatment and contract.

9. Additional comments (If necessary, continue on reverse side).

10. Make no marks in this section.

11. Do not mark in this section.

a. If any of the conditions listed in this paragraph on the WDIR (LPCA 143 & 143 A) are present under or to within 12 inches of the inspected structure(s), list them in section #10 of this report.

12. Signature and registration\licensee number of inspector conducting the inspection.

13. Enter date of inspector signature.

14. Enter name of person requesting the WDIR (if available).

15. Enter name of person WDIR received by (if available).

16. Title of person in Number 15 (if available).

17. Date of signature of Number 15 (if available).

D. Minimum Specifications for conducting a Wood Destroying Insect Report

1. No person shall conduct a WDIR inspection unless that person is properly licensed in termite control or is a certified WDIR technician.

2. Persons described in LAC 7:XXIII.121.D.1 shall inspect all unobstructed or accessible areas including but not limited to bath traps with visible access, crawl spaces of raised pier construction, and attics having a permanent ladder or staircase specifically to provide access to the attic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and R.S. 3:3670.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:856 (July 1997), LR 24:631 (April 1998), LR 25:235 (February 1999), LR 25:829 (May 1999), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:797 (May 2006), repromulgated LR 32:1017 (June 2006), amended, LR 36:

§123. Change in Status of Licensee

A. Any change in a licensee's status (e.g., death, retirement, prolonged illness, merger of companies, sale, change of ownership, etc.) shall be reported to the commission, in writing, within 14 days after the change in status occurs by the permittee or primary licensee.

B. When any change in status occurs, provisions shall be made for supervision at any location where there is no licensee during the interim until another licensee is approved by the commission for examination. The person in charge of the permitted location where the change in status occurred shall notify the department, in writing, of the name and address of the licensee providing supervision during the interim within 14 days after the change occurs. Supervising licensee shall notify the department of his acceptance of this supervision within 14 days of his acceptance.

C. When the change in status results in no licensee being domiciled at a permitted location, an applicant who is eligible for licensure shall be approved by the commission for examination either:

1. at the next meeting of the commission after the change in status occurs; or

2. within 90 days after the change in status occurs, whichever is later. During this period no use of restricted-use pesticides is permitted.

D. When the change of status is within the same company, there is no grace period.

E. When the death or disability of a licensee occurs, resulting in no licensee being domiciled at the permitted location, the commission may extend the period for qualifying a new licensee for an additional 90 days before revoking or canceling the permit for operation.

F. During the temporary absence of the licensee, the permittee/licensee shall designate another licensee(s), certified in the same categories as the licensee, to perform the duties that require the physical presence of a licensee for a period of time not to exceed 30 days. For the purpose of this Chapter, temporary absence shall mean any absence where the licensee would reasonably be expected to return to his duties. The licensee shall notify the department in writing of any such temporary absence giving the name of the substituting licensee jointly responsible with the licensee, and the dates of the temporary absence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 36:

§125. Inactive Status of License

A. Upon written notice to the commission, any licensee may place his license on inactive status during any period of time when he will not be directly engaged in pest control work.

B. Notice to the commission shall include the period for which inactive status is requested and any information which may support the licensee's request for placement of his license on inactive status.

C. The license of any licensee which has been placed on inactive status shall be maintained in current status as provided in §117.F.

D. The commission may deny or defer action on a request to return a license to active status, regardless of the period of time when the license has been on inactive status, whenever the licensee on inactive status has been proven guilty in an adjudicatory proceeding of any of the violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 36:

§127. Adjudicatory Proceedings of the Commission; Violations

A. The commission may place a licensee/registered employee on probationary status or suspend/ revoke a license/registration certificate by holding an adjudicatory proceeding noticed and conducted in accordance with the requirements of the Administrative Procedure Act and the Structural Pest Control Law.

B. Whenever the commission has reason to believe that a licensee/registered employee has violated any provision of

the Act or these rules and regulations, the commission shall notify the licensee/registered employee, by certified mail, at least 30 days prior to the scheduled hearing date.

C. In addition to providing all information required by the Administrative Procedure Act, the notice required in §125.B shall state that failure to appear at the scheduled hearing may result in the suspension or revocation of the license/registration certificate.

D. The commission may place a licensee/registered employee on probationary status or suspend/ revoke his license/registration certificate when any of the following violations are sustained in a properly noticed adjudicatory proceeding:

1. misrepresentation for the purpose of defrauding;
2. deceiving or defrauding;
3. knowingly making false statements;
4. failure by a licensee to provide true and correct information to the commission;
5. failure to comply with any of the requirements of the Act or these rules and regulations;
6. failure to pay required fees;
7. intentional misrepresentation in an application for license and/or employee registration;
8. conviction in any court of law violations of the Act or of any felony;
9. knowingly permitting any person under the supervision of the offender to violate any provisions of the Act or these rules and regulations;
10. failure to enter into a written contract with the property owner employing the pest control operator for termite work;
11. failure to comply with the minimum specifications for termite control work set forth in §141;
12. failure to follow the label and labeling requirement in the application of any pesticide not specifically covered in §141;
13. failure to maintain required insurance coverages and fidelity or surety bonds in full force and effect;
14. failure to fulfill the terms of any written guarantees or agreements entered into;
15. failure to attend an approved training program for commercial applicator certification during any three-year period and failure to maintain current status as a commercial applicator;
16. knowingly making any false or misleading statement in a wood-destroying report;
17. gross negligence in conducting an inspection or failing to make an inspection prior to issuance of a wood-infestation report; or
18. conviction of a violation or assessment of a civil penalty under FIFRA or Louisiana Pesticide Law;
19. failure of a registered technician to attend an approved training program during any one-year period;
20. failure to maintain proper signage on vehicles or;
21. failure to keep records on all pesticide applications as required by §117.I;
22. operating faulty or unsafe equipment;
23. operating in a faulty, careless, or negligent manner.
24. The intentional misrepresentation is the misrepresentation or suppression of a substantial fact with the intent either to obtain an unjust advantage for any person or to cause a loss or inconvenience to any person. Intentional

misrepresentation may occur through words or actions, or by silence or inaction. The following acts are illustrative of intentional misrepresentation:

a. Failure of a registered technician to report structural pest control work performed by him or to remit any fees for structural pest control work collected by him, to his employer within 10 calendar days after performing the work or collecting the fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3672.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 23:854 (July 1997), LR 36:

§129. Probationary Status of Licensee/Registered Employee

A. A license or registration certification may be placed on probationary status only upon the affirmative vote of three members of the commission at an adjudicatory proceeding noticed and conducted as required under §127.

B. When a minor violation is sustained before the commission in an adjudicatory proceeding, a licensee or registered employee may be placed on probation for a period not to exceed six months.

C. When a moderate violation is sustained before the commission in an adjudicatory proceeding, the licensee or registered employee may be placed on probation for a period not to exceed one year.

D. When multiple violations (i.e., violations of more than one provision of the Act or these rules and regulations or more than one violation of the same provision of law or regulations) are sustained before the commission, the commission shall consider each separate violation and take appropriate action with respect thereto.

E. Whenever any licensee or registered employee is found in an adjudicatory proceeding to have committed a major violation or multiple violations of the Act or these rules and regulations, the commission may suspend or revoke the license/registration certificate without first imposing a period of probation.

F. Any violation of the Act or these rules and regulations during a period of probationary status will subject the offender to more severe penalties, including suspension and/or revocation of his license or registration certificate and/or the initiation of proceedings in a court of competent jurisdiction.

G. If the violations resulting in the imposition of probationary status are corrected during the period of probationary status, the probationary period shall automatically expire, without notice, at the end of the probationary period specified by the commission.

H. If the violations resulting in the imposition of the probationary status are not corrected during such period of probationary status, the commission may either:

1. renew the period of probationary status; or
2. suspend/revoke the license/registration certificate after an adjudicatory hearing noticed and conducted under §127.

I. The licensee/registered employee may continue to work during any period of probationary status.

J. The commission may place a licensee/registered employee on probationary status for one phase of pest

control work for which he is licensed/registered without effect upon any other phase of pest control work for which he is licensed/registered.

K. The commission may place on probation all phases of pest control work for which the licensee/employee is licensed/registered for a violation occurring in only one phase of pest control work.

L. The commission shall notify the licensee/registered employee, in writing, of:

1. the nature of the violations sustained before the commission, including dates and places where the violations occurred;
2. the period of probationary status;
3. the phases of the license/registration certificate affected by the probationary status; and
4. any additional terms and conditions imposed by the commission.

M. A licensee/registered employee may be placed on probationary status for a cumulative total of no more than 24 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3370.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:329 (April 1985); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§131. Suspension/Revocation of License/Registration

A. A license/registration may be suspended/revoked by the commission:

1. only upon the unanimous vote of the commission; and
2. only for a violation of the Act or these rules and regulations sustained before the commission in an adjudicatory proceeding noticed and conducted as required under §127 hereof.

B. The commission may suspend/revoke a license/registration for any major violation without previously imposing a period of probationary status.

C. Any suspension of a license/registration shall be for a specific period of time, and the licensee/registered employee shall be notified in writing of the period of time and any conditions which may be imposed on the reinstatement thereof.

D. In addition to the period of suspension, the commission may impose additional terms and conditions which shall be met before the license/registration will be reinstated.

E. The licensee/registered employee shall not perform any work in any phase of pest control work, including in the case of licensees the supervision of registered employees, when his license/registration for that phase of pest control work has been suspended by the commission.

F. The commission may suspend the license/registration for one phase of pest control work without effect upon any other phase of pest control work for which the licensee/employee is licensed/registered.

G. The commission may suspend all phases of pest control work for which the licensee/employee is licensed/registered for a major violation occurring in only one phase of pest control work.

H. Upon provision of evidence acceptable to the commission, either before or at the expiration date for the period of suspension, that the violations which resulted in

the suspension have been corrected, the suspension may be terminated by the commission.

I. When a license/registration certificate has been revoked by the commission, the license/registration certificate may not be reinstated until such time as the former licensee meets all requirements set forth in §§105, 107, 109 hereof and/or the former registered employee meets all requirements set forth in §113 hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3370.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:329 (April 1985); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§133. Inspection, Taking of Samples

A. During the course of their inspections, inspectors employed by the commission may take soil samples and/or chemical samples of tank mixes and/or rodenticide.

B. Soil and chemical samples shall be properly marked to preserve a chain of custody record and shall be submitted to the laboratory at Louisiana State University for analysis.

C. Results of laboratory analysis of soil and/or chemical samples may be used in adjudicatory proceedings and shall be made available to the pest control operator upon request after the analysis is completed.

D. Samples that are requested by any other person other than for enforcement by the department shall be paid for by the person requesting the chemical sample. The fee shall be \$500 per sample which includes one (1) analysis, ~~plus~~ and the cost for obtaining the samples by the employee of the department.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 36:

§135. Prohibitions

A. A pest control operator shall not engage in any phase of structural pest control work for which he is not specifically licensed by the commission.

B. No person engaged in the sale of products for the eradication of household pests or wood-destroying insects shall demonstrate such products by applying the products to the premises of a customer without first obtaining a license from the commission.

C. No examination for licensure will be given if the applicant is not eligible for licensure on the basis of education and/or experience.

D. No person shall assign a registered licensee\employee to perform structural pest control work in any phase for which he is not licensed or registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3371.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§137. Exceptions

A. These rules and regulations do not apply to the application of pesticides for the control of agricultural pests.

B. These rules and regulations do not apply to any person, firm, partnership, corporation, association or other organization or combination thereof engaged in the manufacturing or selling of products to the general public for the control of household pests and termites, provided that such entities shall not apply such products, by way of demonstration or otherwise, to a customer's premises or offer any services connected with pest control unless licensed to do so by the commission.

C. These rules and regulations do not apply to persons who personally apply pesticides of any kind for the control of household pests or wood-destroying insects on property which they own, rent or lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and R.S. 3:3376.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§139. Complaints against Pest Control Operators

A. Any citizen may file a complaint in writing against any pest control operator by contacting the commission's office.

B. Upon receipt of a written complaint, the commission staff shall:

1. conduct an investigation of the incident involved in the complaint; and

2. inform the pest control operator against whom the complaint has been lodged.

C. Upon completion of the investigation required under §139.B, the commission staff shall notify the complainant and the pest control operator of the results of its investigation when requested in writing.

D. The department may bring any matter arising from a citizen's complaint to an adjudicatory hearing if, in the judgment of the department, the facts established in the investigation required under §139.B warrant such action.

E. In any instance where a citizen feels that the facts of his complaint warrant an adjudicatory hearing by the commission, the citizen may request, in writing, that the matter be placed on the agenda for consideration at the next meeting of the commission, provided that the citizen shall appear and give sworn testimony at such hearing called at the request of the citizen. In any instance where a citizen has filed a written petition for an adjudicatory proceeding but fails to appear, upon proper notice, and give testimony, the commission may cancel such adjudicatory proceedings without action.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§141. Minimum Specifications for Termite Control Work

A. All labels for products used for termite control work shall be registered by the EPA and the department and shall be approved by the commission prior to their use.

1. The department shall issue a listing of product labels approved by the commission for termite control work.

The listing shall become effective upon approval by the commission. The list shall be published in the Potpourri Section of the *Louisiana Register* and shall remain in effect until changed by the commission. The commission may add or delete any product labels from its list. The list shall be published in the Potpourri Section of the *Louisiana Register*. Upon publication of the list all previous listings shall be repealed.

2. The commission's list of product labels shall also contain the chemical concentration at which each product label is approved for usage, and shall be applied in accordance with label and labeling requirements and shall not be applied at any less than label and labeling requirements.

B. Requirements for Trench and Treat. All trenches shall be approximately 4 inches wide at the top angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at the rate and manner prescribed on the label and labeling. Rodding will be acceptable only when trenching will damage irrigation equipment, flowers and/or shrubs.

C. Treatment of Existing Pier Type Construction

1. Access Openings

a. Provide suitable access openings to all crawl-space areas and to all other areas requiring inspection and/or treatment for termites.

b. A minimum clearance of 12 inches from the bottom of the sill.

2. Required Clean-Up

a. Remove all cellulose-bearing debris, such as scrap wood, wood chips, paper, etc., from underneath buildings.

b. Trench, rod and treat any large stumps or roots that are too sound to be removed, provided that such stumps or roots are at least 12 inches from the foundation timbers. Stumps or roots located less than 12 inches from foundation timbers shall be cut off to provide at least 12 inches clearance.

c. Remove all form boards that are not embedded in concrete.

3. Elimination of Direct Contact of Wood with Ground

a. Piers and stiff legs shall have concrete or metal-capped bases extending at least 3 inches above the ground. Pressure-treated piling foundations are exempt from this requirement.

b. Wood parts which extend through concrete or masonry (such as posts, door frames or stair carriages) shall be cut off and set on metal or concrete bases at least three inches above ground level.

c. Wood steps shall be placed on concrete or masonry bases which extend at least 1 inch above ground level, and beyond the steps in all directions. Multiple-course masonry step supports shall be treated as required in §141.C.7.a, b, c and d.

4. Pipes

a. Remove all packing around pipes for a distance of 3 inches above ground level and/or treat according to label and labeling.

5. Skirting and Lattice-Work

a. All skirting and lattice-work shall rest on solid concrete or brick extending at least 3 inches above the outside grade. This base will be trenched and treated.

b. All skirting and lattice-work resting on ground shall be treated by digging trenches below and under the edge of the skirting and lattice; or

c. There shall be at least 3 inches clearance above outside grade if skirting or lattice-work is suspended.

6. Stucco

a. Where stucco extends to or below grade, dig trenches below and under the edge of the stucco and apply chemical as required by label and labeling.

b. Where ground slabs prevent treatment as required in Subparagraph (a) above, drill and treat slab as required by label and labeling. Where slab is drilled the holes shall be no more than 18 inches apart (unless label requires closer distance).

7. Masonry. Apply chemical to all porous areas, cracks and accessible voids in foundation walls, piers, chimneys, steps, buttresses, etc., as follows.

a. Treat all cracks in concrete

b. Drill holes every second mortar joint, a minimum of 3 holes, in all two-course brick foundations (piers, foundation walls, steps, buttresses, L-shaped and T-shaped piers, etc.) and thoroughly treat wall voids. Holes shall be deep enough to reach the center mortar joint and chemical shall be applied under sufficient time and pressure to treat all cracks and voids. Drilling is not required when solid concrete footing extends above grade level or when wall is capped with solid concrete.

c. Drill holes in mortar joints of all three-course brick foundation walls at the end of every second brick to the depth of the end of the second brick. Apply chemical under sufficient time and pressure to treat all cracks and voids.

d. Drill holes into each compartment of the lowest accessible block of hollow concrete (or other lightweight aggregate) blocks and apply chemical into the openings under sufficient time and pressure to treat the area of the bottom of the foundation. On T-shaped or L-shaped piers the connecting mortar joints (crotches) shall be drilled and treated. Drilling is not required if the opening in the block is accessible.

8. Ground Treatment

a. Trench around each pier and/or foundation of the structure being treated.

b. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage irrigation equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

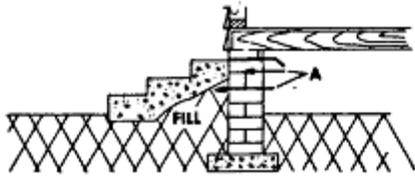
9. Dirt Filled Porches

a. Where the sill or other wood extends to, or below, the under side of the concrete slab, the dirt shall be excavated so as to leave a horizontal tunnel at the junction of

slab and foundation wall. The tunnel shall extend the full length of the fill and be at least 12 inches deep (or down to grade) and 12 inches wide. Soil in the tunnel shall be treated with chemical at all points of contact with wall and slab. Supports for the slab shall be erected in the tunnel if necessary. Tunnel shall be well ventilated, but care shall be taken to assure that water does not run into those tunnels (see Figure 1).

Figure 1 - Excavation of Dirt Filled Porches

Excavation of Dirt Filled Porches (Figure 1)



Exception: If, due to construction, it is impractical to break into and excavate dirt-filled areas, a method of drilling, rodding and flooding as outlined in §141.C.9.b.ii below, may be employed.

b. Where the sill or other wood does not extend to or below the underside of the concrete slab, the fills shall be drilled, rodded and flooded as follows.

i. Drill floor slab at intervals of not more than 18 inches (unless label requires closer distance) along the junction of the porch and the buildings: rod and treat the fill along the foundation wall of the building.

ii. When it is impossible to rod and treat fill because of broken concrete, rock or other non-porous material in the fill, drill the floor slab as outlined in §141.C.9.b.i and apply sufficient chemical to treat the surface areas beneath the floor slab. When non-porous materials are present in the fill, drill holes in a multi-course brick foundation at 8 inch intervals with every other hole extending into the fill. When there is a hollow-brick foundation, drill holes into the fill area every 16 inches along the foundation wall.

NOTE: This is in addition to drilling and treating voids as outlined below (see Figure 2 and 3).

Figure 2 - Dirt Filled Porch (Hollow Block)

Dirt Filled Porch - Hollow Block (Figure 2)

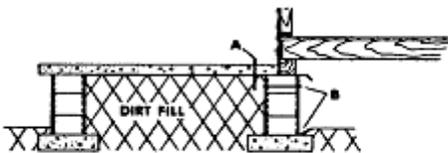
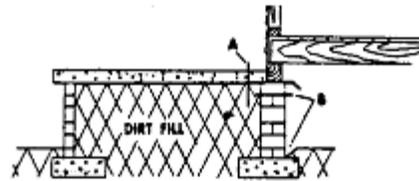


Figure 3 - Dirt Filled Porch (Multi-Course Brick)

Dirt Filled Porch - Multi-Course Brick (Figure 3)



c. When treating earth fills (drilling, rodding and excavation), porch foundation walls will be treated as follows.

i. Drill hollow-block walls and apply sufficient chemical to penetrate mortar joints and flow into the trench at the bottom of the foundation wall.

ii. Drill multi-course brick walls at intervals of every second brick and treat all voids, making certain that the chemical flows into the voids on both sides of the hole being treated.

10. Chimney Bases and Dirt Filled Steps. Chimney bases and dirt filled steps shall be treated by drilling the foundation walls as outlined in Step 2 for dirt filled porches, (see Figure 4 and 5).

Figure 4 - Chimney Base

Chimney Base (Figure 4)

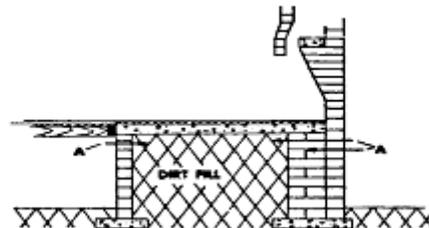


Figure 5 - Dirt Filled Step

Dirt Filled Step (Figure 5)



D. Treatment of Existing Slab-Type Construction

1. Ground Treatment

a. Trench around the entire perimeter of the structure being treated, adjacent to the foundation wall.

b. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable only where trenching will damage irrigation equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

2. Bath Traps

a. An access hole of a minimum of 6 x 8 inches shall be provided to all bathtub plumbing. Specifications shall have a waiver of the listed item or items signed by the owner prior to the treatment. A copy of the signed waiver shall be filed with the department with the monthly Termite Eradication Report.

b. If the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling.

c. A tar filled bath trap shall also be drilled and treated as required by label and labeling.

d. If bath trap is solid concrete pour, it shall be drilled and treated as close as practical to the bathtub plumbing.

3. Other Openings in Slab

a. All showers shall be drilled and treated as close as practical to shower plumbing.

b. Rod under or drill through the slab and treat all areas beneath expansion joints and cracks in the slab as per label and labeling instructions. When the slab is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas.

c. All other openings (plumbing, etc.) shall be treated as required by label and labeling.

E. Pre-Treatment of Slabs

1. The permittee or primary licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form. Within 12 months after initial treatment, the outside perimeter of the foundation will be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage irrigation equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the initial pre-treated slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas.

2. If, during the treatment of any area which will be beneath a slab foundation, the operator shall leave the site for any reason prior to the completion of the application, the operator shall prominently display a poster, approved by the department, which states that the treatment of the area under the slab is not complete.

3. All pre-treatment of slabs ~~must~~ shall be called or faxed to the department's district office in which the pretreat occurs, a minimum of 1 hour prior to beginning the application of termiticides. The information provided shall include treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of each structure to be treated; and number of structures. All pest control operators shall keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Pretreatments in a parish shall be called into the corresponding district office.

a. Shreveport District—Caddo, Bossier, Webster, Claiborne, Bienville, Red River, and Desoto.

b. Monroe District—Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Jackson, Winn, Caldwell, Franklin, Tensas, Concordia, and Catahoula.

c. Alexandria District—Sabine, Natchitoches, Grant, LaSalle, Avoyelles, Rapides, and Vernon.

d. Crowley District—Beauregard, Allen, Acadia, Jefferson Davis, Cameron, Calcasieu.

e. Opelousas District—Evangeline, St. Landry, St. Martin, Iberia, St. Mary, Vermillion, and Lafayette.

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge.

g. New Orleans District—St. John the Baptist, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines.

F. Spot Treatment

1. Spot treatments shall not be done on pier-type or slab construction except where a waiver of minimum specifications has been obtained from the owner of the property. All buildings that can not be treated according to the minimum specifications shall have a waiver of the item or items signed by the owner prior to the treatment. A copy of the signed waiver shall be filed with the department with the monthly Termite Eradication Report.

2. Treatment will be allowed to any additions to the main structure or exterior slab enclosures and a fee shall be paid and a contract issued on this addition unless the main structure is under contract with the firm performing the treatment on this addition.

3. Each spot treatment reported on the Wood-Destroying Insect Eradication Report shall include a waiver of minimum specifications and a complete diagram of the area(s) treated.

G. Infested Properties

1. Whenever any agent of the department finds that any property is infested with termites, the operator who treated the property shall retreat within 30 days after receipt of notification from the department.

2. When the pest control operator completes the re-treatment, he shall notify the department within 5 working days.

H. Responsibility of Pest Control Operator

1. The pest control operator shall notify the property owner/agent of the presence of any visible insect damage found in portions of the building that are accessible for inspection.

2. The pest control operator shall provide for an air space or a backflow preventer on the water hose used in supplying water to the chemical tank.

I. Waiver of Requirements of Minimum Specifications for Termite Control Work

1. A pest control operator may request from the owner/agent of the structure(s) to be treated, a waiver of the requirements set out in these regulations whenever it is impossible or impractical to treat one or more areas of the structure in accordance with these minimum specifications for initial treatment. The waiver shall be signed by the owner/agent of the structure(s) to be treated prior to or during treatment. A signed copy of the waiver shall be given to the owner/agent and shall be sent to the department with the company's monthly eradication report. The waiver shall include, but not be limited to, the following information:

- a. graph identifying the structure and the specific area(s) where treatment is waived;
- b. a description of each area where treatment is waived; and
- c. for each area, the reason treatment is being waived.

2. A pest control operator may request, from the owner/agent of the structure(s) to be treated, a waiver of the requirements set out in these regulations whenever it is impossible or impractical to treat one or more areas of the structure in accordance with these minimum specifications for Retreat(s). The waiver shall be signed by the owner/agent of the structure(s) to be treated prior to or during treatment. A signed copy of the waiver shall be given to the owner/agent and shall be made available to the department upon reasonable request. The waiver shall include, but not be limited to, the following information:

- a. a graph identifying the structure and the specific area(s) where treatment is waived;
- b. a description of each area where treatment is waived; and
- c. for each area, the reason treatment is being waived.

J. Requirements for Baits and Baiting Systems

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

2. All baits and baiting systems applications shall be contracted and reported according to R.S.3:3370 and LAC7:XXV.119. D and pay the fee as described in LAC 7:XXV.119.E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

K. Requirements for Combination Liquid Spot and Baits and Baiting Systems Treatments

1. Any licensee or any person working under the supervision of a licensee, who applies a combination liquid spot and baits and/or baiting systems treatments, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system.

2. Combination of liquid spot and bait and baiting systems treatments shall be used according to label and labeling.

3. All combination liquid spot and baits and baiting systems treatments shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.119.E and pay the fee as described in LAC 7:XXV.119.F.

4. Records of contracts, graphs, monitoring (if required), and applications shall be kept according to LAC 7:XXV.117.I. At termination of the contract, the pest control operator shall remove all components of bait and baiting systems.

5. All structures that cannot be treated according to the combination liquid spot and bait and baiting systems treatment minimum specifications shall have a waiver of the listed item or items signed by the owner prior to the baiting treatment. A copy of signed waiver shall be filed with the department with the monthly termite eradication reports.

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

7. Combination liquid spot and bait and baiting systems treatment of existing slab-type construction shall bait following the label and labeling and liquid spot treat to the following minimum specifications:

a. Trench and treat 10 feet on both sides of live subterranean termite infestation site(s) around the perimeter of the structure, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (minimum 6

inches) to permit application of the required chemical. Apply the emulsion into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable only where trenching will damage irrigation equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

b. Rod under or drill through abutting slab(s) and treat all areas in the abutting slab(s) within the 20 feet as required in LAC 7:XXV.141.K.7.a. When the abutting slab is drilled, the holes shall be no more than 18 inches apart, unless label requires closer distance along the above stated areas.

c. Treat bath trap(s) as per label and labeling. Bath trap(s) access hole of a minimum of 6 x 8 inches shall be provided to all bathtub plumbing.

i. If the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling.

ii. A tar filled bath trap shall also be drilled and treated as required by label and labeling.

iii. If bath trap is solid concrete pore, it shall be drilled and treated as close as practical to the bathtub plumbing.

d. All showers shall be drilled and treated as close as practical to shower plumbing according to label and labeling.

e. All other openings (plumbing, etc.) shall be treated as required by label and labeling.

8. Combination liquid spot and bait and baiting systems treatments of existing pier-type construction with live subterranean termite infestation(s) shall bait following the label and labeling and liquid treat to the following minimum specifications.

a. Trench and treat 10 feet on both sides of infestation site(s) on brick/block chain wall(s) and all piers within 10 feet of an infested pier or chain wall. Trench, drill, and treat as required in LAC 7:XXV.141.

9. Combination liquid spot and bait and baiting systems treatment of existing slab-type construction and pier-type construction without live subterranean termite infestation(s) shall bait following the label and labeling and liquid treat as required in LAC 7:XXV.141.K.7.c-e.

10. Whenever any property under a combination liquid spot and bait and baiting systems treatment contract becomes infested with subterranean termites, the operator shall treat the property according to the minimum specifications as stated in LAC 7:XXV.141.K.

L. Requirements for Retreats

1. Retreatment of existing slab-type construction shall treat following the label and labeling and the following minimum specifications.

a. Trench and treat 10 feet on both sides of live subterranean termite infestation site(s) and/or a breach(s) in the treated zone around the perimeter of the structure, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (minimum 6 inches) to permit application of the required chemical. Apply the emulsion into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable only where trenching will damage irrigation equipment, e flowers

and/or shrubs. Maximum distance between rod holes shall be 4 inches.

b. Rod under or drill through abutting slab(s) and treat all areas in the abutting slab(s) within the 20 feet as required in LAC 7:XXV.141.L.1.a. When the abutting slab is drilled, the holes shall be no more than 18 inches apart along the above stated areas unless the label requires closer distance.

c. Treat bath trap(s) as per label and labeling when live subterranean termites or a breach(s) in the treated zone occur. Bath trap(s) access hole of a minimum of 6 x 8 inches shall be provided to all bathtub plumbing.

i. If the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling.

ii. A tar filled bath trap shall also be drilled and treated as required by label and labeling.

iii. If bath trap is solid concrete pour, it shall be drilled and treated as close as practical to the bathtub plumbing.

2. Retreatments of existing pier-type construction with a live subterranean termite infestation(s) and/or a breach(s) in the treated zone shall liquid treat to the following minimum specifications.

a. Trench and treat 10 feet on both sides of a breach(s) in the treated zone or an infestation site(s) on chain wall(s) and all piers within 10 feet of an infested or breached pier or chain wall. Trench, drill, and treat as required in LAC 7:XXV.141.

3. Minimum specification treatments shall not include areas properly waived in initial treatment contract.

M. Requirements for Borates Pre-Construction Treatments

1. Treat according to the borate label.

2. A perimeter soil treatment shall be applied within 12 months after initial treatment, the outside perimeter of the foundation, shall be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas;

3. treat bath traps as per termiticide label and labeling or as follows:

a. if the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling;

b. a tar filled bath trap shall also be drilled and treated as required by label and labeling;

c. if bath trap is solid concrete pour, it shall be drilled and treated as close as practical to the bathtub plumbing;

4. if, during the treatment of any area, the operator shall leave the site for any reason prior to the completion of the application, the operator shall prominently display a poster at the treatment site, which states that the treatment of the area is not complete;

5. the treatments of structures required in this section shall be called or faxed to the department's district office in which the treatment occurs, a minimum of one hour prior to beginning the application of termiticides. The information provided shall include: treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of the each structure to be treated; and number of structures. Permittees or licensees shall keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Treatments in a parish shall be called into the corresponding district office:

a. Shreveport District—Caddo, Bossier, Webster, Claiborne, Bienville, Red River, and Desoto;

b. Monroe District—Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Jackson, Winn, Caldwell, Franklin, Tensas, Concordia, and Catahoula;

c. Alexandria District—Sabine, Natchitoches, Grant, LaSalle, Avoyelles, Rapides, and Vernon;

d. Crowley District—Beauregard, Allen, Acadia, Jefferson Davis, Cameron, Calcasieu;

e. Opelousas District—Evangeline, St. Landry, St. Martin, Iberia, St. Mary, Vermillion, and Lafayette;

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge;

g. New Orleans District—St. John the Baptist, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines;

6. all borate treatments shall be contracted and reported as provided by R.S. 3:3370 and §119.E of this Part and the fee for each such contract shall be paid in accordance with §119(F) of this Part;

7. records of contracts, graphs, monitoring (if required), and applications shall be kept as required by §117.I;

8. all retreatments shall be as required by §141.L of this Part;

9. the permittee or licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form.

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

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

repromulgated LR 30:1614 (August 2004), amended LR 35:207 (February 2009), LR 35:1469 (August 2009), repromulgated LR 35:1872 (September 2009), amended, LR 36:

§143. Termiticide Foam Applications

A. Termiticide foam applications may be used as a supplemental treatment to approved liquid applications on treatments for the control, prevention or eradication of termites and other wood destroying insects.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 19:1010 (August 1993); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§145. Wood-Destroying Beetles

A. An active infestation of wood destroying beetles, as described below, shall be found by the pest control operator prior to recommending entering into a contract, applying a treatment, or performing a service to control or eradicate the infestation.

1. Powder Post Beetle (Anobiidae, Bostrichids and Lyctidae)

a. Power post beetle frass shall be exuding or streaming from the holes on the outside of the wood or live larvae or pupae are found in the wood members.

2. Old House Borer (*Hylotrupes bajulus*)

a. The presence of live larvae or pupae, adult beetles or oblong exit holes with frass in pine or other softwoods will be evidence of active infestation of the old house borer.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:332 (April 1985), amended LR 35:1470 (August 2009), LR 36:

§147. Fumigation

A. General

1. This rule governs all fumigation of residential and commercial structures, ships, railcars, trucks, commodity containers and vaults within the state of Louisiana, including ships at anchor in rivers within the borders of Louisiana and ships at anchor within a 3-mile limit off the coast of Louisiana.

2. The licensee shall not only comply with the Structural Pest Control Commission rules and regulations but shall follow all other applicable state and federal rules and regulations.

3. The licensee is responsible for compliance with all label and labeling requirements.

4. The licensee is responsible for giving any notice to law enforcement and/or fire protection agencies required by any governing body of the locality in which the fumigation will take place.

5. The licensee shall make certain that personal protection equipment for the fumigant being used is immediately accessible where the fumigation is being done.

6. The licensee or his certified fumigation technician shall remove all signs, fumigation containers and/or materials, and any other debris which accumulated as a direct result of the fumigation.

B. Requirements for Structural Fumigation

1. The permittee or primary licensee shall give notice, in writing, to be received by the department at least 24 hours

prior to structural fumigation. Notice to the department shall include the following items:

a. time and place where the fumigation will take place;

b. name, address and emergency phone number of the licensee;

c. name of the fumigant to be used;

d. a brief description of the property to be fumigated;

e. target pest;

f. location of target pest; and

g. other information the commission requests.

2. When notice cannot be given as required by §147.B.1, notice shall be given by phone but shall be confirmed in writing, to be received by the commission within 24 hours after the telephone notice.

3. A licensed fumigator shall personally inspect all structures that are to be fumigated while they are being tented or sealed after the structure has been evacuated.

4. A licensed fumigator of his certified fumigation technician shall seal or supervise the sealing or the area to be fumigated and assure that there is proper and secure sealing to confine the fumigant to the area that is to be fumigated, prior to the release of the fumigant.

5. A licensed fumigator or his certified fumigation technician shall see that a sign or signs of sufficient size as to be conspicuous and bearing the word "poison" and the skull-and-crossbones symbol, is prominently displayed at all entrances to the area being fumigated continuously from the time the area is sealed until ventilation is completed.

6. When tarp fumigation is being used, in addition to the signs on each entrance of the building, there shall be at least one sign on each side of the exterior tarp. If any side of the building exceeds 35 feet, additional signs will be added. The maximum distance between signs of any side of a building will be 60 feet.

7. Two test lines with at least 1/4 inch outside diameter shall be appropriately located on the first floor of the structure(s) being fumigated to permit sufficient readings of the fumigant concentrate to determine its efficacy in destroying insects. They shall be on opposite sides of the building. In multi-story buildings the lines shall be on different floors. A written record of fumigant level readings shall be maintained during progress of job and will become part of job file.

8. A licensed fumigator shall post a guard(s) to prevent entry by an unauthorized person into the area being fumigated. The guard is not required to be a licensed pest control operator or registered employee.

9. Whenever one unit of a complex containing more than one unit is to be fumigated, all units of the building to be fumigated shall be evacuated during fumigation and until such time as the fumigated area is declared safe for occupancy. A licensed fumigator shall inspect all units of a complex.

10. A licensed fumigator or his certified fumigation technician shall be present when the fumigant is released and immediately prior to the time when the fumigated area is declared safe for occupancy. At least one other person, trained in fumigation in addition to the above, ~~must~~ shall be present when the fumigant is released and immediately prior

to the time when the fumigation area is declared safe for occupancy.

11. A licensed fumigator or his certified fumigation technician shall personally inspect the area which was fumigated when ventilation is completed to assure that the fumigated area, and adjacent areas as appropriate, is safe for occupancy.

C. Requirements for Shipboard Fumigation

1. A licensed fumigator shall be present for the initial application of fumigant.

2. A licensed fumigator is responsible to declare the ship safe for occupancy.

D. Requirements for Commodity Fumigation. A licensed fumigator or certified fumigation technician shall:

1. check inside the container along the junctures to be sealed before fumigation;

2. all openings in vehicles being fumigated must be sealed;

3. inside and outside warning signs shall be posted as required by labeling and label requirements;

4. after releasing the fumigant, check for leakage and repair any leaks which occur;

5. the permittee or licensed fumigator licensee shall notify the consignee, in writing, of the fumigant being used, antidotes and the proper procedures for handling any vehicle(s) or commodity container(s) which is shipped under gas.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 11:332 (April 1985), amended LR 17:251 (March 1991), LR 36:

§149. Repeal of Prior Rules and Regulations of the Commission

A. Upon promulgation of these rules and regulations, all rules and regulations of the commission adopted prior to the effective date of these rules and regulations shall be repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:334 (April 1985); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§151. General Requirements for Pesticide Waste

A. All licensees\commercial applicators applying pesticides which, upon disposal, are classified as waste shall implement a containment system for reuse or apply the waste immediately to the site of application per label and labeling.

B. Handling Spills by Licensees\Commercial Applicators

1. All spills of more than 1 gallon liquid or 4 pounds dry weight shall be reported to the director by the applicator, primary licensee or permittee within 24 hours by telephone and by written notice within three days.

2. The permittee is responsible for the cost of cleanups resulting from pesticide spills in their operations.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May

1986); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§153. Procedures Governing Handling of Pesticide Containers (Except Bulk Pesticide Containers)

A. Storage Areas for Full or Partially Full Pesticides Containers

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

2. Pesticide containers shall be free of leaks.

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

B. Empty containers shall be stored in a secured area. Empty containers shall be kept for no more than 30 days.

C. Metal, Glass and Plastic Containers

1. All metal, glass and plastic containers shall be triple-rinsed, immediately after the pesticide is removed by the following, or equivalent procedure.

a. Using a solvent capable of removing the pesticide, fill each container with solvent equal to approximately 10 percent of the volume of pesticide originally contained in the container.

b. Agitate the solvent thoroughly on all interior surfaces of the container. Agitation shall be accomplished by use of agitation equipment approved by the department or by manual agitation of the solvent.

c. Repeat the above procedure three times.

d. If the rinsate containing the solvent can be used again in subsequent application of the pesticide without reducing the effectiveness of the pesticide, place the rinsate in the containment tank specified for that pesticide.

2. Upon completion of the above triple-rinsing procedures, containers shall be disposed of in one of the following ways:

a. by disposal in any permitted solid waste facility (sanitary landfill), provided that, prior to disposal in a solid waste facility, the pesticide applicator shall pierce all metal and plastic containers in both ends;

b. by prior agreement, by return (for credit or otherwise) to the pesticide sales agent or the pesticide manufacturer; or

c. by transfer to a third party for recycling or reconditioning.

D. Paper and Plastic Bags

1. All pesticides shall be removed from paper and plastic bags to the maximum extent possible when the pesticide is initially mixed for application. Thereafter, containers shall be disposed of as follows.

a. Cut all sides of the container and open the container fully, without folds or crevices, on a flat surface, shake any pesticides remaining in the open container into the pesticide mix.

b. After cutting and flattening such pesticide containers, dispose of containers in a solid waste facility (sanitary landfill).

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§155. Procedures for Constructive Recycling by Commercial Applicators of Unused Portions of Pesticides and/or Rinsate of Pesticides which, upon Disposal are Classified as Hazardous Wastes under EPA Regulations

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

1. by immediate reapplication of the unused portion of the pesticide and/or the rinsate in accordance with label and labeling requirements for that pesticide;
2. by transferring to a closed containment system meeting the requirement of §157; or
3. by disposal in a permitted hazardous waste facility.

B. All unused pesticides and/or rinsate from pesticides classified as a waste upon disposal shall be removed from containment tanks in less than 30 days after deposit therein.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§157. Containment System

A. Containment Tanks

1. Different containment tanks shall be installed for different pesticides and/or rinsate of pesticides, except the same containment tanks may be used for two or more pesticides when such pesticides are physically and chemically compatible and when their mixing is not prohibited by their labels.

2. Each containment tank shall meet the following requirements:

- a. shall be constructed of material of sufficient strength and be compatible with the pesticide and/or rinsate to be placed within the tank;
- b. shall be free of leaks, cracks, holes or other deterioration at all times;
- c. shall be in good operating order at all times;
- d. shall be designed to allow drainage of the entire contents and be triple rinsed;
- e. shall be equipped with stopcocks, at appropriate locations, to prevent any leakage of the contents during storage or transfer of the contents; and
- f. shall be equipped with an opening to allow for sampling.

B. Containment Tank Foundation

1. The containment tank foundation shall be solidly constructed of a material sufficiently impervious to contain leaks, spills and accumulated pesticides and/or rinsate of pesticides.

2. The foundation covering shall not be free of cracks which might allow leakage.

3. The foundation shall be sloped to facilitate cleanup of inadvertent spills.

4. The foundation shall be constructed with a rim of sufficient height to contain run-off from cleanup activities or inadvertent spills and be protected from flood waters.

5. The foundation shall be so constructed as to discharge all liquids into a dump.

6. Tanks shall be located at sufficient elevation to allow visual detection of leakage of the contents.

C. Storage Requirements. All containment tank(s) shall be located in a secured area and protected from flood waters.

D. Location Requirements; Submission of Preliminary Site Plans. Containment systems shall be located a suitable distance from any adjacent buildings, property lines, or public access roads. Site plans showing location of the containment system shall be submitted for the approval of the commission prior to construction. These plans may be rudimentary; the purpose of such submission is to avoid unnecessary expense by the application.

E. Requirements for Final Approval of Containment Systems. Final plans and specifications for construction of a closed containment system shall be approved by the commissioner and shall be filed with the department, subject to the approval of the commission, prior to the start of construction. In consideration for approval of such plans and specifications, the commission may, at their discretion, be assisted by an ad hoc advisory committee consisting of such experts as may be appointed by the commission.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§159. Management of Unused Portions of Pesticides and/or Rinsate of Pesticides Which, upon Disposal, Are Not Classified as Hazardous Wastes under EPA Regulations

A. Unused portions of pesticides and/or rinsate resulting from the application of pesticides not classified as a hazardous waste upon disposal shall be handled by one of the following methods:

1. by subsequent, immediate reapplication in accordance with label and labeling requirements for the pesticide;
2. by deposit in a closed containment system which meets the requirements of §157 hereof;
3. by disposal in surface impoundments which meet the requirements of this rule; or
4. any other methods approved by the commission.

B. Whenever violative levels of pesticides classified as a hazardous waste upon disposal are detected in any sample taken from a containment tank, whether the containment tank was in operation at the effective date of these regulations or installed after the effective date of these regulations, such containment tank shall be immediately and permanently closed and, if closed, all contents thereof shall be removed and disposed of at a permitted hazardous waste disposal facility. The financial responsibility of closing a surface impoundment belongs to the commercial applicator and/or property owner.

C. Insofar as the disposal of a pesticide waste is concerned, commercial applicators who generate hazardous pesticide waste and who do not comply with these regulations shall be subject to the regulations governing hazardous pesticide waste under the jurisdiction of the Department of Environmental Quality until such time as the commissioner of agriculture promulgates regulations governing hazardous pesticide waste.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986); amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§161. List of Approved Termiticides

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 20:644 (June 1994), amended LR 21:671 (July 1995), repealed LR 36:

§163. Donation of Structural Pest Control Work

A. Structural pest control operators licensed by the commission may donate, in accordance with this Section, structural pest control work to eligible individuals or organizations who otherwise could not afford such services in order to improve living conditions and their quality of life.

B. The commission, at the request of the Louisiana Pest Control Association or any other state or local not-for-profit association of pest control operators, may approve a plan for the donation of structural pest control work to individuals or organizations that are in need of, but unable to afford such services.

C. Any plan submitted to the commission shall state:

1. the purpose of the plan;
2. the organization(s) or group(s) of persons receiving such services;
3. the nature of the services to be provided;
4. the location(s) at which the services are to be provided;
5. the length of time the program is to run;
6. the licensed pest control operators who are expected to participate;
7. any other information the commission may deem necessary to properly evaluate the plan.

D. Upon approval of any such plan by the commission, the department shall suspend:

1. the fee for termite contracts required under §117.M of this Part; and
2. the requirements of §119 of this Part pertaining to contracts.

E. The rules and regulations suspended by Subsection D above are waived only for the duration of the program and only in connection with structural pest control work performed by participating licensed pest control operators on buildings and structures at the specific locations listed in the approved plan.

F. The month of June is the Louisiana Pest Control Month. All programs for the donation of pest control work shall begin in June and end at the time specified in the plan that is submitted and approved by the Structural Pest Control Commission. The commissioner may, for exceptional circumstances, approve a plan to begin in a month other than June.

G. A copy of the approved plan, showing the list of specific eligible locations and the beginning and ending dates of the program shall be published in the potpourri Section of the *Louisiana Register* at least 30 days prior to the beginning of the program.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental

Sciences, Structural Pest Control Commission, LR 24:1262 (July 1998), amended LR 36:

§165. Excavation of Dirt Filled Porches (Figure 1)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:334 (April 1985), repealed by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§167. Dirt Filled Porch (Hollow Block) (Figure 2)

Repealed

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:335 (April 1985), repealed by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§169. Dirt Filled Porch (Multi-Course Brick) (Figure 3)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:335 (April 1985), repealed by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§171. Chimney Base (Figure 4)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:335 (April 1985), repealed by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

§173. Dirt Filled Step (Figure 5)

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:335 (April 1985), repealed by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 36:

Family Impact Statement

It is anticipated that the proposed rule will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments on the proposed Rule to David Fields at P. O. Box 3596, Baton Rouge, LA 70806 or 5825 Florida Blvd., Baton Rouge, LA

70806. Written comments received after 4:00 p.m. on Monday, October 25, 2010 shall not be considered. No preamble is available.

Mike Strain DVM
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Structural Pest Control Commission**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed action is not anticipated to have a direct material effect on governmental costs or savings. The proposed action revises the rules and regulations of the Commission to make technical corrections, define and clarify certain terms, provide homeowners and pest control operators a clearer understanding of the requirements for treating in all phases of pest control, and to modernize and update these rules and regulations to reflect changes in the structural pest control industry.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed action is not anticipated to have a direct material effect on governmental revenues. The proposed administrative rules modify the sample fee from \$100 plus the cost for obtaining the samples by the department to a fee of \$500 per sample. The department anticipates this modification to the sample fee to be revenue neutral.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed action is not anticipated to have a direct material effect on the costs or economic benefit to directly affected persons or non-governmental groups. The non-governmental groups that are directly affected are the persons and businesses that provide structural pest control.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistant Commissioner
1009#089

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Sound Recording Production and Infrastructure
Tax Credit Programs (LAC 61:I.1637)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industries Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 47:6023, hereby proposes to amend and adopt its existing rules and regulations relative to its Sound Recording Tax Credit Program.

Whereas the current rules require advance notification before expenditures may begin to earn tax credits, this

contradicts current administration of the program and is detrimental to its success. The proposed amendments therefore delete the advance notification requirement and provide certainty and assurance to program investors.

Whereas the department already has statutory authority to request an audit at the applicants expense, these amended rules will clarify under what circumstances such an audit may be required and establishes a fee schedule.

Title 61

REVENUE AND TAXATION

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

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

**Subchapter C. Louisiana Sound Recording Investor Tax
Credit Program**

§1637. Certification

A. - A.3.b. ...

B. Repealed.

C. - C.1. ...

a. Incorrect Reporting. If an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events, transactions, or other significant information there may be cause for an additional audit.

b. Related Party Transactions. If an audit contains related party transactions in excess of 20 percent of the base investment there may be cause for an additional audit.

c. Reimbursement of Audit Costs. The department may undertake additional audit at the applicant's expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the Department's contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

2. - 6.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010), LR 36:

Family Impact Statement

It is anticipated that the proposed Rule amendment will have no significant effect on the: (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, and (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of

applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons should submit written comments on the proposed Rule to Lynn Ourso through the close of business on October 25, 2010 at P.O. Box 94185, Baton Rouge, LA 70804-9185 or via email to ourso@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 11am on October 26, 2010 at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA.

Kristy Mc Kearn
Undersecretary

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In cases of incorrect reporting or high percentage of related party transactions, in order for LED to verify the amount, if any, of qualifying expenditures, an applicant may have to reimburse LED for the cost of an additional audit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment due specifically to this rule as all entities performing sound recording production activities are under the same guidelines.

Sherri McConnell
Director
1009#047

Robert E. Hosse
Staff Director
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Sound Recording Production and Infrastructure—Tax Credit Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change could increase the need for contract auditors at the Department of Economic Development (LED). One or more state certified public accountants also certified in financial forensics or also certified as a fraud examiner will be on contract with the Department of Economic Development (LED) to conduct any audits on an as needed basis. It is anticipated that only a few audits will be required per year, which may increase over time in proportion to the increasing program applications received annually. LED estimates the need for one auditor in FY 10-11, two auditors in FY 11-12 and three auditors in FY 12-13, at a maximum potential cost of \$15,000 per audit. In theory, the applicant will be charged for the cost of the audit so the net effect to the departmental budget should be neutral. However, the state would be liable for any audit expense above \$15,000. Any other administrative duties brought about by the proposed rule will be handled by existing departmental staff using the existing LED budget.

There are no anticipated costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendment to the rules for the LA Sound Recording Investor Tax Credit program repeals the requirement that all qualifying expenditures must be made on or after the application date, which currently contradicts administrative practice. In current practice, any eligible expenditures made after the statutory effective date (or July 12, 2005) qualify for the credit. According to LED, since this change conforms to current practice, no fiscal impact is anticipated, and the state's exposure continues to be limited to the annual program cap of \$3 million. The Department of Revenue reports utilization of the program in FY 08/09 at about \$400,000 per year in the FY 09/10 Tax Exemption Budget.

While La. R.S. 47:6023 already authorizes LED to conduct an audit at the applicants expense, this revision clarifies when such an audit may be required and establishes a fee structure of \$2,000 minimum and \$15,000 maximum fee per audit. To the extent the fees are assessed, they will increase self-generated revenue to the state and be used to pay auditors as described in Section II. Should the cost of an audit be lower than \$2,000, state revenue collections may increase.

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
(LAC 28:CXLV.Chapters 1 and 11)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement *Bulletin 129—The Recovery School District: Chapters 1 and 11*. The proposed policy aligns the Recovery School District with Bulletin 741, Louisiana Handbook for School Administrators, and outlines the fiscal and internal management of the Recovery School District.

Chapter 1 largely defines that the State Superintendent is to serve as the Recovery School District's governing authority, consistent with the authority delegated to the State Superintendent by the Board of Elementary and Secondary Education (BESE). The Recovery School District Committee of BESE shall serve as the BESE lead group for oversight of the Recovery School District. The Bulletin provides that the Superintendent can make recommendations to BESE for the approval of charter schools. Chapter 1 also provides for the qualifications of the Recovery School District Superintendent who reports to the State Superintendent. Chapter 1 also states that the Recovery School district will also be subject to the policies contained in BESE Bulletin 741.

Chapter 11 deals with the fiscal management of the Recovery School District. Chapter 11 specifies that the Recovery School District shall have a BESE approved budget, prepare financial statements, be audited by the Office of Legislative Auditors, receive and use Minimum Foundation Program funds, and procure goods, services and contracts following the state guidelines.

Title 28 EDUCATION

Part CXLV. Bulletin 129—The Recovery School District Chapter 1. General Provisions

§101. Purpose

A. The purpose of this policy bulletin is to set forth the role, responsibilities, and functions of the Recovery School District (RSD).

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VIII, §3; R.S. 17:6(A)(10); R.S. 17:10.5.A.(1); R.S. 17:10.5.A.(2); 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 36:

Chapter 11. Fiscal Management

§1101. Fiscal Management Priorities

A. The RSD shall manage the finances to provide the best educational opportunity to all students and in the manner most likely to bring the school to an acceptable level of performance.

B. The RSD must identify and explain financial priorities for schools that have been placed into the RSD. These priorities shall aim to improve the overall performance and efficiency of a school. These priorities may be altered in the annual budget reports to BESE.

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, and R.S. 17:10.7.B.(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

§1103. Annual Budget

A. BESE is the entity that makes the allocations of state, local, and federal funds to the RSD. If different funding amounts are allocated to different students, the funding shall follow the student.

B. The RSD's budget must be approved by BESE. The RSD shall present a proposed operational budget to BESE for review in May and for approval in June of each year. The RSD direct-operated and charter-operated schools shall budget on a fiscal year basis, July 1 through June 30.

C. The revenues/receipts and expenditures/disbursements in the RSD's budget shall be listed and classified in such manner and substance as prescribed by the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

§1105. Budget Planning, Preparation, and Schedules

A. The RSD shall present a proposed operational budget to BESE for review in May and for approval in June of each year.

B. The RSD must comply with all accounting principles prescribed by the commissioner of administration under R.S. 39:78.A.

C. The RSD superintendent shall make such annual financial reports to the State Department of Education by September 30 of each year as the state superintendent may require.

D. It shall be the responsibility of the RSD to submit to the State Department of Education in a timely manner all necessary and required information for the computation of an individual allocation from the minimum foundation formula. This information shall be submitted to the department in the form required by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

§1107. Budget and Other Financial Reporting

A. RSD shall conform to all requirements in this Chapter in addition to all applicable state and federal statutes and policy.

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), and R.S. 39:78.A.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

§1109. Auditing

A. The RSD shall submit to an audit of its operations. This audit shall be conducted in accordance with provisions and timelines established by the Office of the Legislative Auditor.

B. Upon transfer of a failing school to the RSD, the RSD shall utilize the results of any audit of the school that occurred before the transfer. The RSD shall continue implementing all corrective post-audit actions of the prior LEA as part of the RSD's own modification of the school's financial practices to improve those practices.

C. Once the Office of the Legislative Auditor has issued a report on the operations of the RSD, it shall be the responsibility of the department to provide BESE with a complete analysis of the report and to recommend corrective actions to be taken, when necessary.

D. The RSD shall comply with BESE's annually approved audit plan for the operations of the Bureau of Internal Audit (BIA) within the State Department of Education, as applicable.

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. 10.6.E, R.S. 24:513, and R.S. 17:3996(F).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

§1111. Allocation of Funds

A. The state shall annually appropriate sufficient monies to fund any school in the RSD in an amount equal to, but not less than, the school's student membership count times 100 percent of the state share per student as provided in the MFP approved formula for the city, parish, or other local public school system in which each school placed under the jurisdiction of the RSD is located as contained in the MFP budget letter approved by BESE. The appropriation shall be made to the administering agency for the RSD (the Louisiana Department of Education) and may be expended by the agency for the provision of services to students in the district.

1. No public monies shall be used to discriminate against protected classes or have the effect of discriminating in providing and ensuring equal education opportunities in Louisiana.

B. In addition to the appropriation required in Subsection A above, any city, parish, or other local public school board which had jurisdiction of a school prior to its transfer to the RSD shall annually allocate and transfer to the RSD an amount of money. That amount shall equal to the number of students enrolled in such a school times the local per pupil amount received by the school system from all of the following sources as provided in the Minimum Foundation Program approved formula, excluding any portion which has been specifically dedicated by the legislature or by voter approval to capital outlay or debt service or which was actually expended by the school board for facilities acquisition and construction as reported to the state Department of Education:

1. sales and use taxes, less any tax collection fee paid by the school system;
2. ad valorem taxes, less any tax collection fee paid by the school system; and
3. earnings from sixteenth section lands owned by the school system.

C. Such allocation and transfer shall be accomplished by a reduction in the amount of state funds otherwise to be allocated to the city, parish, or other local public school system as contained in the Minimum Foundation Program budget letter approved by BESE equal to the amount provided in this Section of this bulletin. Such reduction shall be allocated to the RSD.

D. In the case that there are insufficient funds available to provide the total due the RSD under this section of this bulletin if all state funds are reduced and allocated to the RSD, the prior system shall transfer to the RSD a sufficient amount of money remaining from the sources provided in Paragraphs B.1 through B.3 of this Section. In the case that the prior system's local revenues are insufficient to allow for the allocation to the RSD and to allow the prior system to maintain a minimum balance of 10 percent of state Minimum Foundation Program funding and 10 percent of the local revenues listed in Paragraphs B.1 through B.3 of this Section, local revenues otherwise required to be allocated to the RSD shall be reduced to an amount necessary to allow the prior system to maintain such balances. Such maintained minimum balances shall be applied firstly to the prior system's retiree health insurance costs and secondly to the prior system's board administrative costs.

E. In addition to the appropriation required in Subsection A above, any public entity other than a city, parish, or other local public school board which had jurisdiction of a school prior to its transfer to the RSD shall transfer to the RSD an amount of money. This amount shall equal to the average per pupil amount appropriated or allocated for all students times the number of students enrolled in the school transferred from its jurisdiction to the RSD from self-generated funds or any other appropriated state funds that exceeds the per pupil amount appropriated pursuant to R.S. 17:1990.C.(1).(a).

F. All amounts to be appropriated or allocated and transferred pursuant to this Section shall be estimated or calculated by the state Department of Education based on the most recent local revenue data and projected student counts available. Allocations to be transferred shall be adjusted during the year as necessary to reflect actual student counts and actual prior year local revenue collections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5.A.(1), R.S. 17:10.7.A.(1), and R.S. 17:1990.A.(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

§1113. Purchasing and Contracts

A. Applicable Law and Policy

1. The Recovery School District is established in R.S. 17:1990 as an intermediate education unit within the Department of Education and functions as a unit within a state agency, except as otherwise provided in R.S. 17:1990. State agencies are subject to various laws, regulations, and guidelines with respect to procuring goods and services needed by the agency. The Recovery School District, unlike other state agencies and unlike other units in the Department

of Education, while still required to follow many procurement laws, has specific authority with respect to procurement that exempts it from receiving approval from other state agencies, where applicable, and exempts it from complying with state law applicable to other state agencies with respect to certain types of procurement.

2. The Recovery School District's authority relating to procurement:

a. requires the RSD to engage in the procurement of materials and supplies, telecommunications goods or services, data processing hardware, data processing software, software maintenance and support services, hardware services, major repairs, and public works in compliance with the processes established in law, regulation, and/or executive order, as applicable, but does not require the RSD to receive approval of such procurement from the Division of Administration or any other state agency that may exercise approval over such procurement. The RSD, although it must comply with Title 38 of the Louisiana Revised Statutes with respect to public works contracts, is not required to utilize any state selection board, including but not limited to, the Louisiana Architects Selection Board, the Louisiana Engineers Selection Board, or the Louisiana Landscape Architects Selection Board, when contracting for any public work; and

b. provides the RSD with the same authority and autonomy afforded to city, parish, or other local public school systems under state law regarding the procurement of services, including but not limited to professional, personal, consulting, operating, and social services, the procurement of immovable property, and the leasing of movable property. The authority and autonomy authorizes the RSD to procure such services without complying with the applicable provisions of Title 38 and Title 39 of the Louisiana Revised Statutes, which govern such procurement for all other state agencies.

3. RSD procurement shall be governed by all applicable law and BESE policy. Policy in reference to procurement is herein adopted by BESE in the exercise of its authority to approve the administration of the RSD.

B. Scope

1. The policy set forth herein shall act as the foundation upon which the State Superintendent shall develop procurement procedures and guidelines for the RSD in compliance with the parameters set forth herein. It shall not be construed as a detailed guide to carrying out procurement in the RSD.

2. All procedures and guidelines governing procurement in the RSD shall be in compliance with the policy set forth herein and shall be approved by the State Superintendent.

C. Application

1. This policy applies only to contracts entered into after the approval of the policy in this Section by BESE.

2. This policy shall apply to every expenditure of public funds, irrespective of their source, unless otherwise approved by BESE. This policy shall not apply to grants or contracts funded with federal funds, if procurement under such is governed by applicable federal law and regulation. Nothing in this policy shall prevent the RSD from complying with the terms and conditions of any grant, gift, or bequest.

3. This Section shall not apply to the procurement of services for the operation of a school under the jurisdiction of the RSD.

D. Authority and Delegation

1. In its approval of the administration of the RSD, BESE shall approve the parameters for procurement by the RSD, as set forth herein, and shall approve all RSD contracts, as defined herein.

2. Except as provided herein, the state superintendent is vested with procurement authority for the RSD and shall be responsible for the oversight and approval, as applicable, of all purchasing and contracting in the RSD.

3. The state superintendent may delegate procurement oversight and approval authority to the RSD superintendent, who may delegate such authority to the RSD procurement director or his or her superior, all as authorized herein.

4. When time is of the essence for a contract or contract amendment that requires board approval, such that the Recovery School District cannot wait for the next board meeting, though not an emergency as defined herein, the chairman of the Board Finance Committee and the board president may approve a contract or contract amendment upon the receipt of a written memorandum from the deputy superintendent of management & finance or his designee setting forth the request for approval, the reason for the request, the name of the contractor, the amount of the contract, the contract period, and a description of the services to be provided. The approval shall be reported to the board at its next meeting.

E. State Superintendent Responsibilities

1. The state superintendent shall ensure that the RSD has sufficient internal controls and capacity to manage procurement for the RSD.

2. The state superintendent shall require that procedures and/or guidelines, which govern all procurement within the RSD, be developed. Such procedures and/or guidelines shall reflect the provisions of this policy. The state superintendent shall approve all procedures and/or guidelines governing RSD procurement.

a. Procurement procedures and/or guidelines shall contain, at a minimum, the following:

i. authority, roles, and responsibilities of all employees authorized to approve the procurement of goods and services;

ii. types of authorized and unauthorized contracts;

iii. source selection and contract formation;

iv. contract approval process;

v. contract administration;

vi. types of procurement and procedures for engaging in each;

vii. types of competitive processes to be used for each type of procurement;

viii. ethics in public procurement and contracting;

ix. emergency declaration procedures;

x. dispute resolution; and

xi. debarment.

3. The state superintendent shall implement a written approval process for the approval of all contracts that he/she is authorized to approve and all contracts to be submitted to BESE for its approval. The state superintendent shall ensure

that the RSD superintendent has a written approval process for all contracts he/she may approve pursuant to authority delegated by the state superintendent. These written approval processes shall be delineated in the procedures and/or guidelines which govern all procurement within the RSD.

F. Definitions

1. See Section 2703.D. of this bulletin for definitions of relevant purchasing and financial terms. [Source: this is new, to collect all definitions in the bulletin in a single location at end of bulletin.]

G. Types of Procurement

1. The types of procurement that may be undertaken by the RSD and which are subject to the parameters set forth in this policy include, but are not limited to:

a. purchase of items available under state contracts;

b. materials and supplies;

c. telecommunications goods and services;

d. data processing hardware;

e. data processing software;

f. data processing software maintenance;

g. data processing support and hardware services;

h. major repairs;

i. public works contracts;

j. purchase of immovable property;

k. lease of immovable property;

l. professional services;

i. professional services identified in law; and

ii. other professional services,

m. personal services;

n. consulting services;

o. operating services;

p. social services; and

q. other service contracts.

2. All procurement not specifically listed herein shall be subject to the approval of the State Superintendent.

H. Contractual Arrangements

1. Contract Form and Evidence of Obligation

a. All agreements to provide services to the RSD shall be evidenced by a written contract.

b. All contracts entered into by the RSD shall contain, at a minimum, all provisions contained in form contracts used by the Department of Education.

c. Absent a written contract for the performance of services, the RSD shall have no legal obligation to pay for services rendered and shall not make payments to satisfy any claim that is not based on a fully executed written contract.

2. Prohibited Contracts

a. The RSD shall not enter into the following types of contracts:

i. contracts providing for the payment of cost plus a percentage of costs; or

ii. contingency fee contracts.

3. Term of Contract and Multi-Year Contracts

a. The RSD shall not enter into any contract for a term that exceeds that which is prescribed in law for the respective types of procurement identified herein, regardless of the applicability of the law pursuant to R.S. 17:1990.

b. BESE shall approve all multi-year contracts entered into by the RSD, consistent with the thresholds provided herein. The RSD shall provide a justification for

the need for a multi-year contract with the submission of each multi-year contract for BESE approval.

4. Contract Amendments and Cumulating Multiple Contracts

a. The thresholds established for the use of a competitive process as set forth in this Section shall apply to contracts for which an amendment thereto causes the contract to exceed the applicable threshold and multiple contracts with the service provider or any company which has engaged the service provider, which, when cumulated, exceed the applicable threshold. This Subparagraph shall apply to contracts entered into within a fiscal year.

b. The thresholds established for BESE approval of contracts as set forth in this Section shall apply to contracts for which an amendment thereto causes the contract to exceed the applicable threshold and multiple contracts with the service provider or any company which has engaged the service provider, which, when cumulated, exceed the applicable threshold. This Subparagraph shall apply to contracts entered into within a fiscal year.

c. The state superintendent or his designee has the authority to approve amendments that result in no-cost extensions to current contracts. [This is new.]

5. Commencement of Services under Contract

a. All services performed pursuant to a contract shall not commence prior to the approval of the contract, as set forth herein.

6. Administration of Contracts

a. All contracts shall be administered and monitored by the RSD, including but not limited to, substantiating invoices, monitoring progress of work, and evaluating performance.

7. Documentation of Contracts

a. Documentation related to all contracts shall be maintained pursuant to the RSD and/or Department of Education's Records Retention Schedule, as applicable.

8. Contract Reporting

a. The state superintendent shall provide a report to BESE of all contracts entered into by the RSD, other than major repair or public works contracts, consistent with contract reporting performed by the Department of Education.

b. The state superintendent shall provide a report to BESE of all major repair or public works contracts as determined by BESE.

I. Procurement Executed Pursuant to Applicable Law

1. Purchase of Items Available Under State Contracts

a. The RSD shall purchase all products or services available under state contracts entered into by the Division of Administration, unless a product or service being purchased can be obtained at a lower cost or the state superintendent determines that it is in the best interest of the RSD to independently procure the product or service.

b. The state superintendent shall require that a record be created of all procurement of products or services available under state contract, but which the RSD does not procure through a state contract. The record shall include the justification for the purchase of such products or services other than that which is available through a state contract.

c. The exceptions set forth in Subparagraph 1.a. above shall not apply if purchasing from a state contract is mandatory, as prescribed by the Division of Administration.

In such case, the RSD shall comply with all applicable exceptions provided in law or regulation.

2. Materials and Supplies

a. The RSD shall comply with all applicable law when procuring materials and supplies.

b. The state superintendent shall have the authority to delegate his authority to procure materials and supplies to the RSD superintendent, who shall have that authority to delegate the same to the RSD procurement director.

c. The RSD superintendent may delegate his authority to procure materials and supplies to school level personnel, subject to procedures and purchasing thresholds approved by the state superintendent.

3. Telecommunications Goods and Services, Data Processing Hardware, Data Processing Support, and Hardware Services

a. The RSD shall comply with all applicable law when procuring telecommunications goods and services, data processing hardware, data processing support, and hardware services.

b. The state superintendent shall have the authority to delegate his authority to procure telecommunications goods and services, data processing hardware, data processing support, and hardware services to the RSD superintendent, who shall have that authority to delegate the same to the RSD procurement director.

c. All service contracts resulting from procurement of telecommunications goods and services, data processing hardware, data processing support, and hardware services shall be subject to BESE approval as defined in Subparagraph K.2.b. of this Section.

4. Data Processing Software

a. The RSD shall comply with all applicable law when procuring data processing software.

b. The RSD procurement procedures and guidelines shall ensure the participation of a committee of no less than three individuals, with expertise appropriate to the software being selected, in the selection of data processing software.

c. The state superintendent shall have the authority to delegate his authority to procure data processing software to the RSD superintendent, who shall have that authority to delegate the same to the RSD procurement director.

5. Small Purchases

a. The RSD may engage in small purchases pursuant to R.S. 39:1596 and any Executive Order issued pursuant thereto.

b. The state superintendent shall have the authority to delegate his authority to engage in small purchases to the RSD superintendent, who shall have that authority to delegate the same to the RSD procurement director.

6. Used Equipment

a. The RSD may purchase used equipment, pursuant to Title 39 of the Louisiana Revised Statutes, when the purchase of used equipment is cost effective to the RSD.

b. The state superintendent shall have the authority to delegate his authority to purchase used equipment to the RSD superintendent, who shall have that authority to delegate the same to the RSD procurement director.

7. Major Repairs

a. The RSD shall comply with all applicable law when procuring major repairs.

b. BESE shall approve all major repair contracts exceeding \$250,000 and all amendments to such contracts.

c. The state superintendent shall have the authority to approve all major repair contracts exceeding \$250,000 if such contracts are entered into pursuant to an emergency condition as defined in applicable law and policy.

d. The state superintendent shall have the authority to approve all major repair contracts not exceeding \$250,000.

e. The state superintendent shall have the authority to delegate his authority to approve major repair contracts not exceeding \$50,000 to the RSD superintendent.

8. Public Works Contracts

a. The RSD shall comply with all applicable law when entering into public works contracts.

b. BESE shall approve all public works contracts exceeding \$250,000 and all amendments to such contracts.

c. The state superintendent shall have the authority to approve all public works contracts not exceeding \$250,000.

J. Procurement Executed Pursuant to BESE Policy

1. Professional Services Contracts Involving Professionals Identified in Louisiana Law

a. All professional services identified in Title 39 of the Louisiana Revised Statutes, which include lawyers, doctors, dentists, psychologists, certified advanced practice nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, and claims adjusters shall be procured in compliance with applicable law.

b. The state superintendent shall develop and implement a process for the procurement of the professional services of architects, landscape architects, and engineers, which ensures that such professionals have the ability to participate in RSD projects and that professionals qualifying to participate have demonstrated competence and qualifications for the type of services required.

c. The process for the procurement of the professional services of architects, landscape architects, and engineers shall be approved by BESE.

d. BESE shall approve all professional service contracts exceeding \$50,000 and all amendments to such contracts.

e. The state superintendent shall have the authority to approve all contracts not exceeding \$50,000 and shall have the authority to delegate such approval authority to the RSD superintendent.

2. Other Professional Services, Personal Services, and Consulting Services

a. All professional services not specifically identified in Title 39 of the Louisiana Revised Statutes, as set forth in Paragraph 1 above, and all other service contracts, except for personal service contracts, which shall not require a competitive process regardless of the amount of the personal service contract, shall be procured through the use of a competitive process for all contracts that will exceed \$50,000, subject to the exceptions provided herein.

b. BESE shall approve all service contracts exceeding \$50,000 and all amendments to such contracts.

c. The state superintendent shall have the authority to approve all contracts not exceeding \$50,000 and shall

have the authority to delegate such approval authority to the RSD superintendent.

3. Social Service Contracts

a. All social service contracts shall be procured through the use of a competitive process for all contracts that will exceed \$150,000, subject to the exceptions provided herein.

b. BESE shall approve all social service contracts exceeding \$50,000 and all amendments to such contracts.

c. The state superintendent shall have the authority to approve all contracts not exceeding \$50,000 and shall have the authority to delegate such approval authority to the RSD superintendent.

4. Purchase or Lease of Immovable Property

a. The state superintendent shall develop and implement a process for the purchase or lease of immovable property.

b. BESE shall approve the purchase or lease of immovable property by the RSD.

K. Exceptions to Required Competitive Process

1. Procurement that is governed by state law and regulation is set forth in Subsection I. of this Section. All requirements that must be met when engaging in such procurement are governed by applicable law and regulation. In addition, all exceptions to such requirements are governed by applicable law and regulation. The RSD must comply with all law and regulation, unless law or regulation authorizes an exception. The exceptions set forth below in Subparagraph K.2. for procurement which is governed by policy shall not apply to procurement governed by state law and regulation.

2. Procurement that is governed by BESE policy is set forth in Paragraph J. of this Section. The provisions of Paragraph J. require the use a competitive process for certain types of procurement that are governed by policy. A competitive process shall not be required in the following circumstances:

a. Declaration of an Emergency by State Superintendent

i. In all procurement wherein a competitive process is required by this policy, the RSD may engage in emergency procurement following the declaration of an emergency by the state superintendent or his designee. The state superintendent is authorized to delegate his authority to declare emergencies and/or approve emergency contracts to the RSD superintendent, the RSD chief operating officer, or the RSD chief procurement officer. The state superintendent or his designee may declare an emergency if an emergency condition, meeting the following criteria, exists.

(a). An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as proclaimed by the state superintendent. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (i). the functioning of Louisiana government;
- (ii). the preservation or protection of property; or

(iii). the health or safety of any person.

ii. The state superintendent shall require that a record be created of all emergency declarations by making a written determination stating the basis for an emergency procurement and for the selection of a particular contractor. In addition to the written determination describing the basis for the emergency procurement, the record shall also contain:

- (a). each contractor's name;
- (b). the amount and type of each contract; and
- (c). a listing of services procured under each contract.

iii. Emergency procurement shall be limited to only those services necessary to meet the emergency.

iv. The source selection method used shall be selected with the goal of assuring that the required services are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained.

b. Sole Source Procurement

i. The RSD may engage in sole source procurement if the product or service it is seeking is available from a single supplier. The vendor must be the sole provider of any services requested.

ii. A requirement for a particular service does not justify a sole source procurement if there is more than one potential bidder or offeror for the service.

iii. The state superintendent shall require that a record be created of all sole source procurement by making a written determination stating the basis for the sole source procurement and for the selection of a particular contractor. In addition to the written determination describing the basis for the sole source procurement, the record shall contain:

- (a). the contractor's name;
- (b). the amount and type of contract; and
- (c). a listing of services procured under the contract.

iv. All sole source contracts submitted to BESE for approval as required in this Section shall be accompanied by a description of the basis for exercising the sole source exception. Each amendment to such contracts submitted for BESE approval shall also contain an assurance that the services to be provided through the contract amendment continue to meet the sole source exception provided herein.

v. For all contracts with a sole source provider which have been entered into pursuant to the exception set forth this Subparagraph, the contractor shall be allowed to subcontract with a provider of services to be compensated through its contract with the RSD, even if the subcontractor does not meet the criteria for being a sole source provider, as long as the subcontractor's work is a part of the overall contract objective and the contract is predominantly a contract for the services of the sole source provider.

c. Service Contracts with Education Program Specialists

i. The RSD may enter into a personal service, consulting service, or other professional service contract, as set forth in Paragraph J.2. of this Section, without using a competitive process upon a specific determination of the following:

(a). the service proposed to be provided by the education program specialist is directly related to efforts to improve student academic achievement;

(b). the service proposed to be provided by the education program specialist is directly related to the development of an academic organizational structure; or

(c). the service proposed to be provided by the education program specialist is directly related to efforts to provide services to students with disabilities.

ii. The state superintendent shall require that a record be created for each education program specialist contract entered into without the use of a competitive process by making a written determination stating the basis for the procurement and for the selection of a particular contractor. In addition to the written determination describing the basis for the procurement and for the selection of a particular education program specialist, the record shall contain:

- (a). the contractor's name;
- (b). the amount and type of each contract;
- (c). a listing of the services to be provided; and
- (d). an explanation of the how the contractor meets a category in Clause K.2.c.i. of this Section.

iii. All education program specialist contracts submitted to BESE for approval as required in this Section shall be accompanied by a description of the basis for exercising the education program specialist exception. The basis shall include evidence that the contractor qualifies as an education program specialist and an explanation of how the contractor meets a category in Clause K.2.c.i. of this Section. Each amendment to such contracts submitted for BESE approval shall also contain an assurance that the services to be provided through the contract amendment continue to meet the education service provider exception provided herein.

iv. For all contracts with an education program specialist which have been entered into pursuant to the exception set forth this Subparagraph, the contractor shall be allowed to subcontract with a provider of services to be compensated through its contract with the RSD, even if the subcontractor does not meet the criteria for being an education program specialist, as long as the subcontractor's work is a part of the overall contract objective and the contract is predominantly a contract for the services of an education program specialist.

L. Cooperative Purchasing

1. The RSD shall have the authority to join with other school districts, the State of Louisiana, or other units of government in cooperative purchasing plans when such purchasing is in the best interest of the RSD. Competitive sealed bids or sealed proposals received by any other governmental agency or school district shall be the equivalent of bids or proposals received by the RSD and may be the basis for purchase of goods and services by the RSD.

M. Federal General Services Administration (GSA) Contracts

1. The RSD may procure materials, supplies, and equipment from Federal General Services Administration supply schedules in compliance with the Federal Acquisition

Streamlining Act and regulations adopted pursuant to that law. Such purchases of materials, supplies, or equipment shall not be purchased at a price higher than the price for the same item listed on any available state purchasing contract. No use shall be made of the federal GSA supply schedules with the participation of a Louisiana licensed dealer or distributor.

N. Waiver of Requirements

1. BESE may waive, or deviate from, any provision of this Section upon the request of the State Superintendent.

2. The State Superintendent, in requesting such a deviation or waiver, shall identify the provision to be waived or the provision from which the State Superintendent seeks to deviate, and shall provide a justification for the request.

3. Any request for a deviation from, or for a waiver of, any provision of this Section shall be approved by BESE prior to the execution of any contract or contract amendment pursuant to such waiver or deviation and prior to commencement of work by any contractor pursuant to any such contract or contract amendment.

4. The agenda of the Finance/Audit Review Committee shall have a standing item wherein the State Superintendent may make a request defined in this Paragraph.

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), and R.S. 39:1596.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

Family Impact Statement

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 9, 2010, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: Bulletin 129—
The Recovery School District**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy aligns the Recovery School District with BESE Bulletin 741, La Handbook for School Administrators and outlines the fiscal and internal management of the Recovery School District.

Chapter 1 is a simple introduction and states that the purpose of Bulletin 129 is to set forth the role, responsibilities, and functions of the Recovery School District

Chapter 11 deals with the fiscal management of the Recovery School District. Chapter 11 specifies that the Recovery School District shall have a BESE approved budget, prepare financial statements, be audited by the Office of Legislative Auditors, receive and use Minimum Foundation Program funds, and procure goods, services and contracts following the state guidelines. The cost to publish and distribute the Bulletin will be about \$2,000.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy will have no effect on revenue collections of state and local 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
1009#026

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Education
Board of Regents**

Registration and Licensure
(LAC 28:IX.101, 103, 105, 302,
303, 305, 317, 319, and 501)

In accordance with the Administrative Procedure Act, R.S. 17:1808 et seq., notice is hereby given that the state Board of Regents proposes to amend the rules and regulations to LAC Part Number IX, Regents, Rules for Registration and Licensure.

**Title 28
EDUCATION
Part IX. Regents**

Chapter I. Rules for Registration and Licensure

§101. Definition of Terms

A. Terms used in these regulations such as *Board of Regents*, *Postsecondary*, *Academic Degree-granting Institution*, *Registration*, *Licensure*, and *Fees* shall be interpreted in accordance with R.S. 17:1808.

B. For institutions domiciled in Louisiana, the term *operate* applies to the offering of courses and programs through any modality. For institutions domiciled outside Louisiana, the term *operate* shall mean the offering of courses that are physically delivered in the state of Louisiana and/or require clinical experiences in the state of Louisiana.

C. The term *clinical experiences* shall mean site-based learning activities (e.g., clinical, internships, student teaching, practicum, field-based experiences, etc.) in settings (e.g., hospitals, schools, businesses, etc.) in which candidates are working with patients, children, teachers, principals, etc. in Louisiana and are observed/assisted/evaluated by supervisors, preceptors, coaches, teachers,

principals, or other individuals to determine that course and/program requirements have been addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 36:

§103. Registration and License Applications

A. All public and private postsecondary, academic degree-granting institutions offering instruction in the state of Louisiana must register annually with the Board of Regents. Regular licenses are reviewed every two years. Requests for registration forms and license applications should be made in writing and addressed to:

Commissioner of Higher Education
Louisiana Board of Regents
PO Box 3677
Baton Rouge, LA 70821-3677

B. Completed registration forms and license applications should be returned to the address shown above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 21:168 (February 1995), LR 36:

§105. License Fees

A. The license application fee shall be \$750 (future increase to \$1000 upon approval of the Legislature). Those institutions granted a license to operate will be required to pay an additional \$750 (future increase to \$1000 upon approval of the Legislature) at the start of the second year of the two-year licensing period. However, the initial license application fee may be reduced to \$100 for institutions seeking initial licensure in order to allow clinical practicum experiences for fewer than five Louisiana residents enrolled in nursing and other health-related programs. In order to continue and renew their licenses, those institutions will be required to pay all subsequent fees, including renewal fees. License renewal fees are required during each subsequent two-year licensing period and are nonrefundable.

B. - C. ...

D. Institutions seeking licensure shall submit all required materials and the nonrefundable license fee to the Board of Regents. If a final determination concerning the institution's qualifications for licensure is not reached within 180 days of receipt of the license application and supporting materials, a provisional license will be issued to the institution. The provisional license will remain in effect pending a final licensing decision by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 21:168 (February 1995), LR 36:

Chapter 3. Criteria and Requirements for Licensure

§302. Institutional Accreditation

A. - B. ...

C. The Board of Regents will consider a possible waiver of the accreditation requirement in the case of single purpose institutions. This consideration will be given in extraordinary circumstances where the board determines that it would be educationally impractical for an institution to reorganize its programs and operations in order to become eligible for

consideration by a U.S. Department of Education recognized accrediting association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21:168 (February 1995), amended LR 36:

§303. Faculty

A. Qualifications of Faculty

1. Faculty shall be qualified by education and experience in the fields in which they teach. Faculty must meet the following minimum requirements.

a. Faculty shall possess no less than the degree awarded to a graduate of the program in which they are teaching.

b. The faculty shall be sufficient in number to establish and maintain the effectiveness of the educational program.

B. Institutions offering advanced degrees must employ faculty who hold advanced degrees in appropriate fields from institutions accredited by recognized agencies.¹ It is required that faculty credentials be verifiable.

1. If any institution employs a faculty member whose highest earned degree is from a non-regionally-accredited institution within the United States or an institution outside the United States, the institution must show evidence that the faculty member has appropriate academic preparation.

2. It is the responsibility of the institution to keep on file for all full-time and part-time faculty members documentation of academic preparation, such as official transcripts, and if appropriate for demonstrating competency, official documentation of professional and work experience, technical and performance competency, records of publications, and certifications and other qualifications.²

¹ Recognized accrediting agencies are those approved by the United States Department of Education.

² Source: Southern Association of Colleges and Schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:169 (February 1995), LR 36:

§305. Academic Program Standards

A. - E. ...

F. For all face to face teacher/leader courses/programs with or without clinical experiences in Louisiana and all on-line teacher/leader courses/programs with clinical experiences in Louisiana that result in initial teacher or leader certification being placed on teacher/leader certificates in Louisiana, provide evidence of the pursuit or attainment of national accreditation by the National Council for Accreditation of Teacher Education (NCATE) or Teacher Education Accreditation Council (TEAC) and provide evidence of attainment of Level 1 Approval to implement a program for initial certification of teachers and/or certification of educational leaders. (*Bulletin 996 B Standards for Approval of Teacher and Educational Leadership Preparation Programs*). Also, provide evidence of intent to adhere to the requirements of the state teacher and/or educational leadership accountability systems.

G. For all face to face teacher/leader courses/programs with or without clinical experiences in Louisiana and all on-line teacher/leader courses/programs with clinical experiences in Louisiana that do or do not result in add-on

certifications/endorsements being placed on teacher/leader certificates in Louisiana, provide evidence of the pursuit or attainment of national accreditation by the National Council for Accreditation of Teacher Education (NCATE) or Teacher Education Accreditation Council (TEAC).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:169 (February 1995), LR 36:

§317. Procedures for Tuition and Fee Refunds

A. - A.4.d.iii. ...

iv. refund policies for programs offering tuition/fee payments on an installment plan or programs offered through distance learning will be examined by the Board of Regents on an individual basis. Refund policies for installment programs are expected to conform generally to refund policies which appear in Subparagraphs A.4.c.i through iii and d.i through iv of this Section;

e. refunds must be paid within 45 days of the date of withdrawal of the student from the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21:169 (February 1995), LR 36:

§319. Surety Bonding

A. Institutions are required to post a surety bond issued by a surety authorized to do business in the state of Louisiana in the amount of \$10,000 to cover the period of the license. These bonds are intended to protect students in the event of a sudden closure of the institution. Institutions that are also licensed and bonded under provisions set forth by R.S. 17:341 et. seq. need not seek additional bonding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1554 (December 1993), amended LR 36:

Chapter 5. Consumer Protection

§501. General Provisions

A. Individuals must make every reasonable effort to solve disputes directly with the institution. If a solution cannot be reached, an individual may file a written complaint with the Board of Regents. Board of Regents' staff will review the facts and intervene where appropriate. Such intervention shall not include legal action on behalf of the party, but may include additional investigation of the institution including a site visit to determine if the institution's license should be revoked.

B. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1554 (December 1993), amended LR 36:

Family Impact Statement

In accordance with R.S. 17:3141, Title 28 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 Section 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? Lacks sufficient information to determine.

Public Comments

Interested persons may submit written comments until 4:30 p.m., October 5, 2010, to Dr. Larry Tremblay, Louisiana State Board of Regents, P.O. Box 3677, Baton Rouge, LA 70802-3677.

Larry Tremblay
Associate Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Registration and Licensure

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change should have little or no impact (costs/savings) to state governmental units. The Regents' staff will add one additional step in its review process for licensed institutions wishing to offer teacher education or education leadership programs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units. The only impact would be if an institution determined not to seek licensure due to the additional criteria.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will require licensed educational institutions wishing to offer teacher education or education leadership programs to meet the same program accreditation requirements as Louisiana's institutions to continue offering that program in Louisiana. Affected institutions without the appropriate accreditation would incur additional requirements and costs to obtain the program accreditation required by the proposed rule if they want to continue offering the academic program in Louisiana. Affected institutions may pass on additional program accreditation costs to affected students or may choose to cease offering the particular program to students in Louisiana rather than seek program accreditation required by the proposed rule.

The primary economic benefit for students enrolled in these teacher education or education leadership programs is that upon graduation they are eligible to become certified teachers or education leaders in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Institutions may choose to discontinue teacher education or education leadership programs rather than seek the program accreditation required by the proposed rule, potentially decreasing supply and competition among post-secondary

educational programs in Louisiana. However, individuals obtaining a degree from an accredited program as required by the proposed rule will be qualified to become certified teachers or education leaders in Louisiana.

Larry Tremblay
Associate Commissioner
1009#012

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Removal of Pesticide Application Exemption from LPDES Permitting Requirements (LAC 33:IX.2315)(WQ082)

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 Water Quality regulations, LAC 33:IX.2315.A.8. (WQ082).

On November 27, 2006, EPA issued a final Rule [hereinafter called the "2006 NPDES Pesticides Rule", 40 CFR 122.3(h)] in which an NPDES permit is not required for pesticide applications to or around water, provided that the application is consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. The Rule became effective on January 26, 2007.

On January 9, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule [40 CFR 122.3(h)]. *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir., 2009).

This rule-making action will suspend (delete) LAC 33:IX.2315.A.8 which is identical to the 2006 NPDES Pesticide Rule [40 CFR 122.3 (h) which was vacated by the January 9, 2009 court decision. It will eliminate the exemption which says you do not need a LPDES permit when applying a pesticide in accordance with the FIFRA label. The suspension of the state rule will require LDEQ to issue a general permit for the application of pesticides in Louisiana. This Rule change shall become effective April 11, 2011. The basis and rationale for this Rule is to bring our regulations in line with the federal regulations and court decisions.

On April 11, 2011, the two-year stay will end and anyone applying a pesticide without a permit will be in violation of the Clean Water Act and EPA's NPDES Regulations. In conjunction this action to suspension of this state regulations, LDEQ will need to issue a general permit for the application of pesticides. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 23. Definitions and General LPDES Program Requirements

§2315. Exclusions

A. - A.7. ...

8 - 8.b. repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2069 (October 2007), LR 36:

Family Impact Statement

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

Public Hearing

A public hearing will be held on October 27, 2010, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ082. Such comments must be received no later than November 3, 2010, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to donald.trahan@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ082. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Removal of Pesticide Application
Exemption from LPDES Permitting Requirements**

NOTICE OF INTENT

**Office of the Governor
Board of Home Inspectors**

Training, Testing, and Licensure
(LAC 46:XL.103, 105, 109, 115, 117, 119,
120, 121, 125, 303, 309, 313, 315, 319, 321,
501, 707, and 709)

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

If the United States Environmental Protection Agency (EPA) allows the proposed pesticide general permit to be issued without the requirement for the Notice of Intent (NOI) there will be no implementation cost to the Louisiana Department of Environmental Quality (LDEQ). The resources associated with the administration and management of the pesticide general permit will increase LDEQ's workload with the preparation of the permit every five years, the public noticing of the permit every five years, and the required inspections during the five year cycle of the permit. The described activities can be accomplished using existing personnel resources.

If the EPA determines that LDEQ must include NOI requirements in the pesticide general permit, the costs to the agency will increase. The estimated cost to the department would be a minimum of \$125,000 annually for one additional technical employee and one additional analytical employee who would review, verify and otherwise process NOI documentation from as many as several hundred thousands to approximately two hundred and fifty applicants. The figure depends, of course, upon EPA decision to require NOI submittals in Louisiana. If the NOI submittal requirements are dictated by EPA, LDEQ will assess a prorated fee to cover the \$125,000 costs to the department. Future LDEQ fees could possibly range from a nominal level to approximately \$500 annually depending on the universe of applicants dictated by EPA.

No additional costs or savings can be identified for other state agencies or local governmental units if EPA allows the general permit to be issued as proposed. If the EPA determines that LDEQ must include NOI requirements in the pesticide general permit, the estimated costs to the other state and local agencies and units will increase.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections for state or local governmental units if the EPA allows LDEQ to issue the pesticide general permit as it is proposed. If the EPA dictates NOI requirements and additional conditions in the pesticide general permit, future LDEQ fees could range from a nominal level to approximately \$500 annually depending on the universe of applicants dictated by EPA.

**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 from the proposed pesticide general permit. If the EPA dictates additional NOI requirements, future LDEQ fees could possibly range from a nominal level to approximately \$500 annually depending on the universe of applicants dictated by EPA.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no estimated effect on competition or employment as a result of the proposed rule. The proposed rule results from a nationwide federal law.

Herman Robinson, CPM
Executive Counsel
1009#095

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

The Board of Home Inspectors proposes to amend LAC 46:XL.103, 105, 109, 115, 117, 119, 120, 121, 125, 303, 309, 313, 315, 319, 321, 501, 707, and 709 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Home Inspector Licensing Law, R.S. 37:1471 et seq. The text is being amended and adopted to correct typographical errors, to relocate definitions, to remove superfluous language, to reinstate prior fees, revise infield training requirements and to revise qualifications for trainers and education providers.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XL. Home Inspectors

Chapter 1. General Rules

**§103. Domicile; Meetings; Quorum; Service of
Process; Publication**

A. The board shall be domiciled in Baton Rouge, but may meet in other locations as determined by the board. A majority of the board members shall constitute a quorum of the board for all purposes, including the issuance of licenses and the rulemaking and adjudicative functions of the board.

B. The chief operating officer of the board shall be the agent for service of process. The board shall register the name and address of its agent for service of process as required by law.

C. The board shall publish quarterly a bulletin, which shall be the official journal of the board. This bulletin shall contain notice of all applications filed, board agendas, minutes of open meetings, request for declaratory relief, and generally serve as the board's form notice to licensees and the public. All licensees shall receive the bulletin free of charge. Others may subscribe to the bulleting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474-1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:

**§105. Officers; Election; Secretary-Treasurer; Chief
Operating Officer; Board Staff; Duties**

A. - B.4. ...

C. The chairman shall preside at all meetings, approve the agenda and shall be the official custodian of all records.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1686 (August 2004), LR 36:

§109. Definitions

* * *

Component—repealed.

* * *

Home Inspection—repealed.

Home Inspection Report—repealed.

1. - 10. Repealed.

Home Inspector—repealed.

Inspection—repealed.

* * *

System—repealed.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S.37:1473 and R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2739 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1686 (August 2004), LR 36:

§115. Licensing Applications; Forms; Terms; Renewals; Inactive Status

A. ...

B. Upon renewal of a license, the licensee shall submit a copy of a completed inspection report form from the previous licensing period. All client information, including name and address, shall be deleted from the form. Reports must comply with §123.

C. Licenses shall be renewed on an annual basis. Licenses shall expire one year after the last day of the month of issuance of the preceding year. Renewal requests shall be made on approved renewal application forms supplied by the board and must be received at least two weeks prior to the expiration date of the current license. Each applicant shall complete all Chapters of the renewal application.

D. Any licensee who fails to timely renew his license may thereafter obtain renewal upon filing a renewal application and upon paying the appropriate renewal and delinquent fees. The period for delinquent renewal of an expired license shall be limited to the 12 month period immediately following the expiration date of the active license. Failure to renew an expired license during such 12 month period shall require the former licensee to pass the board approved licensing examination, pay the appropriate renewal and delinquent fees, file a renewal application, and complete all continuing education requirements accruing during the period of delinquency. Failure to renew an expired license within the 36 month period immediately following the expiration date of the active license shall, in addition to the above requirements, require the licensee to retake and pass 90 hours of classroom education as set forth in the Board Rules and take the Standards of Practice and Code of Ethics report writing seminar offered by the board or other board approved education provider. Any home inspection performed during an expiration period is considered a violation and subject to disciplinary action by the board.

E. A licensee may hold inactive status by maintaining license renewals and continuing education requirements, but all insurance requirements are waived provided no home inspections are performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740

(December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 36:

§117. Fees; Submission of Report Fees; Timeliness of Filings

A. Fees charged by LSBHI are as follows:

1. application for license—\$200;
2. license renewal—\$100;
3. delinquent renewal (for home inspectors only)—\$100;
4. initial qualifying/continuing education provider—\$200;
5. annual renewal for education provider—\$200;
6. filing for additional course offerings—\$50;
7. inspection report—\$5.

B. Each home inspection performed by an inspector under this law shall be subject to a \$5 state inspection fee per home inspection. This fee is to be made payable to the LSBHI and is to be remitted monthly in the following manner.

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 34:1926 (September 2008), LR 36:

§119. Education/Training and Testing; Initial Licensure

A. Initial applicants for licensure must pass a LSBHI approved licensing examination, regarding home inspection information, techniques, standards of practice, and code of ethics.

B. Any person filing an initial application for licensure shall present evidence to the board that he has satisfactorily completed at least 130 hours of required home inspection instruction and training by training providers and instructors approved by the board.

C. Education and training shall be performed as follows.

1. 90 hours of the required instruction and training shall consist of classroom hours of home inspection course work approved by the board with an certified education provider as set forth in §120.

2. 30 hours of the required instruction and training shall consist of in-field platform training from a certified infield trainer approved by the board.

3. 10 hours of the required instruction and training shall consist of attending 10 live home inspections from a certified infield trainer at a residential structure where a fee is paid and a report is provided to a client.

4. In addition to completion of the 130 hours of home inspection instruction and in-field training, the applicant shall also attend the report writing seminar conducted on behalf of the board or its approved representative and pass the board approved examination of the Standards of Practice and Code of Ethics.

D.1. The 90 hours of classroom instruction as set forth in §119.C.1 above, may only include a combination of any of the following methods of instruction:

- a. live lectures by a certified home inspector instructor;
- b. DVD, CD ROM, videotape, or other electronic means of video lecture, with a certified home inspector

available during classroom hours for questioning and discussion;

c. in-classroom or remote demonstration of techniques; or

d. periodic, in-classroom testing.

2. No credit towards the 90 classroom hours shall be given for:

a. in-classroom study;

b. instruction received from an education provider not duly qualified by the board;

c. time spent listening to audiotapes; or

d. classroom time devoted to non-approved course materials.

3. Before the trainee can be certified as having completed the required 90 hours of classroom instruction, the trainee must have:

a. attended and completed the 90 hours of classroom instruction within 180 days of commencement;

b. passed the final examination and all periodic examinations given by the educational provider; and

c. mailed a completed LHI Application Form and Education Provider Application Form to the board.

E. Before registering for the 90 hour classroom instruction with a certified educational provider, the trainee must first apply with the board. After enrolling with a certified educational provider, the trainee must provide the board with the name of the provider and the commencement date of instruction.

F. Prior to admission to an infield training program, the trainee shall complete the required 90 hours of classroom training and pass the licensing exam described in §119.A.

G. Infield training shall consist of platform training and live training.

1. Platform training shall consist of attending 30 hours of hands-on training performed at a residential structure or using residential components or equipment with a certified infield trainer. All systems of a residential structure shall be examined and inspected during platform training. The applicant shall be given one credit hour for each hour of platform training attended. No more than four applicants may be trained at one time during platform training. Platform training shall not be conducted during a live home inspection where an inspection fee is paid and an inspection report is provided to a client.

2. Live training shall consist of attending 10 live home inspections with a certified infield trainer at a resale residential structure where a fee is paid and a report is provided to the client. The applicant shall be given one credit hour for each live inspection attended. No more than two applicants may be trained at a time during a live home inspection. During each inspection, the trainee shall prepare a mock home inspection report in a format approved by the board that conforms to the requirements of the Standards of Practice for each home inspected during live training. The applicant shall retain these reports for three years from the date of completion of training.

H. Upon registering trainees for a 90 hour course, all certified education providers shall:

1. notify the board of the date of the commencement of each 90 hour course of instruction of each trainee;

2. provide the names, addresses, and telephone numbers of all trainees enrolled for that course;

3. keep records of attendance of each trainee enrolled in the 90 hour course to confirm satisfactory completion of the 90 required classroom hours of instruction;

4. provide the trainee with an education provider evaluation form approved by the board prior to final testing and completion of the 90 required classroom hours of instruction;

5. provide a final examination and multiple periodic examinations to the trainee covering course contents; and

6. provide a copy of certificates of completion to the board of only those trainees who have successfully completed the full 90 hours of classroom instruction.

I. Certified in-field trainers shall:

1. instruct the trainee on how to complete and file the monthly state reporting form;

2. provide the trainee with a copy of the Standards of Practice and Code of Ethics;

3. issue to trainee a certificate showing completion of platform training and/or live training; and

4. maintain for three years a list of all trainees and the dates of training.

J. The board shall adopt and approve a licensing examination, which may be administered by a nationally accepted testing service as determined by the board.

K. The board shall review examination material relative to the adoption and approval of licensing examinations. The board shall have complete authority to enter into confidentiality agreements, which prohibit the public dissemination of information pertaining to review of questions or materials, including any questions or materials certified as proprietary by the person or facility submitting them for evaluation. Any person or testing facility submitting evaluation materials for review, certification, or otherwise, conveys and assigns to the board a right of limited use and license solely for use in the certification process and any related inquiry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2741 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 35:1519 (August 2009), LR 36:

§120. Education Providers; Instructors

A.1. In order to qualify as a certified 90 hour education provider, an applicant shall:

a. pay the initial education provider fee;

b. provide a syllabus and a course list to the board;

c. agree, in writing, to defend, indemnify and hold the board harmless against any claim or suit alleging negligent or intentional acts or omissions of the education provider in its training, or otherwise;

d. remain current on all renewal and other fees;

e. employ only certified home inspector instructors; and

f. be approved by the board.

2. In order to qualify as a certified home inspector instructor of a 90 hour education provider, a person must:

a. have been actively engaged in the performance of home inspections for the three years prior to certification;

b. have been an actively engaged, Louisiana licensed home inspector for the three years prior to certification;

- c. have performed at least 500 home inspections; or
- d. be licensed in the field of the subject matter of the particular course instructed.

3. In order to qualify as an infield trainer, an applicant shall:

- a. be a LSBHI licensed home inspector for at least three years;
- b. pay the required infield trainer fee(s);
- c. be current on all other fees;
- d. be current on all continuing education hours; and
- e. be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 30:1687 (August 2004), amended by the Office of the Governor, Board of Home Inspectors, LR 31:2011 (August 2005), LR 35:1520 (August 2009), LR 36:

§121. Continuing Education; Instructors

A. As a condition of license renewal, an inspector must certify completion of at least 20 hours of continuing education during the previous licensing period, in courses approved by the board. Board-approved training providers may be given credit for course preparation and other activities as sanctioned by the board in lieu of the continuing education requirements. The board shall fix the amount of course credit to be received upon application by an instructor. No more than 10 hours of continuing education credit may be carried over into the following year.

B. Repetition of Courses

1. The same continuing education course may be taken only once for continuing education credit during any two year period, unless otherwise approved by the board.

2. For each license period the board may specify mandatory subject matter for one course, such course to be not less than two nor more than four credit hours. The remaining courses shall be elective courses covering subject matter to be chosen by the licensee and meeting all other criteria specified in this Chapter.

3. Each course shall comprise of at least one credit hour.

4. The board may approve only up to two hours of credit per licensing period for courses dealing with construction, but outside the scope of the Standards of Practice.

5. Up to four hours of credit may be given per licensing period for attending a quarterly or special board meeting or for serving on a committee appointed by the board.

6. The board may approve only up to four hours of continuing education course per licensing period from non-approved instructors.

C. In order to receive credit for completing a continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course.

D.1. The board shall deny continuing education credit claimed by a licensee, and shall withdraw continuing education credit previously awarded by the Board to a licensee if:

- a. the licensee provided incorrect or incomplete information to the board concerning continuing education or compliance with this Section;

- b. the licensee was mistakenly awarded continuing education credit because of an administrative error; or

- c. the licensee failed to comply with the attendance requirement established by Paragraph C of this Section.

2. When continuing education credit is denied or withdrawn by the board under Subsection D of this Section, the licensee remains responsible for satisfying the continuing education requirement. Any license may be suspended until proof of compliance is submitted.

E. It is the duty of every licensee to provide proof of compliance with continuing education requirements on a timely basis. In order to receive credit from the Board for completion of continuing education courses under this Section, proof of compliance must be submitted on forms approved by the board and prepared by board approved training providers.

F.1. In order to qualify as a continuing education instructor, an applicant shall pay the required continuing education provider fee(s) and be approved by the board.

2. A licensee who is also a board approved continuing education instructor may satisfy all or part of the continuing education requirements provided for in Subsection A of this Section by presenting satisfactory evidence to the board of participation, other than as a student, in educational processes and programs in home inspection practices or techniques, including but not limited to teaching, program development, and preparation of textbooks, monographs, articles, or other instructional material subject to approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477, and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:

§125. Home Inspectors Record Keeping; Inspection; Production Retention

A. - C. ...

D. To facilitate compliance with record keeping requirements of this Section, copies of all home inspection reports performed by a licensee shall be provided to the licensee upon any separation from employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:

Chapter 3. Standards of Practice

§303. Definitions

A. The definitions in §109 of this Part are incorporated into this Chapter by reference. The following definitions apply to this Chapter.

Alarm System—warning devices, whether installed or free standing, including but not limited to, carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.

Automatic Safety Control—devices designed and installed to protect systems and components from unsafe conditions.

Cooling System—a central system that uses ducts to distribute cooled air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one

room, and that is not plugged into an electrical convenience outlet.

Client—the person with whom a licensed home inspector contracts to perform a home inspection, whether individually or through that person's agent.

Component—a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as Boards or nails or where many similar pieces make up a component.

Cross Connection—any physical connection or arrangement between potable water and any source of contamination.

Dangerous or Adverse Situations—situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.

Deficient—a condition of a system or component that adversely and materially affects its performance.

Describe—to report, in writing, a system or component by its type, or other observed characteristics, to distinguish it from other systems or components.

Dismantle—to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means, that would not be taken apart by a homeowner in the course of normal household maintenance.

Enter—to go into an area to observe all visible components.

Functional Drainage—a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

Functional Flow—a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

Functioning—performing as expected and in accordance with its intended design and purpose.

Further Evaluation—examination and analysis by a qualified professional or service technician whose services and qualifications exceed those provided by a home inspector.

Heating System—a central system that uses ducts to distribute heated air to more than one room which is not plugged into an electrical convenience outlet.

Home Inspection—the process by which a Home Inspector visually examines the readily accessible systems and components of a home and describes those systems and components in accordance with the Standards of Practice.

Home Inspection Report—a written evaluation of two or more of the following systems of a resale residential building:

- a. electrical system;
- b. exterior system;
- c. interior system;
- d. heating and cooling systems;
- e. plumbing system;
- f. roofing system;
- g. structural system;
- h. insulation and ventilation system;
- i. appliance system; or
- j. any other related residential housing system as defined in the standards of practice prescribed by the board.

Home Inspector—any person who, in accordance with the provisions of these rules, holds himself out to the general public and engages in the business of performing home inspections on resale residential buildings for compensation and who examines any component of a building, through visual means and through normal user controls, without the use of mathematical sciences.

Inaccessible—unable to open with the use of Standard Inspection Tools or hidden from visual inspection by furniture, stored items, wall or floor coverings or other obstructions.

Inspect—to examine readily accessible systems and components of a building in accordance with the Standards of Practice, using normal operating controls and opening readily openable access panels.

Installed—attached such that removal requires tools.

LHI—an acronym for Licensed Home Inspector.

Method of Access—a means by which the inspector gains entry, ingress and/or a visual advantage.

Normal Operating Controls—devices such as thermostats, switches, or valves intended to be operated by the homeowner.

Normal Operating Cycle—the standard period during which a system or component operates by the use of Normal Operating Controls

Observe—the act of making a visual examination.

On-Site Water Supply Quality—water quality based on the bacterial, chemical, mineral and solids contents of the water.

On-Site Water Supply Quantity—water quantity based on the rate of flow of water.

Operate—to cause systems or equipment to function.

Recreational Facilities—spas, saunas steam baths, swimming pools, tennis courts, and exercise, entertainment, athletic, playground or other equipment and associated accessories.

Readily Accessible—available for visual inspection without requiring the moving of personal property, the dismantling, disconnecting, unplugging or destroying of equipment, or any action which may involve a risk to persons or property.

Readily Openable Access Panel—a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, is not sealed in place and is not blocked by stored items, furniture, or building components.

Representative Number—for multiple identical interior components such as windows and electrical outlets - one such component per room.

Roof Drainage Components—gutters, downspouts, leaders, splash blocks, scuppers, and similar components used to carry water off a roof and away from a building.

Shut Down—a state in which a system or component cannot be operated by normal user controls.

Solid Fuel Heating Device—any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves central furnaces, and combinations of these devices.

Specialized Tools—diagnostic devices and other equipment, including but not limited to, thermal imaging devices, gas leak detection equipment, environmental testing equipment, elevation determination devices and ladders capable of reaching surfaces over one story above the ground.

Standard Inspection Tools—a flashlight, outlet tester, ladder and appropriate screwdriver.

Structural Component—a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

System—a combination of interactive or interdependent components assembled to carry out one or more functions.

Technically Exhaustive—an inspection involving the extensive use of measurements, instruments, testing, calculations, or other means used to develop scientific or engineering findings, conclusions, and recommendations.

Under Floor Crawl Space—the area within the confines of the foundation between the ground and the underside of the lowest floor structural component.

Unsafe—a condition of a readily accessible, installed system or component which, in the opinion of the inspector, is judged to be a significant risk of personal injury or property damage during normal use or under the circumstances.

Wiring Methods—manner or general type of electrical conductors or wires installed in the structure such as non-metallic sheath cable, armored cable, knob and tube, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1689 (August 2004), LR 36:

§309. General Exclusions

A. Home inspectors are not required to inspect or report on:

1. - 6. ...

7. the presence or absence of any suspected or actual adverse environmental condition or hazardous substance, including but not limited to asbestos, radon lead, mold, contaminated drywall, carcinogens, noise, or contaminants, whether in the building or in soil, water, or air;

A.8. - B.14. ...

C. Home inspectors shall not:

1. - 5. ...

6. solicit to perform repair services on any system or component of the home which the inspector noted as deficient, deficient or unsafe in his home inspection report for a period of one year from the date of the inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1478.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1690 (August 2004), LR 36:

§313. Exterior System

A. The home inspector shall inspect:

1. wall cladding, flashings and trim;
2. all doors, garage doors and windows;
3. storm doors and windows;
4. decks, balconies, stoops, steps, porches, and applicable railings;

5. eaves, soffits, and fascias where visible from the ground level; and

6. vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

B. The home inspector shall:

1. describe wall cladding materials;

2. operate all entryway doors;

3. operate garage doors and test the electronic safety beam reverse feature by interrupting the electronic beam (if present); and

4. report whether or not the garage door operator is equipped with a pressure sensitive safety reverse feature and whether that feature was tested.

C. The home inspector is not required to inspect:

1. shutters, awnings, and similar seasonal accessories;

2. fences;

3. presence of safety glazing in doors and windows;

4. garage door operator remote control transmitters;

5. geological conditions;

6. soil conditions;

7. recreational facilities;

8. detached buildings or structures other than garages and carports;

9. presence or condition of buried fuel storage tanks;

10. sea walls, break walls or docks;

11. erosion control and earth stabilization measures; or

12. garage door operator pressure sensitive reverse failure devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2747 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1691 (August 2004), LR 36:

§315. Roofing System

A. - A.5.

B. The home inspector shall:

1. describe the type of roof covering materials; and

2. report the methods used to inspect the roofing system and any limitations.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2747 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1691 (August 2004), LR 36:

§319. Electrical System

A. The home inspector shall inspect:

1. - 5. ...

6. and test ground fault circuit interrupters and arc fault circuit interrupters, unless, in the opinion of the inspector, such testing is likely to cause damage to any installed items or components of the home or interrupt service to an electrical device or equipment located in or around the home.

B. - D. ...

E. The home inspector is not required to:

1. insert any tool, probe, or testing device inside the panels;

2. test or operate any overcurrent device except ground fault circuit interrupters and arc fault circuit interrupters in accordance with §319.A.6;

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2748 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1691 (August 2004), LR 36:

§321. Heating and Cooling System

A. The home inspector shall inspect permanently installed heating and cooling systems including:

A.1. - E.4.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2748 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1692 (August 2004), LR 36:

Chapter 5. Code of Ethics

§501. Code of Ethics

A. ...

B. Ethical Obligations

1. - 6. ...

7. The LHI shall not solicit to repair, replace or upgrade for compensation, any system or component of the home which the inspector noted as deficient or unsafe in his home inspection report, for a period of one year from the date of the inspection.

8. - 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 36:

Chapter 7. Disciplinary Actions

§707. Investigations; Special Investigating Entity;

Board Review

A. Upon receipt of a complaint filed pursuant to §703.A and conforming to this Chapter, the board shall assign a docket number to the complaint and refer it to a special investigating entity.

B. - E. ...

F. If the report states that the allegations lack sufficient evidence to support the allegations, the chief operating officer shall:

1. - 3. ...

G. If the complainant makes a written request for review by the board, the board shall review the report and the complainant's documentation. If the board finds that the allegations are unsupported by the evidence, the chief operating officer shall advise the complainant in writing that the board has concurred with the special investigating entity's conclusion that the complaint lacks sufficient evidence to support the allegations in the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1694 (August 2004), LR 36:

§709. Disciplinary Hearing; Procedure

A. - C. ...

D. No board member, committee member or employee serving as part of the special investigating entity shall participate in the consideration or decision of the matter or confection of the board's decision, order or opinion. However, any member of the special investigating entity may prosecute the case against the licensee or respondent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1695 (August 2004), LR 36:

Family Impact Statement

The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested parties may submit written comments to Morgan Dampier, Chief Operating Officer, Louisiana State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA, 70808, or by facsimile to (225) 248-1335. Comments will be accepted through the close of business October 10, 2010.

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 October 29, 2010 at 9 a.m. at the Office of the State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA.

Albert J. Nicaud
Board Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Training, Testing, and Licensure

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Board expects minimal costs associated with the publication of the Amendments and adoption of these rules in the State Register.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an estimated \$40,000.00 annual reduction in revenue collections of the Board as a result of the decrease in inspection report fees from \$7 to \$5 pursuant to changes to Section 117.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be an economic benefit to the public as the inspection report fee has been lowered from \$7 to \$5 per inspection as a result of changes to Sec 117.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no expected impact on competition and employment.

Albert J. Nicaud
Board Attorney
1009#050

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Enforcement Terms; Unprofessional Conduct (LAC 46:XLV.7601-7605)

Notice is hereby given that the Louisiana State Board of Medical Examiners (board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., intends to amend its administrative rules governing physician practice, LAC 46:XLV, Subpart 3 (Practice), by adopting Subchapter 76, §§7601-7605 (Definition of Enforcement Terms). The proposed rules identify certain conduct that may be deemed unprofessional by the board under R.S. 37:1285(A)(13), and which may provide cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician culpable of such violation.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 76. Definition of Enforcement Terms

Subchapter A. General Provisions

§7601. Scope of Chapter

A. The board has the responsibility to consider and determine action upon all charges of conduct which fail to conform to the Louisiana Medical Practice Act, R.S. 37:1261-1292 et seq., as re-enacted and amended, and the rules and regulations promulgated by the board to carry out the provisions of this Part. The rules of this Chapter compliment the board's authority to deny, suspend, revoke or take such other action against a physician's license, as it may determine to be appropriate, pursuant to R.S. 37:1285.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 36:

Subchapter B. Unprofessional Conduct

§7603. Unprofessional Conduct

A. In the exercise of its duties the board has determined to define the term *unprofessional conduct*, as set forth in R.S. 37:1285(A)(13), as conduct that includes but is not limited to the departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice or the ethics of the medical profession including, but not limited to, the principles established by the American Medical Association, the American Osteopathic Association, and relevant medical specialty associations, 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 physician's practice or otherwise, and whether committed within or without of this state. For illustrative purposes only, *unprofessional conduct* includes but is not limited to:

1. *Sexual Misconduct*—any act of sexual intimacy, contact, exposure, gratification, abuse, exploitation or other sexual behavior with or in the presence of a patient or any

other individual related to the physician's practice of medicine regardless of consent. 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 physician and a former patient after termination of the physician-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;

2. *Disruptive Behavior*—aberrant behavior, including but not limited to harassment, sexual or otherwise, manifested through personal interaction with physicians, 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;

3. *Failing to Cooperate with the Board*—physicians shall cooperate with and assist the board to carry out its duties. A physician shall, among other matters:

a. 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;

b. not attempt to influence the board, its members, staff or agents by means of intimidation, falsehoods or other means prohibited by law;

c. not contact members of the board directly or through others in an attempt to influence the outcome of an investigation or disciplinary proceeding; and

d. not contact or attempt to contact a complainant or witness regarding a complaint or an investigation by the board for purposes of intimidation or harassment;

4. *Failing to Maintain Independent Medical Judgment*—at all times while engaged in the practice of medicine in this state a physician shall exercise independent medical judgment in the sole interest of the patient. To that end a physician shall not:

a. allow a non-physician to impose or substitute his, her, or its judgment for that of the physician in the exercise of the rights and privileges provided for by medical licensure; or

b. enter into or attempt to enforce an agreement that would have the effect of requiring a physician to abandon a patient, deny a patient continuity of care, or interfere with the patient's freedom of choice in the selection of health care providers or services;

5. *Improperly Delegating or Supervising*—physicians retain responsibility to their patients for the training, delivery and results of medical services rendered to their patients. A physician shall not:

a. delegate professional responsibilities to a person the physician knows or has reason to know is not qualified by training, experience or licensure to perform them; or

b. fail to exercise appropriate supervision over a person who is authorized to practice only under physician supervision;

6. *Exercising Undue Influence*—physicians shall exercise their professional judgment in the best interest of their patients. A physician shall not:

a. place his or her own financial gain over the interest and welfare of a patient in providing, furnishing, prescribing, recommending or referring a patient for therapy, treatment, diagnostic testing or other health care items or services;

b. perform, or refer a patient to another to perform, unnecessary tests, examinations or services which have no legitimate medical purpose; or

c. exercise influence over a patient in such a manner as to exploit the patient or his or her third party payor for financial gain of the physician or of a third party through the promotion or sale of services, goods, appliances or drugs;

7. *Enabling the Unauthorized Practice of Medicine*—A physician shall insure that he or she is practicing in conformity with the law and in a lawful setting. A physician shall not:

a. enter into any arrangement, as medical director or otherwise, that allows or condones an unlicensed individual to engage in the practice of medicine, as defined by R.S. 37:1261(1), in the absence of the physician's direction and immediate personal supervision—i.e., where the physician is physically present on the premises at all times that the unlicensed individual is on duty and retains full responsibility to patients for the training, delivery and results of all services rendered; or

b. practice in a pain management clinic that is not licensed by the Department of Health and Hospitals pursuant to R.S. 40:2198.11 et seq., or in any other clinic or medical setting that the physician knows or reasonably should know, is operating in violation of the law or the board's rules;

8. *Practicing or Enabling Practice by Impaired Provider*—a physician shall not:

a. engage in the practice of medicine while under the influence of a mood-altering substance that compromises or has the potential to compromise a physician's medical judgment or practice, irrespective of whether or not prescribed by another physician or authorized practitioner; or

b. prescribe any mood-altering substance to a patient, who is a physician or another licensed health care provider, without instructing the patient to refrain from practice while under the influence of the substance. The physician's record on the patient shall document this instruction;

9. *Failing to Adhere to Accepted Practices*—Physicians shall practice within the scope of their education, training and experience;

10. *Failing to Create or Maintain Medical Records*—a physician shall create and maintain adequate and legible patient records. In addition, a physician 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. 40:12999.96, make patient medical records in the physician'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 of the physician after relocating or closing a medical practice, retiring, or being prohibited from practice by consent, decision or other order of the board;

d. make arrangements, or assist another physician practicing in the same group make arrangements, for access by a physician or patients to their medical records after the physician has left a medical 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.

B. By implementing the meanings set forth hereinabove, the board does not intend to restrict and indeed reserves unto itself its authority and right to take action based upon R.S. 37:1285(A)(13), in any instance in which the particular facts and circumstances of a complaint, investigation or adjudication rise to a level of conduct that it may, in its discretion, determine constitutes unprofessional conduct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 36:

§7605. Effect of Violation

A. Any violation or failure to comply with the provisions of this Subchapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 36:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed Rule on the family has been considered. It is not anticipated that the proposed Rule will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, LA 70190-0250 (1515 Poydras Street, Suite 2700, New Orleans, LA 70112), telephone no. (504) 568-6820, Ex. 240. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., October 20, 2010.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. Should it become necessary to convene a public hearing to receive data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on October 26, 2010 at 9 a.m. at the office of the Louisiana State Board of Medical Examiners,

1515 Poydras Street, Suite 2700, New Orleans, LA. Any person wishing to attend should call to confirm that a hearing is being held.

Robert L. Marier, M.D.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Unprofessional Conduct**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the notice/rule publication costs, the total of which are estimated to be \$289 during the current fiscal year, it is not anticipated that the proposed rules will result in any material costs or savings to the Board of Medical Examiners or any state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated effects on the Board's revenue collections or that of any other state or local governmental unit anticipated from the proposed rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will not have a material impact on costs or economic benefits to directly affected persons or non-governmental groups. The proposed changes do not represent a change in the Board's regulation of unprofessional conduct by its licensees. The Board can and has taken disciplinary action under current rules and laws against licensees for conduct which it deems to be unprofessional. The proposed changes codify unprofessional conduct which may subject a physician to disciplinary action by the Board, resulting in the denial, suspension, revocation or imposition of probationary terms, conditions or restrictions on any license held or applied for by a physician culpable of such violation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules will have any material impact on competition or employment in either the public or private sector.

Robert L. Marier
Executive Director
1009#055

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Medical Examiners**

**Licensure and Certification; Reciprocity
(LAC 46:XLV.311 and 353)**

Notice is hereby given that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., intends to amend §311 and §353 of its rules governing Licensure and Certification of Physicians. The proposed amendments recognize medical internship programs comprised of a combination of accredited programs, remove the requirement that all steps, components, parts, or levels of an

approved examination be successfully completed within a span of ten years for applicants who satisfy the criteria set forth in §311.B, and clarify that the restrictions and limitations on examination attempts applicable to applicants for medical licensure by examination apply equally to applicants by reciprocity.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part XLV. Medical Professions
Subpart 2. Licensure and Certification
Chapter 3. Physicians
Subchapter B. Graduates of American and Canadian
Medical School and Colleges**

§311. Qualifications for License

A. To be eligible for a license, an applicant shall:

1. - 5.h....

6. have completed at least one year of postgraduate clinical training in a medical internship or equivalent program accredited by the American Council on Graduate Medical Education (ACGME) of the American Medical Association, or by the American Osteopathic Association (AOA), or by the Royal College of Physicians and Surgeons (RCPS) of Canada, and approved by the board. A combined postgraduate year one training program that is not accredited shall be deemed to satisfy the requirements of this Section provided each program comprising the combined program is accredited by the ACGME or by the AOA or by the RCPS.

B. Pursuant to Paragraph A.5 of this Section applicants are required to have successfully completed all steps, components, parts, or levels of an approved examination within the prior 10 years and within a span of not more than 10 years. An applicant who is otherwise fully qualified for licensure, but whose successful completion of all steps, components, parts, or levels of an approved examination spanned a period of more than 10 years, shall nonetheless be eligible for licensing provided that such applicant:

1. has within the past three years, completed a medical residency training program accredited by the ACGME, AOA, or RCPS; and

2. is continuing training in a postgraduate year four or fellowship program in the same specialty or subspecialty; or

3. has been practicing or is commencing practice in the same specialty or subspecialty in which the physician completed residency or fellowship training.

C. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by, and to the satisfaction of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1271, 37:1272, 37:1274 and 37:1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 27:836 (June 2001), LR 31:1583 (July 2005), LR 36:

Subchapter E. Licensure by Reciprocity

**§353. Qualifications for Medical Licensure by
Reciprocity**

A. An applicant who possesses and meets all of the qualifications and requirements specified by §§311-313 of

this Chapter, including but not limited to the restrictions and limitations prescribed by §387, save for successfully passing the examinations in the manner specified by §311.A.5.a-h within the prior 10 years, 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 to practice medicine issued by the medical (whether allopathic or osteopathic) licensing authority of another state, and the applicant has, within 10 years prior to the date of application, taken and successfully passed a written certification or recertification examination administered by and leading to certification or recertification by a specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA).

B. ...

C. The waiver of qualifications provided by §311.B of this Chapter shall be available to reciprocity applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1276.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:910 (November 1984), amended LR 14:149 (March 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:516 (June 1990), LR 27:839 (June 2001), LR 31:1583 (July 2005), LR 36:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is anticipated that the proposed amendments will have no impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed rule amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, LA 70190-0250 (1515 Poydras Street, Suite 2700, New Orleans, LA 70112), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., October 20, 2010. A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensure and Certification; Reciprocity

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Other than notice/rule publication costs estimated at a combined total of \$274, which will be absorbed within the Board's budget during the current fiscal year, it is not anticipated that the proposed amendments will result in any additional costs or savings to the Board or any other state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

While the Board has no reliable data, it is believed that a few and infrequent number of additional applicants may be eligible for licensure as a result of the proposed amendments to §§311.B and 353.C. The proposed amendment to §311.A.6 would accept for medical licensure a combined internship program that is not accredited, provided that each program of the combined program is accredited. The proposed amendments to §§311.B and 353.C remove the requirement for completion of a medical licensing examination within a span of ten years for applicants who satisfy the criteria of §311B.1-.3. The proposed amendment to §353A clarifies that the limitation on the number of examination attempts applicable to individuals who apply for a license on the basis of examination, applies equally to reciprocity applicants. While the Board is not in a position to estimate the proposed rules' effect in this respect, no material effect on the Board's revenue collections or those of any other state or governmental unit is anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is not anticipated that the proposed rule amendments will have any material effect on costs, paperwork or workload of physicians or applicants. Nor is it anticipated that the proposed rule amendments will result in any adverse costs and/or economic impact on applicants, licensees or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule amendments will have any material impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.
Executive Director
1009#054

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Veterinary Medicine

Temporary Registration During Oil Spill;
License Procedures
(LAC 46:LXXXV.312)

The Louisiana Board of Veterinary Medicine proposes to adopt LAC 46:LXXXV.312 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518(A)(9). The Rule is being adopted implementing the regulatory requirements for the issuance of temporary registrations to qualified out of state veterinarians with unique veterinary expertise in the care of free-ranging migratory birds, marine mammal, sea turtles, and other unspecified animals affected by an oil spill in Louisiana in keeping with its function as defined by the state Legislature in the Veterinary Practice Act.

The implementation of the requirements for qualified out of state veterinarians who are operating as agents of the U.S. Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration, or their affiliated organizations, under the Federal permits issued by these respective agencies, regarding free-ranging migratory bird rehabilitation, marine mammal, sea turtles, and other unspecified animals, and related matters, are in the

continued best interest for the protection of the public health and safety.

Due to the unanticipated and continuing devastating impact the oil has on free-ranging migratory birds, marine mammal, sea turtles, and other unspecified animals, it is necessary to further address the need for qualified specialized veterinarians to be able to assist the people and animals of Louisiana during the BP Deepwater Horizon oil spill cleanup effort.

This Rule does not allow out of state veterinarians, who do not meet the specific and express qualifications set forth in the Rule, to provide veterinary services in Louisiana. This Rule does not limit or adversely impact the practices of Louisiana veterinarians to provide veterinary services pursuant to their licensed authority in this state.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 3. Licensure Procedures

§312. Temporary Registration During Oil Cleanup (2010 BP Deepwater Horizon)

A. The Governor of Louisiana issued a Declaration of a Public Emergency (effective on or about April 29, 2010) regarding the Deepwater Horizon oil spill in the Gulf of Mexico. The effect of the spill, including the unfortunate and unforeseen delay in capping/stopping the unabated flow of oil, continues to have an adverse impact on the coastal parishes of our state. More specifically, the residual effect of the oil spill, even after the very recent capping/plugging of the well, is an unanticipated and continuing devastating impact on free-ranging migratory birds, marine mammal, sea turtles, and other unspecified animals.

B. This Section is necessary to address the needs of the particular declared emergency or disaster at issue.

C. The board exercises its legal authority pursuant to the Louisiana Veterinary Practice Act, R.S. 37:1518(A)(9), and adopts this Rule thereby granting temporary registration for a period of time to out of state veterinarians who meet the specific and express qualifications set forth in this Section.

D. Accordingly, the following requirements and/or any other requirements required by the board for temporary registration of qualified out of state veterinarians are imposed which more properly address the needs of the particular declared emergency or disaster as set forth herein.

E. A veterinarian not licensed in Louisiana, but currently licensed, in good standing, in a state jurisdiction of the United States may provide veterinary services needed in response to the oil spill if:

1. the veterinarian has a current permit with the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration, or is operating under a federal permitted affiliated organization, regarding free-ranging migratory bird rehabilitation, marine mammal, sea turtles, and other unspecified animals, affected by the recent oil spill in Louisiana;

2. the veterinarian has photo identification and a license to verify a current license in a state jurisdiction of the United States;

3. the veterinarian properly registers with the board providing the documentation set forth in Paragraphs 1 and 2 above;

4. the veterinarian is engaged in a legitimate relief effort during the emergency period at sites specified by the LA Department of Wildlife and Fisheries, and/or the Department of Agriculture, Office of the State Veterinarian (Louisiana Incident Command Central), and provides satisfactory documentation to the board that he will be providing veterinary services at such sites specified by these State agencies; and

5. the veterinarian shall comply with the Louisiana Veterinary Practice Act, board's rules, and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skills, training, and ability.

F. All out-of-state veterinarians licensed, in good standing, in other state jurisdictions of the United States shall submit a copy of their respective license, photograph identification, and current permit issued by the US Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration as required by this rule, as well as other requested information, to the Board of Veterinary Medicine office for registration with this agency.

G. All temporary registrations issued to qualified out of state veterinarians by the board as per Rule 311 (2010 Deepwater Horizon-ER #1) shall remain in effect during the emergency cleanup without the need for re-application to the board.

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 36:

Family Impact Statement

In compliance with Act 1183 and the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or 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, October 22, 2010.

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 Thursday, October 28, 2010 at 10:00 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: Temporary Registration During Oil Spill; License Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$400 in FY 2011). Licensees will

be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups as a result of the rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result.

Wendy D. Parrish
Executive Director
1009#036

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Electronic Health Records
Incentive Payments
(LAC 50:I.Chapter 125)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:I.Chapter 125 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The American Recovery and Reinvestment Act (ARRA) of 2009 authorized 100 percent federal financial participation to states for the purpose of establishing incentive payments to encourage Medicaid health care providers to adopt, implement and use certified electronic health records (EHR) technology. In compliance with the directives of ARRA, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions which will establish Medicaid incentive payments to qualifying professional practitioners and hospitals that adopt, implement, or upgrade certified EHR technology.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 13. Electronic Health Records

Chapter 125. Incentive Payments

§12501. General Provisions

A. In accordance with the provisions of the American Recovery and Reinvestment Act of 2009, the department establishes a Medicaid electronic health record (EHR) incentive payment program to provide payments to eligible professional practitioners and hospitals that adopt, implement or upgrade certified Electronic Health Record (EHR) technology.

B. The following providers may qualify to receive Medicaid incentive payments:

1. physicians;
2. nurse practitioners;
3. certified nurse-midwives;
4. dentists;
5. physician assistants who direct a federally qualified health center (FQHC) or rural health clinic (RHC);
6. acute care hospitals, including cancer and critical access hospitals; and
7. children's specialty hospitals.

C. Eligible providers shall meet the appropriate meaningful use requirements for certified EHR systems as established by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

D. Payments shall be distributed through a web-based Medicaid EHR incentive payment system and at the frequency specified by the department.

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

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

§12503. Qualifying Criteria for Professional Practitioners

A. Professional practitioners shall qualify for Medicaid incentive payments when:

1. services are rendered to the required number of patients based on the Medicaid patient volume threshold; and
2. the meaningful use requirements are met for EHR systems, based on the participation year of the program.

B. Professional practitioners shall be required to meet the minimum Medicaid patient volume threshold of 30 percent. This threshold shall be calculated as a ratio where the numerator is the total number of Medicaid patient encounters with needy individuals treated in any 90-day period in the previous calendar year and the denominator is all patient encounters over the same period of time.

1. Needy individuals shall include:
 - a. Medicaid recipients;
 - b. Children's Health Insurance Program recipients;
 - c. patients furnished uncompensated care by the provider; and
 - d. patients furnished services at no cost or on a sliding scale.

C. During the first year of program participation, the meaningful use requirements for an eligible provider are to adopt, implement, and upgrade a certified EHR system. In subsequent years' participation, providers must meet the meaningful use requirements defined by CMS at the stage that is in place at that time.

D. Incentive payments to eligible practitioners shall begin in state fiscal year (SFY) 2011 and will end in SFY 2021. The latest state fiscal year a Medicaid provider can begin the program is SFY 2016.

E. Eligible practitioners may receive incentive payments from the Medicaid Program or from the Medicare Program. Payments cannot be received from both entities simultaneously. After the initial program selection, eligible practitioners shall be allowed to change their selection only once during SFY 2012 through SFY 2014.

F. Payments are based on calendar year and may total up to \$63,750 over six years of participation. To receive the maximum total payment amount, the provider would have to initiate the program by SFY 2016.

1. Pediatricians with more than 20 percent, but less than 30 percent Medicaid patient volume, will receive two-thirds of the maximum amount.

G. Medicaid EHR incentive payments shall not be available to a hospital-based provider who furnishes 90 percent or more of his/her services in a hospital setting. This includes services furnished on an inpatient or outpatient basis and in an emergency room setting.

AUTHORITY NOTE: Promulgated in 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:

§12505. Qualifying Criteria for Hospitals

A. Hospitals shall qualify for Medicaid incentive payments when:

1. services are rendered to the required number of patients based on the Medicaid patient volume threshold; and

2. the meaningful use requirements are met for EHR systems, based on the participation year of the program.

B. Acute care hospitals shall be required to meet the minimum Medicaid patient volume threshold of 10 percent. There is no Medicaid patient volume threshold for children's hospitals.

C. Hospitals that meet Medicare's meaningful use requirements for certified EHR systems shall satisfy the meaningful use requirements for Medicaid incentive payments.

D. Incentive payments for eligible hospitals shall begin in SFY 2011. Hospitals participating in the Medicaid incentive program cannot initiate payments after SFY 2016 and payment years must be consecutive after SFY 2016.

E. Eligible hospitals may receive incentive payments from Medicare and Medicaid simultaneously.

F. Payments are based on Federal fiscal year and are calculated as follows.

1. The overall EHR amount is multiplied times the Medicaid share.

a. The overall EHR amount is the sum over four years of the base amount plus the discharge related amount applicable for each year multiplied times the transition factor applicable for each year.

b. The Medicaid share is the Medicaid inpatient bed days plus the Medicaid managed care inpatient bed days divided by the total inpatient bed days multiplied times the estimated total charges minus uncompensated (charity) care charges divided by the estimated total charges.

2. The resulting amount is the eligible hospital payment amount.

G. Payments to eligible hospitals are disbursed over a 3-6 year period. No annual payment may exceed 50 percent of the total calculation and no two-year payment may exceed 90 percent of the total calculation.

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

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

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by improving the quality of health care through the utilization of a coordinated electronic health records system.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, October 27, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Electronic Health Records Incentive Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 10-11 since 100 percent federal financial participation (FFP) is available. It is anticipated that \$656 (\$328 SGF and \$328 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$12,175,328 for FY 10-11, \$26,600,000 for FY 11-12, and \$41,025,000 for FY 12-13 since 100 percent FFP is available. It is anticipated that \$328 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule adopts provisions to establish Medicaid incentive payments to qualifying professional practitioners and hospitals that adopt, implement, or upgrade certified electronic health records technology (approximately 9 hospitals and 1,174 eligible practitioners participating). It is anticipated that implementation of this proposed rule will increase program expenditures in the Medicaid Program by approximately \$12,175,000 for FY 10-11, \$26,600,000 for FY 11-12 and \$41,025,000 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

It is anticipated that the implementation of this proposed rule will have no effect on competition or employment.

Don Gregory
Medicaid Director
1009#074

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid Eligibility—Medicare Savings Programs
(LAC 50:III.2325, 10703, and 10705)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:III.2325 and §10703 and to amend §10705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted the state and federal requirements governing the determination of eligibility of persons applying for coverage under the Qualified Medicare Beneficiary, Specified Low Income Medicare Beneficiary and the Qualified Individual-1 Programs as identified under Title XIX of the Social Security Act. These are commonly referred to as the Medicare Savings Programs (MSP). Medicaid coverage under these programs is limited to payment of Medicare premiums, and may pay deductibles and co-insurance. Under section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive resource methodologies in determining eligibility for most Medicaid eligibility groups than are used by the related cash assistance programs. The applicant's resources are currently considered in the determination of Medicaid eligibility. Resources are defined as cash assets or assets that can be converted to cash, such as bank accounts, stocks, bonds, automobiles and property.

The Medicare Improvement for Patients and Providers Act (MIPPA) of 2008 modified the provisions of the Medicare Savings Programs in order to increase enrollment and reduce barriers to enrollment. In order to reduce the administrative burden for the Medicaid Program, to align MSP eligibility more closely with the Medicare Part D Low Income Subsidy eligibility and to eliminate financial hardship for individuals, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Medicare Savings Programs to incorporate provisions regarding the submittal of low income subsidy data and to disregard certain assets in the eligibility determination process (*Louisiana Register*, Volume 36, Number 1). The department amended the January 1, 2010 Emergency Rule to clarify the provisions governing MSP resource disregards (*Louisiana Register*, Volume 36, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 6, 2010 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2325. Medicare Savings Programs

A. Medical assistance furnished to Qualified Medicare Beneficiaries (QMB), Specified Low Income Beneficiaries (SLMB) and Qualified Individuals (QI) is commonly referred to as the Medicare Savings Programs (MSP). Medicaid coverage under these programs is limited to payment of Medicare premiums, and may pay deductibles and co-insurance.

1. Effective January 1, 2010, with the consent of an individual completing an application for Low Income Subsidy (LIS) benefits, the Social Security Administration will transmit LIS data to Medicaid.

2. Medicaid shall use the data to initiate an application for the individual for benefits under the Medicare Savings Program.

3. The date that the LIS application is filed with the Social Security Administration will be used as the date of application for MSP and for determining the effective date of MSP eligibility.

AUTHORITY NOTE: Promulgated in 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:

Subpart 5. Financial Eligibility

Chapter 107. Resources

§10703. General Provisions

A. Medicaid utilizes the income and asset methodologies of the Supplemental Security Income (SSI) Program to determine Medicaid eligibility for aged, blind and disabled individuals.

B. Under section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive income and asset methodologies in determining eligibility for most Medicaid eligibility groups than are used by the cash assistance program.

C. Medicare Savings Programs

1. The following individual's resources shall be considered in determining eligibility for the Medicare Savings Programs:

a. the applicant/recipient; and

b. the spouse living in the home with the applicant/recipient.

2. Resource Assessment. The assets test for full Low Income Subsidy (LIS) eligibility is set at three times the SSI asset standard, indexed annually by the increase in the consumer price index.

a. Effective January 1, 2010, the asset limit for all Medicare Savings Programs will be the same as the asset limit for Medicare's Part D full benefit LIS.

AUTHORITY NOTE: Promulgated in 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:

§10705. Resource Disregards

A. - B.1. ...

C. Effective January 1, 2010, the following assets shall be disregarded in eligibility determinations for all Medicare Savings Programs:

- 1. all life insurance, regardless of cash surrender value; and
- 2. all vehicles, regardless of value.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended LR:36:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by increasing access to Medicaid services for individuals who receive Medicare.

Public Comments

Interested persons may submit written comments to Don Gregory, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, October 27, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Medicaid Eligibility—Medicare Savings Programs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic increase in expenses to the state of approximately \$890,013 for FY 10-11, \$1,016,338 for FY 11-12 and \$1,006,855 for FY 12-13. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 10-11 for the state’s administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$3,798,279 for FY 10-11, \$3,332,162 for FY 11-12 and \$3,341,645 for FY 12-13. It is anticipated that \$246 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the May 6, 2010 emergency rule, amends the provisions governing the Medicare Savings Programs (approximately 3,060 anticipated recipients) to incorporate provisions regarding the submittal of low income subsidy data and to disregard certain assets in the eligibility determination process as mandated by federal regulations in the Medicare Improvement for Patients and Providers Act of 2008. It is anticipated that implementation of this proposed rule will increase program expenditures in the Medical Vendor Program by approximately \$4,687,800 for FY 10-11, \$4,348,500 for FY 11-12 and \$4,348,500 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Don Gregory
Medicaid Director
1009#075

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Supplemental Payments
(LAC 50:V.5315, 5515, 5717, 5915 and 6117)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.5315, §5515, §5717, §5915 and §6117 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2009, the department promulgated an Emergency Rule which reduced the reimbursement rates paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 2). The final Rule was published September 20, 2009 (*Louisiana Register*, Volume 35, Number 9).

Act 228 of the 2009 Regular Session of the Louisiana Legislature directed the department to issue a supplemental

payment to hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike. In compliance with Act 228, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state public hospitals (*Louisiana Register*, Volume 35, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2009 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring continued provider participation in the Medicaid Program and continued access to outpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5315. Non-Rural, Non-State Public Hospitals

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

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

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

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

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

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5515. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for clinic services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

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

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

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

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

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5717. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for laboratory services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

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

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

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

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

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5915. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for rehabilitation services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state public hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital

that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

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

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

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

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6117. Non-Rural, Non-State Public Hospitals

A. Hurricane Katrina Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state public hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries and rehabilitation services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group, including inpatient supplemental payments, will not exceed \$170,000,000.

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

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

AUTHORITY NOTE: Promulgated in 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:

Public Comments

Interested persons may submit written comments to Don Gregory, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, October 27, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Outpatient Hospital Services—Non-Rural, Non-State Hospitals—Supplemental Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic increase in expenses to the state of approximately \$3,119,992 for FY 10-11, \$3,956,733 for FY 11-12 and \$4,037,408 for FY 12-13. It is anticipated that \$656 (\$328 SGF and \$328 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$9,240,664 for FY 10-11, \$8,774,067 for FY 11-12 and \$9,075,316 for FY 12-13. It is anticipated that \$328 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the July 1, 2009 emergency rule, amends the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state public hospitals (approximately 35 hospitals). It is anticipated that implementation of this proposed rule will increase program expenditures in the Medical Vendor Program by approximately \$12,360,000 for FY 10-11, \$12,730,800 for FY 11-12 and \$13,112,724 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Don Gregory
Medicaid Director
1009#073

Robert E.Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 99—Certificates of Insurance (LAC 37:XIII.Chapter 139)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 22:11 and R.S. 22:881.1, the Louisiana Department of Insurance gives notice that rulemaking procedures have been initiated to promulgate Regulation 99. Adoption of the proposed regulation is authorized by Acts 2010, No. 1017 of the Regular Session of the Louisiana Legislature. The purpose of Regulation 99 is to implement the provisions of Acts 2010, No. 1017, concerning the issuance, effect, and approval of certificates of insurance.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 139. Regulation 99—Certificates of Insurance

§13901. Authority

A. Regulation 99 is adopted in accordance with the provisions of R.S. 49:953 et seq., of the Administrative Procedure Act and the authority vested in the commissioner granted under the Louisiana Insurance Code, Title 22, R.S. 22:11 and R.S. 22:881.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13903. Purpose

A. The purpose of Regulation 99 is to implement the provisions of Acts 2010, No. 1017 of the Regular Session of the Louisiana Legislature, concerning the issuance, effect, and approval of certificates of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13905. Scope and Applicability

A. Regulation 99 applies to certificates of insurance issued in reference to property, operations and risks in Louisiana insured by property and casualty insurance policies.

B. Regulation 99 applies to all certificate holders, policyholders, insurers, insurance producers, and certificate of insurance forms issued as a statement or evidence of any type of property and casualty insurance coverage on property, operations, or risks located in Louisiana, regardless of where the certificate holder, policyholder, insurer, or insurance producer is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13907. Exemptions

A. Regulation 99 shall not apply to:

1. ocean marine and foreign trade insurances;
2. self insurance for workers' compensation, including any group self insurance fund pursuant R.S. 23:1195;

3. interlocal risk management agency pursuant R.S. 33:1341;

4. automobile identification cards issued pursuant to R.S. 32:863.1(A)(1)(a);

5. travel insurance;

6. credit card insurance; or

7. forced placed insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13909. Definitions

A. For the purposes of Regulation 99 and in accordance with R.S. 22:881.1 the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Certificate or Certificate of Insurance—any document, instrument, or record, including an electronic record, no matter how titled or described, which is prepared by an insurer or insurance producer and issued to a third person not a party to the subject insurance contract, as evidence of property and casualty insurance coverage. *Certificate or certificate of insurance* shall not mean an insurance binder.

Certificate Holder—any person, other than a policyholder, that is designated on a certificate of insurance as a *certificate holder* or any person, other than a policyholder, to whom a certificate of insurance has been issued by an insurer or insurance producer at the request of the policyholder.

Commissioner—Louisiana Commissioner of Insurance.

Electronic Record—shall have the meaning defined in R.S. 9:2602(7).

Insurance—shall have the meaning defined in R.S. 22:46(9).

Insurance Producer—shall have the same definition as set forth in R.S. 22:1542.

Insurer—an insurer as defined in R.S. 22:46(10) and any other person engaged in the business of making property and casualty insurance contracts, including but not limited to self-insurers, syndicates, risk purchasing groups, and similar risk transfer entities. *Insurer* shall not mean any person self-insured for purposes of workers' compensation, including any group self-insurance fund authorized pursuant to R.S. 23:1195 et seq., any interlocal risk management agency authorized pursuant to R.S. 33:1341 et seq., or any self-insured employer authorized pursuant to R.S. 23:1168 et seq.

LDI—Louisiana Department of Insurance.

Person—any individual, company, insurer, organization, reciprocal or inter-insurance exchange, business, partnership, corporation, limited liability company, association, trust, or other legal entity, including any government or governmental subdivision or agency.

Policyholder—means a person who has contracted with a property or casualty insurer for insurance coverage.

Record—shall have the meaning defined in R.S. 9:2602(13).

Self-insurer—any individual business or group of businesses which have created a risk purchasing group, risk retention plan, syndicate, or other form of self-insurance covering property or casualty risk exposures. "*Self-insurer*" shall not mean any person self-insured for purposes of workers' compensation, including any group self-insurance fund authorized pursuant to R.S. 23:1195 et seq., any

interlocal risk management agency authorized pursuant to R.S. 33:1341 et seq., or any self-insured employer authorized pursuant to R.S. 23:1168 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13911. Effect and Use of Certificates of Insurance

A. A certificate of insurance form that has been approved by the commissioner and properly executed and issued by a property and casualty insurer or an insurance producer, shall constitute a confirmation that the referenced insurance policy has been issued or that coverage has been bound notwithstanding the inclusion of "for information purposes only" or similar language on the face of the certificate.

B. The commissioner may approve a certificate of insurance form that does not state that the form is provided for information only or similar language, provided that the form states that the certificate of insurance does not confer any rights or obligations other than those conveyed by the policy and that the terms of the policy control

C. A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference.

D. A certificate of insurance shall not confer to a certificate holder new or additional rights beyond what the referenced policy or any validly executed endorsements of insurance provides.

E. An insurer or insurance producer may prepare or issue an addendum that clarifies, explains, summarizes, or provides a statement of the coverages provided by a policy of insurance and otherwise complies with the requirements of this Regulation 99.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13913. Filing Requirements

A. No person, wherever located, may prepare, issue, or request the issuance of a certificate of insurance for risks located in this state unless the form has been filed with and approved by the commissioner.

B. No person, wherever located, may alter or modify an approved certificate of insurance form unless the alteration or modification has been approved by the commissioner.

C. The commissioner shall approve or disapprove a certificate of insurance form within 45 days of receipt of the form.

D. Each certificate of insurance form shall be filed separate and apart from other forms.

E. A person submitting a certificate of insurance form for approval shall include:

1. a cover letter which includes the person's full name and Federal Employer Identification Number (FEIN) or National Association of Insurance Commissioners (NAIC) number or producer license number;

2. any person submitting a paper filing shall include two copies of all required documents, including a stamped, self-addressed envelope(s) of sufficient size for use in returning the company's forms filed.

F. Certificate of insurance form filings shall not require:

1. a statement of compliance;
2. a filing fee.

G. Except for the statutorily approved forms in R.S. 881.1(F)(2) and §13917.A, once a certificate of insurance has been properly submitted and approved, the LDI shall assign a certificate of insurance number for the approved form. The LDI shall provide written notice to the person that the certificate of insurance has been approved. Within 30 days of receipt of the written notice, the person shall incorporate the assigned LDI number and approval date on the certificate of insurance and resubmit the form for placement on the LDI certificate of insurance website.

H. The LDI number and approval date shall be placed on the certificate of insurance in the following format:

LA. Dept. of Ins. LDI	Cert. of Ins. COI	Assigned LDI No. 123456	Date (mm/year) 08 10
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I. The commissioner will not approve any certificate of insurance that contains any references to legal or insurance requirements contained in any contracts other than the underlying contracts of insurance, including construction or service contracts.

J. The commissioner will disapprove any certificate of insurance form, or withdraw approval of a certificate of insurance form if it:

1. is unfair, misleading, or deceptive, or violates public policy;
2. violates any state statute or regulation validly promulgated by the commissioner;
3. requires certification of insurance coverages that are not available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13915. Certificates of Insurance Approved Prior to Promulgation of Regulation 99

A. Any person that received approval for a certificate of insurance prior to January 1, 2011, and did not receive an LDI certificate of insurance number shall provide written notice of the prior approval to the LDI. The notice of the prior approval shall include:

1. the person(s) name;
2. LDI's filing number; and
3. a copy of the approved certificate of insurance.

B. Pursuant to the written notice required in §13915.A, the LDI shall review the previously approved form to determine if it is compliant with R.S. 22:881.1 and Regulation 99. If deemed compliant, the LDI shall notify the person that the form is approved and provide the person the assigned LDI certificate of insurance number.

C. The person shall incorporate the LDI certificate of insurance number on the approved form using the format provided in §13913.H and shall resubmit the approved form to the LDI prior to use.

D. §13915.B and C do not apply to the statutorily approved forms in R.S. 881.1(F)(2) and §13917.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13917. Use of ACORD, AAIS and ISO Forms

A. Standard certificate of insurance forms promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) shall be filed by those organizations, but are deemed approved by the commissioner unless the commissioner determines that these forms do not comply with the provisions of Regulation 99 and R.S. 22:881.1.

B. Once filed, these forms may be issued by any person as evidence of property and casualty insurance coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13919. Notice of Cancellation

A. A person shall have a legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance, only if the person is named within the policy or any endorsement and the policy or endorsement, law, or regulation of this state requires notice to be provided. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance in accordance with the laws and regulations of this state and cannot be altered by a certificate of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13921. Investigations and Examinations of Complaints and Violations

A. The commissioner of insurance may examine and investigate any complaint or allegation of specific violations by any person who has allegedly engaged in an act or practice prohibited by R.S. 22:881.1. Any such examinations or complaint investigations conducted by the commissioner shall be subject to the provisions of R.S. 22:1983(J).

B. The commissioner may fine any person who willfully violates R.S. 22:881.1 not more than one thousand dollars per violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13923. Severability

A. If any Section or provision of this Regulation 99 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 99 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 99 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

§13925. Effective Date

A. Regulation 99 shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:881.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 36:

Family Impact Statement

1. Describe the effect of the proposed rule on the stability of the family. The proposed rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed rule on the authority and rights of parents regarding the education and supervision of their children. The proposed rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed rule on the functioning of the family. The proposed rule should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed rule on family earnings and budget. The proposed rule should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed rule on the behavior and personal responsibility of children. The proposed rule should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed rule on the ability of the family or a local government to perform the function as contained in the rule. The proposed rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed rule should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed rule should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed rule should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed rule should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Public Hearing

Persons interested in obtaining copies of Regulation 99 or in making comments relative to this proposal may do so at the public hearing to be held October 28, 2010, at 10 a.m., in the Poydras Hearing Room of the Louisiana Department of Insurance Building, 1702 N.Third Street, Baton Rouge, LA or by writing to Walter Corey, Attorney, 1702 N. Third Street, Baton Rouge, LA 70802. The deadline for submitting written comments is 5 p.m., October 28, 2010.

James J. Donelon
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Certificates of Insurance**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed administrative rules could increase the costs to the Department of Insurance by an indeterminable amount. Potential costs include reassigning personnel to this activity and programming changes to the form filing database and enforcement activities. However, such potential costs will be absorbed with existing budgetary resources. Regulation 99, which is being implemented pursuant to Act 1017 of the 2010 Regular Legislative Session, redefines certificate of insurance, provides for the Commissioner of Insurance to approve all certificate of insurance forms, and provides for the department to enforce the provisions set in the regulation. Standard certificate of insurance forms promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance (AAIS) or Insurance Services Office, Inc. (ISO) are deemed approved by the Commissioner of Insurance. The department currently reviews approximately 20,000 form filings annually and is anticipating an increase up to 1,000 new filings from departmental regulated and unregulated entities in the first year and 250 to 500 form filings in subsequent years as a result of this regulation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Regulation 99 will have no impact on state or local governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed administrative rules could minimally impact directly affected persons or non-governmental groups. Insured or insurers may need to restructure their project management in allowing appropriate approval time for certificate of insurance form approval. The maximum approval process is approximately 45 days. A person shall only have legal right to notice of cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of insurance if the person is named in the policy or by endorsement. The amended regulation will help prevent misrepresentation on certificate of insurance forms.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of proposed Regulation 99 should have no impact upon competition and employment in the state.

Shirley D. Bowler
Deputy Commissioner
1009#045

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Statewide Order No. 29-B
(LAC 43:XIX.301, 303, 501, 519 and 565)

The Louisiana Office of Conservation proposes to amend LAC 43:XIX.303, 501, 519 and 545 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana. The proposed amendment would allow commercial facilities to reclaim material that would otherwise be disposed of as E&P Waste and use said material solely as media during Office of Conservation permitted hydraulic fracture stimulation operations.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B**

**Chapter 3. Pollution Control—Onsite Storage,
Treatment and Disposal of Exploration
and Production Waste (E&P Waste)
Generated from the Drilling and
Production of Oil and Gas Wells (Oilfield
Pit Regulations)**

§301. Definitions

* * *

FSR Fluid—fracture stimulation reclamation fluid as defined in §501.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2798 (December 2000), amended LR 33:1653 (August 2007), LR 36:

§303. General Requirements

A. - O.6 ...

P. FSR fluid received by an operator regulated pursuant to this Chapter shall be used solely as media for hydraulic fracture stimulation operations. Upon receiving possession of FSR fluid from a commercial facility, the operator shall be solely responsible for ensuring that this requirement is met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000), amended LR 30:254 (February 2004), LR 33:1654 (August 2007), LR 36:

**Chapter 5. Off-Site Storage, Treatment and/or
Disposal of Exploration and Production
Waste Generated from Drilling and
Production of Oil and Gas Wells**

§501. Definitions

* * *

Fracture Stimulation Reclamation Fluid (FSR fluid)—a material that would otherwise be classified as E&P Waste, but which has been reclaimed for the sole use as media for Office of Conservation permitted hydraulic fracture stimulation operations.

* * *

Reusable Material—a material that would otherwise be classified as E&P Waste, but which is capable of resource conservation and recovery and has been processed in whole or in part for reuse. To meet this definition, the material must have been treated physically, chemically, or biologically or otherwise processed so that the material is significantly changed (i.e., the new material is physically, chemically, or biologically distinct from the original material), and meets the criteria §565.F. This term does not include FSR Fluid.

* * *

Type A Facility—a commercial E&P Waste disposal facility within the state that utilizes technologies appropriate for the receipt, storage, treatment, reclamation, or disposal of E&P Waste solids and fluids (liquids) for a fee or other consideration.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000), amended LR 27:1898 (November 2001), LR 29:937 (June 2003), LR 34:1421 (July 2008), LR 36:

§519. Permit Application Requirements for Commercial Facilities

A - A.1. ...

2. A major modification to an existing commercial facility or transfer station permit is one in which the facility requests approval to include FSR fluid operations or make significant technological changes to an existing E&P Waste treatment and/or disposal system, including the construction and operation of additional equipment or systems to treat and/or dispose of E&P Waste streams other than those previously accepted by the facility. A major modification request may include a request to expand an existing commercial facility or transfer station onto adjacent property not previously permitted for E&P Waste disposal activities.

A.3. - C.21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000), amended LR 27:1905 (November 2001), LR 29:938 (June 2003), LR 36:

§565. Resource Conservation and Recovery of Exploration and Production Waste

A. In order to encourage the conservation and recovery of resources in the oilfield industry, the processing of E&P Waste into reusable materials or FSR fluid, in addition to or beyond extraction and separation methods which reclaim raw materials such as crude oil, diesel oil, etc., is recognized as a viable alternative to other methods of disposal.

B. Commercial facilities may function for the purpose of generating reusable material or FSR fluid only, or they may generate reusable material or FSR fluid in conjunction with other storage, treatment or disposal operations.

C. Commercial facilities that generate reusable material or FSR fluid are subject to all of the permitting requirements imposed on other commercial facilities. They are also subject to the same operational requirements without regard to the distinction between E&P Waste and reusable material or FSR fluid. Existing permits may be amended to allow re-use or FSR fluid operations at commercial facilities which acquire the capability to engage in processing for re-use or

FSR fluid operations. Commercial facilities which utilize extraction or separation methods to reclaim raw materials such as crude oil, diesel oil, etc. may do so without amendment of existing permits.

D. - H. ...

I. Reporting. Each company which generates reusable material must furnish the commissioner a monthly report showing the disposition of all such material.

J. Onsite temporary use of E&P Waste for hydraulic fracture stimulation operations is permissible only as authorized by the Office of Conservation and in accordance with the requirements of LAC 43:XIX.313.J.

K. Existing commercial facilities who desire to commence FSR fluid operations must comply with the notification, application and permitting requirements of LAC 43:XIX.519.

L. The Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the State of Louisiana upon issuance of a permit to a commercial facility operator for FSR fluid operations shall be held harmless from and indemnified for any and all liabilities arising from such operations and use of FSR fluid, and the commercial facility operator shall execute such agreements as the commissioner requires for this purpose.

M. Reporting. Each commercial facility which generates FSR fluid must furnish the commissioner a monthly report showing the disposition of all such material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1916 (November 2001), amended LR 29:939 (June 2003), LR 34:1422 (July 2008), LR 36:

Family Impact Statement

In accordance with R.S. 49:972, the following statements are submitted after consideration of the impact of the proposed Rule amendments at LAC 43: XIX.501, 519 and 545 on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed Rule amendment.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., November 1, 2010, at Office of Conservation, Environmental Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. ENV 2010-05 on all correspondence. All inquiries should be

directed to John Adams at the above addresses or by phone to 225-342-7889. No preamble was prepared.

Public Hearing

The Commissioner of Conservation will conduct a public hearing at 9 a.m., October 25, 2010, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Statewide Order No. 29-B**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional implementation costs (savings) to State or Local governmental units are anticipated to implement the proposed rule amendment.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No costs and/or economic benefits are anticipated to directly affected persons or non-governmental groups. Since most of the waste that could be reclaimed for frac water supply is transported to Texas for disposal, the impact on Louisiana waste disposal facilities is minimal. Any positive economic benefits cannot be predicted until it is known how many companies choose to participate in reclaiming exploration and production waste for use as fracture stimulation reclamation fluid.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

James H. Welsh
Commissioner
1009#082

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Board of Parole (LAC 22:XI.103, 503, 511, and 1301)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Board of Parole, hereby gives notice of its intent to amend the contents of Part XI, Board of Parole.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Board of Parole

Chapter 1. Administration

§103. Composition of the Board

A.1. The board shall be composed of seven members appointed by the governor and one ex-officio member. Of

the seven members appointed by the Governor, one shall be the chairman of the board.

a. The warden, or in his absence the deputy warden, of the correctional facility in which the offender is incarcerated shall be an ex officio member of the board. When the offender is housed in a local correctional facility and the warden or deputy warden of that facility is not able to attend the offender's parole hearing, the warden, or in his absence the deputy warden, of the facility where the offender's parole hearing is held may serve as an ex officio member. The ex officio member shall not be a voting member nor shall he be counted or permitted to be counted for purposes of the number of members necessary to take board action or the number of members necessary to establish quorum. In all other respects, the ex officio member shall have all duties, authority, requirements and benefits of any other board member.

2. ...

3. One member shall be appointed from a list of names submitted by any victim's rights advocacy organization which is recognized as a nonprofit with the Internal Revenue Service, incorporated or organized in the state of Louisiana and in good standing and does not engage in political activity, with each organization submitting a list of three names. However, no person nominated by any victim's rights advocacy organization shall be appointed to serve as a member of the board who has previously been confirmed by the senate and has served as a member of the board.

4. Each member shall, except the ex officio member, devote full time to the duties of the office and shall not engage in any other business or profession or hold any other public office.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended by Department of Public Safety and Corrections, Corrections Services, LR 36:

Chapter 5. Meetings and Hearings of the Board of Parole

§503. Selection of Three-Member Panels

A. The board shall meet in a minimum of three-member panels, except as otherwise provided in these rules.

B. The chairman of the board shall randomly assign all three-member panels. Each panel shall appoint the chairperson of that three-member panel.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq. and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:

§511. Public Hearings

A. - B.2. ...

C.1. A unanimous vote is required to grant parole or to recommend work release regardless of the number of board members at the parole hearing, except as provided for in Subparagraph C.1.a of this Subsection.

a. The board may grant parole with two votes of a three-member panel, or, if the number exceeds a three-member panel, a majority vote of those present if all of the following conditions are met.

i. The offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

ii. The offender has not committed any disciplinary offenses in the 12 consecutive months prior to the parole eligibility date.

iii. The offender has completed the mandatory minimum of 100 hours of pre-release programming in accordance with R.S. 15:827.1.

iv. The offender has completed substance abuse treatment as applicable.

v. The offender has obtained a GED credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability. If the offender is deemed incapable of obtaining a GED credential, the offender must complete at least one of the following:

- (a). a literacy program;
- (b). an adult basic education program; or
- (c). a job skills training program.

vi. The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the Secretary of the Department of Public Safety and Corrections.

b. Notwithstanding any other provision of law in this Section, no person convicted of a crime of violence against any peace officer as defined in R.S. 14:30(B), shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the board are present and all members present vote to grant parole.

C.2. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq. and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:

Chapter 13. Time Served

§1301. Time Must Be Served if Revoked

A.1. An offender returned to incarceration for a parole violation that does not include a new sentence for a felony offense will be returned to serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits and any credit for time served for good behavior while on parole.

2. ...

B. An offender returned to incarceration as a parole violator who has received a new sentence for a felony offense while on parole shall serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits and any credit for time served for good behavior

while on parole. The new sentence shall be served consecutively to the previous sentence unless a concurrent term of imprisonment is expressly directed by the court.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., R.S. 15:540 et seq. and R.S. 15:571.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2306 (December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:

Family Impact Statement

Amendment to the current Section has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on October 9, 2010.

C. A. Lowe, Jr.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Board of Parole

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes may result in a decrease in state general fund expenditures. Section 511 is being amended to allow the Board to grant parole by 2/3 vote of a three member panel or a majority vote if the panel exceeds three members for eligible offenders. The potential cost savings to the state would be \$7,967.95 per year per offender paroled (\$24.39 -\$2.56 (cost per offender per day for offenders on parole) = \$21.83/day X 365 days) for state offenders housed at the local level. There is no way to determine the exact cost savings to the state as it is not possible to know which offenders would be paroled since three votes would no longer be needed. Also the projected savings would be contingent on not back filling beds vacated by the paroled offenders.

Section 1301 is being revised to allow offenders to earn good behavior credit while on parole. The projected cost savings to the state would be \$8,902 annually per offender (\$24.39 X 365 days = \$8,902) for those housed at the local level and would also be contingent on not back filling beds.

For Sections 103 and 503, the proposed rule changes are technical adjustments adding a warden as an ex-officio member of the Parole Board, amending the method by which one appointment to the Board is from victim's rights advocacy organizations, and providing that board meetings will consist of a minimum of three member panels selected by the chairman of the board. These technical adjustments will have no fiscal impact on state or local government expenditures associated with the repealing and implementing of the updated regulation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There would be no impact on the Revenue Collections of state or local governmental units as a result of technical adjustments to Sections 103 and 503. For Sections 511 and 1301, State Self-Generated Revenue for Probation and Parole would increase for parole fees (\$50/month per offender) contingent on the collection rate; however, Revenue Collections could potentially decrease for local jails housing state offenders that are paroled or earn good behavior credit

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There could be an economic benefit to offenders that are paroled or earn good behavior credit since they could be employed once they are released. There would be no impact to non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

To the extent that offenders are paroled or earn good behavior credit and are thereby granted an earlier release, employment opportunities would be potentially impacted.

Thomas C. Bickham, III
Undersecretary
1009#052

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Death Penalty (LAC 22:I.103)

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 36:404, hereby gives notice of its intent to repeal LAC 22:I.103, Death Penalty in its entirety. This repeal is a technical adjustment as the information is not required to be promulgated and will remain intact and enforced as a department regulation.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 1. Secretary's Office

§103. Death Penalty

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 6:10 (January 1980), amended LR 7:177 (April 1981), amended by the Department of Public Safety and Corrections, Corrections Services LR 17:202 (February 1991), LR 18:77 (January 1992), LR 24:342 (February 1998), LR 25:2410 (December 1999), LR 28:2552 (December 2002), LR 29:2847 (December 2003), LR 31:1600 (July 2005), LR 31:2032 (August 2005), LR 32:2270 (December 2006), LR 36:526 (March 2010), repealed LR 36:

Family Impact Statement

The proposed repeal of this Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804, until 4:30 p.m. on October 9, 2010.

James M. Le Blanc
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Death Penalty

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change repeals the existing regulation regarding the death penalty. As a result of Act 889 of the 2010 Regular Session, this regulation does not have to be promulgated, and the procedure will remain intact and enforced as a department regulation. Therefore, there will be no fiscal impact with the repealing of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no impact on the Revenue Collections of state or local governmental units as a result of this technical adjustment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this technical adjustment.

Thomas C. Bickham, III
Undersecretary
1009#053

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

**Disciplinary Rules and Procedures for
Adult Offenders (LAC 22:I.351 and 363)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of §§351 and 363, Disciplinary Rules and Procedures for Adult Offenders.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult Services

**Subchapter B. Disciplinary Rules and Procedures for
Adult Offenders**

§351. Correcting Disciplinary Reports

A. - B.NOTE. ...

C. Evidence. The disciplinary board shall carefully evaluate all evidence presented or stipulated. In situations where the disciplinary report is based solely on information from a confidential informant or from an offender whose identity is known, there must be other evidence to corroborate the violation. That evidence may include, but is not limited to, witness statements from another confidential informant who has not been unreliable in the past and has legitimate knowledge of the present incident(s), the record

(investigative report) or other evidence. If requested, the accusing employee must be summoned to testify about the reliability and credibility of the confidential informant when the report is based solely on information from a confidential informant. (In order to accomplish this, the informant must have been reliable in the past and/or have legitimate knowledge of the present incident(s).)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin V. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR27:417 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 34:2199 (October 2008), LR 36:

§363. Disciplinary Rules

A. ...

B. Contraband (Schedule B). No offender shall have under his immediate control any illicit drugs, any product that could be used to adulterate a urine sample, unauthorized medication, alcoholic beverage, yeast, tattoo machine, tattoo paraphernalia, syringe, any type weapon, cellular phone or component hardware or other electronic communications device, whether operational or not, (including but not limited to beepers, pagers, subscriber identity module (SIM) cards, portable memory chips, batteries for these devices, chargers, global satellite system equipment), or any other item not permitted by department regulation or institutional posted policy to be received or possessed or any other item detrimental to the security of the facility. Money is contraband. Any item not being used for the purpose for which it was intended will be considered contraband if it is being used in a manner that is clearly detrimental to the security of the facility. Possession and/or use of lighted cigarettes or other smoking materials are deemed to be contraband in non-smoking areas. To smuggle or attempt to smuggle prohibited items into or out of the facility will be in violation of this rule.

B.1. - X.20. ...

X.21. Starting, causing, assisting in the creation of any fire, heat or spark of any nature by any means or methods, or attempting to start a fire and/or attempting to heat substances utilizing electrical/mechanical devices or any other means, other than in the performance of an approved work assignment;

X.22. - X.23. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995), Cassels v. Stalder, 342 F. Supp. 2d 555.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:419 (March 2001), amended by the Department of Public Safety and Corrections, Corrections Services, LR 31:1099 (May 2005), LR 34:2201 (October 2008), LR 36:

Family Impact Statement

Amendment to the current Section has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and

Corrections, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on October 9, 2010.

James M. Le Blanc
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Disciplinary Rules and Procedures for Adult Offenders

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is a technical adjustment to an existing regulation regarding Disciplinary Rules and Procedures for Adult Offenders and will have no fiscal impact on state or local government expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no impact on the Revenue Collections of state or local governmental units as a result of this technical adjustment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this technical adjustment.

Thomas C. Bickham
Undersecretary
1009#051

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Income Tax Withholding on Gaming Winnings (LAC 61:I.1525)

Under the authority of R.S. 47:164(D), R.S. 47:241 et seq., and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1525 relative to income tax withholding on gaming winnings. The primary purpose of this regulation is to require anyone paying gaming winnings to withhold on those winnings if the IRS requires withholding on the winnings.

Title 61

REVENUE AND TAXATION

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

Chapter 15. Income: Withholding Tax

§1525. Income Tax Withholding on Gaming Winnings

A. Withholding Requirement for Gaming Winnings

1. Every person or business that pays gaming winnings won in Louisiana is required to withhold individual income taxes at a rate of six percent if income

taxes are required to be withheld for the Internal Revenue Service under 26 USC 3402 on the same winnings.

2. Additionally following current Department of Revenue practice, casinos that pay slot machine winnings in excess of \$1,200 should issue a form W2-G and withhold at a rate of 6 percent of the slot machine winnings regardless of the Internal Revenue Code withholding on such slot machine winnings.

B. Reporting Requirements for Gaming Winnings

1. Businesses that withhold income taxes on gaming winnings shall electronically report and remit the withholdings to the Louisiana Department of Revenue quarterly.

2. Businesses required to withhold and to submit income taxes on gaming winnings shall send the Department of Revenue a report electronically containing a list of all winners annually in a format approved by the department. The report shall contain the following information as printed on federal form W-2G:

a. the payor's name, address, and federal identification number;

b. the winner's name, address, social security number, gross winnings, amount of federal income taxes withheld, and amount of state income taxes withheld.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.71, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Service Division, LR 36:

Family Impact Statement

The adoption of LAC 61:I.1125 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Vanessa LaFleur, Director, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be submitted no later than 4:30 p.m., Tuesday, October, 26th, 2010.

Public Hearing

A public hearing will be held on Wednesday, October, 27th, 2010, at 10 a.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Income Tax Withholding
on Gaming Winnings**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This proposed rule requires every person or business that pays gaming winnings won in Louisiana to withhold individual income taxes if income taxes are required to be withheld for the

Internal Revenue Service under 26 USC 3402 on the same winnings. In addition, the proposed rule requires casinos that pay slot machine winnings in excess of \$1,200 to issue a form W2-G and withhold income taxes at a rate of 6 percent of the slot machine winnings regardless of the Internal Revenue Code withholding requirements on slot machine winnings.

System modifications to implement this proposal will cost approximately \$17,500 for development and testing. However, this proposal will allow the reallocation of resources being used in the assessment and collection of delinquent taxes to other tax processing functions; thereby offsetting a portion of the implementation costs.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed rule, which requires every person or business that pays gaming winnings won in Louisiana to withhold individual income taxes if income taxes are required to be withheld for the Internal Revenue Service under 26 USC 3402 on the same winnings, will have no effect on revenue collections of state or local governmental units. This withholding is currently provided on a voluntary basis, and this rule will make the current practice mandatory.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Requiring every person or business to withhold from gaming winnings won in Louisiana may limit the need to assess the recipients of those winnings for delinquent income taxes; saving those recipients interest and penalty that would otherwise be due. The payor of gaming winnings will have to file a form electronically with the Department containing information about the winner. This rule makes electronic filing mandatory which may require an initiation expense for the payor, but it is expected to be minimal.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
1009#037

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development

Access Connection Permits and Driveway Permits
(LAC 70:I.Chapter 15 and II.503)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development intends to enact Part I, Chapter 15, of Title 70 entitled "Access Connection Permits", and amend Part II, Chapter 5, §531 of Title 70 entitled "Driveway Permits", in accordance with the provisions of R.S.48:344.

Title 70

TRANSPORTATION

Part I. Highway Construction

Chapter 15. Access Connection Permits

§1501. Introduction

A. The Louisiana Department of Transportation and Development (DOTD) recognizes that landowners have certain rights of access. The DOTD also recognizes that access connections are a major contributor to traffic congestion, increase the degradation of transportation

facility operations, can result in decreased highway capacity, cause driver and pedestrian confusion, and can increase safety hazards.

B. Most roadside interference can be attributed directly to vehicular traffic entering, exiting, and parking adjacent to accesses for residential developments, business establishments, and commercial roadside developments.

C. Incumbent with this is the obligation to protect the investment of the state in the highway system. Access connections granted by the DOTD can be restrictive.

D. The Louisiana Department of Transportation & Development (DOTD) has the authority to require permits for access connections as set forth in R.S. 48:344. Access connection permits are required in order to achieve the following:

1. to ensure safe and orderly movement for vehicular traffic entering and leaving the highway;
2. to prevent hazardous and indiscriminate parking on, along, or adjacent to the roadway surface;
3. to preserve adequate sight distances at intersections (including streets and driveways);
4. to encourage beautification of property frontage;
5. to ensure uniform design and construction of access on highway right-of-way.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1503. Definitions

Access Connection Permits—shall be defined and required as follows:

1. single-family residential access connections:
 - a. single family residential—1 to 5 homes on a single access connection (Six or more residences on a single shared access or a single property subdivided for multiple homes must apply as a multi-family residential commercial access.);
 - b. residential sporting and recreation camps (Full-time or part-time residential camps used for hunting, fishing, etc.);
2. non-commercial agricultural operations:
 - a. unimproved land (farm, pasture, or wooded; passenger vehicle or farm equipment access and use only);
3. traffic generator access connections:
 - a. place of business (e.g., retail outlets, banks, restaurants, etc.);
 - b. medical facilities (e.g., doctors' offices, hospitals, urgent care facilities, assisted living homes, etc.);
 - c. religious facilities (e.g., churches, synagogues, etc.);
 - d. multi-family residential developments (e.g., subdivisions, condominiums, apartment complexes, trailer parks, etc.);
 - e. educational facilities (e.g., schools, colleges, daycares, after-school daycares, etc.);
 - f. lodging facilities (e.g., hotels, vacation rentals, motels, RV parks, etc.);
 - g. recreational facilities (e.g., sports fields, public swimming pool, parks, golf courses, bowling alleys, theme parks, etc.);
 - h. private clubs (e.g. country clubs, golf clubs, yacht clubs, etc.);

- i. emergency services (e.g., fire station, ems stations, police stations, etc.);

- j. mixed-use developments (any combination of above-listed uses);

- k. public facilities (libraries, court houses, city halls, jails, conference/convention centers, etc.);

- l. commercial agricultural operations (processing and/or wholesale operations; cotton gin, rice mill, sugar mill, etc.);

- m. oil, natural gas, logging, and other natural resource harvesting operations;

- n. utility company access;

- o. any other connections that do not fit a category listed above;

4. temporary permits:

- a. short-term oil, natural gas, logging, or other natural resource harvesting operations;

- b. short-term haul road;

- c. short-term construction access to a building site until an access connection is approved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1505. Public Road/Street Connections

A. Public road or street connections shall follow the normal project development process and shall only be requested by the local authority within the jurisdiction over the roadway.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1507. Facilities Requiring Access Connection

A. Facilities requiring access connection permits may be either new facilities or existing facilities which are remodeled, undergo a change of use, or any other change(s) to the operations of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1509. Personal Injury/Property Damage

A. The applicant agrees to hold harmless the DOTD and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of the exercise of this permit, whether or not the same may have been caused by the negligence of the DOTD, its agents, or its employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1511 Requirements

A. The location, design, and construction of the access shall be in accordance with the rules and regulations stated in the Section of this Chapter entitled Access Connection Requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1513. Process for Acquiring an Access Permit

A. The access connection permit application process shall be initiated by the applicant during the preliminary planning and development stages of a project. Applicant shall coordinate the initial requests with the Louisiana DOTD district permit specialist where the subject property is located.

B. The process for acquiring an access connection permit shall be defined in DOTD policies.

C. If required by DOTD Policy, a traffic impact study (TIS) and/or a traffic signal study (TSS) shall be completed by the applicant and approved by the DOTD district traffic operations engineer (DTOE). These studies shall be completed in accordance with DOTD policies.

D. At the direction of the DOTD district office, a request for an access connection permit may require the submission of any required supporting documentation to the DOTD district office. Actual work on an access connection shall not begin until the application has been approved by the DOTD. Required permit application supporting documentation may include some or all of the following:

1. detailed property location, including but not limited to:
 - a. location address;
 - b. legal property description (with professional land surveyor stamp);
 - c. property frontage dimensions;
 - d. relative locations of all access connections, intersecting streets, signals, railways, and crossovers within a specified distance from the property lines. This distance shall be specified by the DOTD district engineering administrator (DA) and/or DTOE;
 - e. information on any nearby or adjacent properties owned and/or controlled by the applicant(s), including anticipated future land use(s);
 - f. posted speed limit of adjacent roadways;
2. right-of-way information, including but not limited to:
 - a. measured rights-of-way for the subject property;
 - b. easements (utility, drainage, etc.) and locations of same;
 - c. known existing access restrictions;
 - d. property lines;
 - e. right-of-way widths for all adjacent roadways (state, parish, local, private, etc.);
3. proposed site plan drawing, fully dimensioned to-scale on 11" x 17" or 24" x 36" paper, showing all, but not limited to, the following:
 - a. existing roadway alignment for all adjacent roadways;
 - b. requested access connection location;
 - c. distance from requested access connection to nearest property line(s) and nearest intersecting roadways (in all directions along the roadway from the subject property);
 - d. distance from right-of-way to all buildings, structures, gas pumps, etc. on the proposed site;
 - e. plan for internal parking, drives, traffic flow patterns, traffic control devices, markings, truck/service vehicle routing, emergency access, etc. Autoturn or similar analysis must be shown for adequate design vehicle(s).
 - f. detailed geometry of proposed access connection (width, radii, lane use, etc.)—must conform to DOTD

standard plans. Autoturn or similar analysis must be shown for adequate design vehicle(s);

- g. detailed pavement design of proposed access connection (base type and thickness, pavement thickness, curb treatment, etc.);
- h. sidewalk and ADA ramps, where required;
- i. proposed treatment of right-of-way area between and adjacent to proposed and existing access connection(s);
- j. sight distance triangles for proposed access connection;
4. if a traffic impact study is required, the review and approval process shall be as outlined in DOTD policies. Copies of approvals shall be attached to the access connection permit;
5. copies of a traffic signal study, and/or traffic signal permit application, if applicable, shall be included. These studies shall be completed within the guidelines of DOTD policies;
6. temporary traffic control plan for work within the right-of-way—see Section entitled Construction Requirements;
7. railroad crossing permit—see Section entitled Railroad Crossings;
8. copies of permits obtained for access and building rights from local authorities;
9. permanent signing and pavement marking plans which conform to DOTD standards and the most current edition of the manual on Uniform Traffic Control Devices;
10. detailed plans of required or proposed mitigation (turn lanes, etc.);
11. additional information, drawings, or documents as required by the district engineer administrator or his/her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1515. Permit Conditions

- A. The applicant must be the owner of the property or his/her legally designated representative.
- B. Any access connection or approach constructed under this permit shall be for the bona fide purpose of securing access to the subject property.
- C. The entire highway right-of-way affected by this work shall be restored to at least the same condition that existed prior to the beginning of the work.
- D. The applicant may be required to post a bond in order to secure an access connection permit. This bond shall be required and posted in accordance with DOTD policy, and shall be an amount as identified by the DOTD district office as sufficient to cover the expenses of all work or improvements required within the DOTD right-of-way as a condition of an access connection permit. The cost of restoration shall be borne by the applicant.
- E. All access connections, approaches, or other improvements on the right-of-way shall comply with DOTD standards and be subject to the approval of the district engineer administrator or his/her designee.
- F. All access connections in the DOTD right-of-way shall at all times be subject to inspection by the DOTD.
- G. Post-construction inspections are mandatory for traffic generator access connections.

H. After having been constructed, access connection(s) shall at all times be subject to inspection with the right reserved to require changes, additions, repairs, and relocations at any time considered necessary to permit the location and/or to provide proper and safe protection to life and property on or adjacent to the highway. The cost of making such mandated changes, additions, repairs, and relocations shall be borne by the applicant.

I. The relocations or alterations of any access, approach, or other improvement constructed on the right-of-way shall require a new permit.

J. If the applicant is unable to commence construction within 12 months of the permit issue date, the applicant may request a six month extension from the DOTD. No more than two six-month extensions may be granted under any circumstances. If the access connection is not constructed within 24 months from the permit issue date, the permit shall be considered expired. Any person wishing to reestablish an access connection permit that has expired shall begin again with the application procedures.

K. When the adjacent highway is under construction, a letter of no objection must be obtained from the highway contractor before the application can be approved and the permit can be issued. A copy of this letter shall be attached to the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1517. Application Requirements

A. The applicant shall submit a design that conforms with all requirements included herein. Design(s) shall also conform with all DOTD standards, where applicable.

B. The applicant shall make any and all changes or additions necessary to make the proposed access satisfactory to the DOTD.

C. Three copies of the completed application package, including all supplemental documentation, are required with each application. One copy is to be retained by the district office, and two copies are to be forwarded to DOTD Headquarters Permits Section. The application package shall include all supporting documentation as required by the district engineer administrator or his/her designee and as described in the Section entitled Process for Acquiring an Access Permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1519. Permit Reapplication and Modifications to Existing Commercial Access Connections

A. The provisions of this Section do not apply to single-family residential access connection permits, as described in the definitions Section of this Chapter.

B. If the property is reconstructed/remodeled/redeveloped, the owner shall submit a new application for an access connection permit. The new application shall contain all information and documentation as described in Section entitled Process for Acquiring an Access Permit, as well as a copy of the old access connection permit.

C. If the property owner reconstructs the access connection, a new access connection permit application shall

be submitted. The DOTD reserves the right to make changes to the original permit during this process.

D. If DOTD road maintenance and/or construction operations affect the condition or necessitate the reconstruction, improvement, modification, or removal of an existing access connection, a re-evaluation of the access connection geometrics, location, etc. shall be performed by the district traffic operations engineer. The access connection permit shall be re-issued according to the most current DOTD standards, and DOTD reconstruction efforts shall follow these standards. The cost to reconstruct the access connection to the right-of-way shall be borne by the DOTD. Any additional costs to improve on-site conditions shall be borne by the property owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1521. Access Connection Requirements

A. Location of Access Connections

1. The frontage of any parcel of property adjacent to a public highway shall be considered to be confined within lines drawn from the intersection of the property lines with the right-of-way lines of the highway to the roadway surface, and perpendicular to the axis of the highway; or if the axis is a curve, to the center of curvature; or a combination of the two. Those lines shall be known as boundaries.

2. In addition, the following constraints shall apply.

a. Full access shall not be granted within the functional influence area of the intersection. For purposes of this Chapter, the functional influence area of an intersection shall be defined as the area beyond the physical intersection of two roadways and/or access connection points that:

i. comprises decision and maneuvering distances;

ii. comprises any required vehicle storage lengths, either determined by length of existing storage lanes, observed queue lengths, or anticipated post-development queue lengths, all as determined by the district traffic operations engineer;

iii. includes the length of road upstream from an oncoming intersection needed by motorists to perceive the intersection and begin maneuvers to negotiate it.

3. Access connections located near or within storage limits of existing or proposed right- or left-turn lanes with no alternate locations shall be located as far as possible from the intersection and may be granted right-in/right-out only access connection conditions.

4. If the subject property is located at the intersection of two routes, an access connection may be permitted on one of the routes. The determination of the access connection location shall be at the discretion of the DOTD according to this rule and other applicable DOTD policies.

5. The applicant shall provide sufficient on-site circulation to ensure the safe ingress and egress of vehicles on the site. This on-site circulation shall be contained within the owned property boundaries and shall not encroach upon the right-of-way in any way. Adequate on-site vehicle storage shall be provided in order to prevent any overflow of queued/waiting traffic in the travel lane(s) of the adjacent roadway(s).

6. Access connections shall be designed and constructed so that a driver can maneuver entering, parking, and exiting without backing onto the adjacent roadway.

B. The granting of access shall adhere to the following decision hierarchy.

1. Each property or group of adjacent properties with a single owner or development plan shall be granted no more than one access point, unless Paragraphs 4 and 5 of this Section are completed and approved. The DOTD reserves the right to limit access to adjacent properties to those access connections which already exist. All properties shall receive adequate access, but that may be accomplished through required access sharing with a neighboring property.

2. The owner shall be required to gain access through the appropriate local authorities for access on the non-state route.

3. The DOTD may require adjacent properties to share access through a single access point. If shared access is required by the DOTD, a copy of the shared access agreement shall be submitted to the DOTD as part of the driveway permit and shall be signed by all involved property owners. If an applicant does not meet the minimum requirements for a single access connection, and the adjacent properties do not have existing access connections, the DOTD may issue an access connection permit with the condition that the permitted access connection shall be placed along the property line with the agreement that upon development of the adjacent property, the permitted access connection shall be shared and any reconstruction or reconfiguration required at the future time shall be the responsibility of the permittee(s).

4. A request for an access connection on a state route where alternative access connection opportunities exist on non-state route(s) shall be accompanied by a traffic impact study. This study shall comply with the guidelines and policies set forth by the DOTD for such studies. In order to consider state route access in these cases, the study shall show that the lack of access on the state route causes unreasonable negative impacts to the traffic flow in the vicinity of the property.

5. Requests for access connections in excess of one access connection or for an access connection on a state route where non-state route access exists must be reviewed and approved by the district engineer administrator. Such requests shall be accompanied by a traffic impact study. This study shall comply with the guidelines and policies set forth by the DOTD for such studies. In order to consider an additional access connection or an access connection on a state route where non-state route access exists, the study shall show that the lack of the requested access connections causes unreasonable negative impacts to the traffic flow in the vicinity of the property and shall demonstrate that an additional access connection will contribute to the overall improvement of the safety and efficiency of the adjacent roadways and of the transportation system.

C. The construction of parking within the limits of the state right-of-way is specifically prohibited. Facilities which require parking shall provide such within the limitations of the facility and shall not encroach upon the right-of-way.

D. Access connections which extend or travel parallel to the roadway shall not be permitted. This includes access near gasoline pumps or other structures requiring vehicular

access. Any such pumps or structures shall be located a minimum distance of 15 feet from the right-of-way line in order that all on-site access lanes shall be located outside of the right-of-way.

E. Gates, fences, signage, landscaping, or other decorative or access-control features (i.e. gated subdivision) shall not be located within the right-of-way. Any such access-control feature shall be located so that a minimum storage of two vehicles (50' storage length minimum) is provided outside of the limits of the right-of-way. Gated access shall not be permitted as an approach to a traffic signal.

F. Display of merchandise for sale within the limits of right-of-way (including, but not limited to, automobiles, farm equipment, agricultural produce, fireworks, tents, etc.) or the storage of farm implements within the limits of right-of-way is strictly prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1523. Limited Access Highways

A. On those highways which have been designated as limited access highways, or along which service roads have been constructed, access shall be permitted to connect only to the service roads and not to the main traveled highways.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36;

§1525. Access Connections—Spacing and Sharing

A. Every effort shall be made by the district traffic operations engineer and/or district engineer administrator to designate approved locations of access connections within existing property limits so that the spacing between adjacent access connections is maximized.

B. A minimum spacing as defined in DOTD policy shall be maintained between access connections. If frontage is not available to maintain minimum spacing of access connections, the DOTD reserves the right to require adjacent property owners to share a single access connection.

C. When necessary to maintain the corridor and preserve mobility, adjacent property owners may be required by the DOTD to share an access connection (new or existing). This provision applies to both residential and commercial applicants. Under this provision, a residential applicant shall only be required to share use with other residential applicants. A commercial applicant shall only be required to share an access connection with other commercial applicants.

D. The DOTD may require adjacent commercial applicants to share access connections and/or provide connectivity between properties and parking lots in an effort to limit the number of access connections along the right-of-way.

E. When access connection sharing and/or property connectivity is required by the DOTD of independent property owners, it shall be the responsibility of the property owners to develop maintenance and cost agreements. The signed agreement shall be submitted to the DOTD as part of this application.

F. Any costs resulting from the requirement to share access connections or provide property connectivity shall be

borne by the involved property owners and shall not be the responsibility of the DOTD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1527. Access Connection Operational Restrictions

A. DOTD reserves the right to restrict operations at an access connection.

B. Such restrictions may include, but are not limited to:

1. turn restrictions (e.g., right-in/right-out only);
2. truck only or no trucks;
3. entrance-only or exit-only.

C. Restricted movements cannot be limited to certain times of day or days of week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1529. Access Connections on Roadways with Medians

A. On roadways with center medians of any type, access connections will not be permitted to align with median cuts or crossovers, and shall be located as far from these cuts and crossovers as possible within property limit constraints.

B. DOTD reserves the right to require the applicant to modify, relocate, or construct crossovers to facilitate the movement of additional traffic expected to be generated by the proposed facility.

C. All access on roadways with medians may be restricted to right-in/right-out movements only, and shall be constructed in such a way as to prevent any other movements. This shall apply to both residential and commercial access.

D. Median opening spacing, locations, and operations with regard to access connections shall be as defined in DOTD policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1531. Design Requirements

A. There are multiple standard plans for access connection types. The DOTD district engineer administrator or his/her designee will aid in determining the appropriate type for each application at the initial access connection permit meeting. These standard access connection types must be applied in their entirety without modification, unless otherwise recommended or approved by the district traffic operations engineer. The permissible design of access connection returns shall be governed by the type of access connection to be constructed and shall be as shown in the appropriate detail of the standard plans for access connections.

B. All single-family residential and traffic generator access connections shall be constructed with permanent hard surface type materials (i.e. asphalt or concrete) as shown on the standard plans for access connections. Aggregate access connections shall not be permitted within the right-of-way for these types of connections. The hard surface type materials shall extend the following distances from the edge of pavement:

1. single-family residential access connections: 10 feet from the edge of pavement;

2. traffic generator access connections: 25 feet from the edge of pavement.

C. Non-commercial agricultural operations may not be required to be constructed of hard surface type materials.

D. All entrances and exits shall be located so that drivers approaching or using them will have adequate sight distance in all directions along the highway in order to maneuver safely and without interfering with traffic. Minimum required sight distance shall be calculated using the methods outlined in the AASHTO Geometric Design Guide for sight distance based on the posted speeds of the adjacent roadway or a speed other than the posted speed limit for these calculations.

E. All access connections shall be designed and constructed in accordance with all DOTD plans and specifications regarding drainage requirements. Culvert sizes, proposed elevations and proposed slopes shall be approved by the DOTD prior to issuance of an access connection permit. The DOTD may require a drainage study to be performed at the expense of the applicant.

F. Access connections shall be constructed according to DOTD Standard Plans and other applicable policies and provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1533. Construction Requirements

A. During construction in the right-of-way, appropriate temporary traffic control devices shall be used to maintain traffic on the roadway in a safe manner. All temporary traffic control devices and the placement of same shall conform to the most current DOTD standards.

B. All public notices shall be handled by the DOTD district office personnel. Closure plans and times shall be submitted to the district traffic operations engineer for review according to the following:

1. 5 working days before construction if traffic control plan has been approved or is contained in the plans that were approved;
2. 10 working days before construction if traffic control plan must be submitted for lane closures not addressed in the plans.

C. The allowable times, days, and duration of lane closures shall be as determined by the district traffic operations engineer. All lane closures should be scheduled in a way that minimizes the impact to roadway traffic.

D. Nighttime closures may be required.

E. The services of an independent DOTD-approved inspector shall be obtained to inspect the construction of all DOTD-required improvements in the DOTD right-of-way. The inspection process shall be in accordance with current DOTD policy. The DOTD district office may elect to perform independent inspections of work. Satisfactory completion and acceptance of the improvements by DOTD will be based upon the reports received from the inspector(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1535. Improvements to the Adjacent Transportation System

A. The DOTD may require mitigation on the adjacent roadway network and facilities due to the effects of the proposed development and access connection location(s). Expense for such requirements shall be borne by the applicant.

B. Mitigation, which may be required by the DOTD, may be determined through a complete traffic impact study and/or traffic signal study review process. Required mitigation shall be reviewed by the district engineer administrator. Any required mitigation shall be noted on the permit, and bond amounts shall be appropriate for such mitigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1537. Coordination with Local Authorities

A. Additional permits may be required by other local governing authorities.

B. It is the responsibility of the applicant to determine the need for additional permits from local authorities, and to obtain these permits.

C. Access connection permits shall not be granted based on the possession of other required state or local permit(s). The issuance of a DOTD access connection permit does not guarantee the issuance of other required state or local permit(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1539. Temporary Access Connection Permits

A. Temporary access connection permits may be granted for a period of time as specified on the permit. This time period shall be specified on the permit prior to issuance.

B. Temporary access connection permits shall not be issued for a period of time to exceed one year.

C. A temporary access connection permit may be extended or reissued as approved by the district engineer administrator.

D. Applications for temporary access connection permits shall be accompanied by a bond per DOTD policies.

E. All temporary access connections installed under a temporary access connection permit shall be constructed using non-permanent materials (i.e. aggregate). Concrete or asphalt should not be used for temporary access connections.

F. The property owner shall be responsible for removal of any materials tracked onto the roadway by property operations on a daily and continual basis until such time that the temporary access connection is removed.

G. Temporary access connection permits may be issued where access from a state highway is needed on a short-term basis. Such instances may include, but are not limited to:

- 1. access during construction for a site where the future permanent access will be located on another roadway not within the state highway right-of-way;
- 2. use of an existing access connection during the permit application process for a change in land use.

H. Temporary access connection permits to controlled access facilities shall not be allowed under any circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1541. Appeals Process

A. Any decision rendered by the DOTD district office may be appealed by the applicant to the DOTD headquarters staff.

B. Appeals shall be filed in accordance with the DOTD appeals policies set forth in LAC 70:I.1101 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1543. Utility Company Access Connections

A. Permits requested by utility companies for access connections within the DOTD right-of-way shall be limited to 15 feet in width.

B. Permit requests for access wider than 15 feet will require proof of necessity before approval. Such requests shall be approved by the district traffic operations engineer.

C. Prior to permit approval, a DOTD permit for placement of a cable closure box or maintenance cabinet on DOTD right-of-way must have been granted.

D. The following special condition must be noted on utility company permits when the applicant does not have control of the frontage (abutting) property:

“This permit is issued subject to permittee obtaining prior approval for any access(s) and producing written permission from abutting property owner(s). Otherwise, said access(s) shall be completely removed from the highway right-of-way. Access(s) is(are) to be used for the maintenance of utilities only and is(are) not to be used for any other purposes.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1545. Bus Stop Shelters

A. Permits for bus stop shelters within the highway right-of-way shall only be granted to public bodies (e.g. municipality, police jury, etc.).

B. Applications for such permits must include the following information:

- 1. name of the agency requesting the permit;
- 2. type and size of shelter or bench, including diagram of such (to scale with dimensions);
- 3. exact proposed location with respect to the highway and to the right-of-way limits;
- 4. drainage requirements;
- 5. access requirements;
- 6. signed statement that approaches will be maintained by the agency in an acceptable state of repair.

C. Such structures shall not be permitted when they do not comply with these regulations or when they are proposed at a location that will interfere with needed highway operations or maintenance (e.g., sight distance, shoulders, drainage, etc.).

D. The DOTD is to maintain full control over any such structure and may require removal at any time.

E. If a bus stop shelter or bench is no longer in use or service, it shall be removed at the expense of the public body to which the permit for such was granted. The roadway shall be returned to a condition which matches the adjacent area, including replacement of regular curb and gutter, pavement, shoulders, etc. as directed by the DOTD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1547. Railroad Crossings

A. Railroad tracks crossing highways shall conform to the permit supplement titled Rules and Regulations Governing the Construction of Railroad Grade Crossings on State Highways.

B. It is the responsibility of the applicant to contact the appropriate railroad agency, submit any required documentation, and pay any required fees in order to obtain a permit from the railroad agency.

C. DOTD shall not issue an access connection permit until the appropriate railroad permit(s) has(have) been secured by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

§1549. Failure to Comply

A. Unlawful access connections shall be:

1. any driveway, street, or other connection which violates the provisions of this Chapter;
2. any driveway, street, or other connection which violates the provisions of the permit issued; or
3. any driveway, street, or other connection which is constructed without an access connection permit.

B. The DOTD shall give 30 days notice by certified mail to the owner of such connection to remove same if it is a prohibited connection or cause it to conform to regulations if it is not an authorized connection.

C. At the time of owner notification, the DOTD shall place barricades across the unlawful access connection. The barricades shall be marked with an approved sticker as "ILLEGAL."

D. If the owner is unknown or cannot be found, a written notice shall be affixed to the barricade stating that the access connection is unlawful and shall be removed within 30 days from the date specified on the sticker.

E. Failure to remove within the specified period serves as forfeiture of all rights thereto and the department shall remove the unlawful access connection. The owner and/or any other person responsible therefore remains liable for any damage to public property or expenditure of highway funds resulting from the installation or removal of the unlawful access connection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 36:

Part II. Utilities

Chapter 5. Standards Manual for Accommodating Facilities on Highway Right-of-Way

§531. Driveway Permits

A. Guidelines. Driveway permits are required in order to assure safe and orderly movement for vehicular traffic entering and leaving the highway; to abolish hazardous and indiscriminate parking adjacent to the roadway surface; to preserve adequate sight distances at intersections; to encourage beautification of property frontage and to insure uniform design and construction of driveways on highway right-of-way. The DOTD's authority to require permits for

driveways is set forth in R.S. 48:344. All rules governing the installation of driveways are now located at LAC 70:I, Chapter 15, Access Connection Permits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381-382, 48:193 and 48:344.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 20:317 (March 1994), amended LR 36:

Family Impact Statement

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.
2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.
3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.
4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.
5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.
6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, DOTD Legal Section, P.O. Box 94245, Baton Rouge, LA 70804, Telephone (225) 237-1359.

Sherryl H. Lebas, P.E.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Access Connection Permits and Driveway Permits

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There is no anticipated direct material effect on governmental expenditures as a result of this proposed administrative rule. The proposed administrative rule merely codifies current access permit processing.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated direct material effect on governmental revenues as a result of this proposed administrative rule. Currently, the department does not charge an access permit fee and the proposed administrative rule does not change this practice.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This rule applies to property owners desiring access to a state highway. There is no cost to these owners for acquiring a

permit. Some property owners may be required to post a bond if improvements within DOTD highway right-of-way are required by other DOTD policies already in existence. No claims will be made against the bond if the required improvements are installed in accordance with DOTD standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct material effect on competition and employment as a result of the proposed administrative rules. All businesses impacted by the proposed administrative rule will be impacted equally.

Sherri H. LeBas, P.E.
Secretary
1009#084

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Use of Yo-yo's and Trotlines in Lake Lafourche (LAC 76:VII.116)

The Wildlife and Fisheries Commission hereby advertises its intent to adopt regulations on yo-yo's and trotlines in Lake Lafourche in Caldwell Parish, Louisiana.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sport and Commercial Fishing

§116. Lake Lafourche

A. The Wildlife and Fisheries Commission hereby adopts the following regulations applicable to the use of yo-yo's and trigger devices when used in Lake Lafourche in Caldwell Parish.

1. No more than 50 yo-yos or trigger devices shall be allowed per person.

2. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, each yo-yo or trigger device shall be clearly tagged with the name, address, and telephone number of the owner or user.

3. When in use, each yo-yo or trigger device shall be checked at least once every 24 hours, and all fish and any other animal caught or hooked, shall be immediately removed from the device.

4. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, each yo-yo or trigger device must be re-baited at least once every 24 hours.

5. Except for those metal objects located above the water that are affixed to a private pier, dock, houseboat, or other manmade structure which is designed for fishing, no yo-yo or trigger device shall be attached to any metal object.

6. Except for a metal object used strictly in the construction of a pier, boathouse, seawall, or dock, no metal object which is driven into the lake bottom, a stump, tree, or the shoreline shall be used to anchor a yo-yo or trigger device.

7. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, when not being used in accordance with the provisions of this Paragraph, each yo-yo or trigger device shall be removed from the waterbody immediately.

B. The Wildlife and Fisheries Commission hereby adopts the following regulations applicable to the use of trotlines when used in Lake Lafourche in Caldwell Parish.

1. All trotlines shall be clearly tagged with the name, address, and phone number of the owner or user and the date of placement. The trotline shall be marked on each end with a floating object that is readily visible.

2. At any given time, no person shall set more than three trotlines with a maximum of fifty hooks each.

3. All trotlines shall have an eight foot cotton leader on each end of the trotline.

4. Except for those metal objects located above the water that are affixed to a private pier, dock, houseboat, or other manmade structure which is designed for fishing, no trotline shall be attached to any metallic object.

5. Each trotline shall be attended daily when in service.

6. When not in use, each trotline shall be removed from the waterbody by the owner or user.

C. A violation of any of the provisions of this Section shall be a class one violation, except there shall be no imprisonment. In addition, any device found in violation of this Section shall be immediately seized by and forfeited to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:326.3 and 56:6(32).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 36:

Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public Comments

Interested persons may submit written comments on the rule to Mr. Gary Tilyou, Administrator, Inland Fisheries Section, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, no later than 4:30 p.m., November 4, 2010.

Stephen J. Oats
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Use of Yo-yo's and
Trotlines in Lake Lafourche**

**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. No increase or decrease in costs to state or local governmental units associated with implementing the proposed rule is anticipated.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule is anticipated to have no effect on revenue collections of state and local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The proposed rule establishes gear regulations for trigger devices and trotlines in Lake Lafourche in Caldwell Parish. Fishers who use trotlines and trigger devices to take fish must abide by the gear regulation requirements or risk receiving enforcement citations and loss of fishing gear. Some fishermen may benefit from the proposed rule by having additional areas to fish and less chance of damaging their boats from metal objects in the water.

No cost, additional workload or paperwork will be incurred as a result of the proposed action.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule is anticipated to have no impact on competition and employment in the public or private sectors.

Lois Azzarello
Undersecretary
1009#049

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Spotted Seatrout Management Measures
(LAC 76:VII.341)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.341, modifying the existing Rule. Authority for adoption of this Rule is included in R.S. 56:6(25)(a) and 56:326.3. Said Rule is attached to and made a part of this Notice of Intent.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§341. Spotted Seatrout Management Measures

A. Commercial Season; Quota; Permits

1. The commercial season for spotted seatrout whether taken from within or without Louisiana state waters

shall remain closed until January 2 of each year, when it shall open and remain open until the maximum annual quota is reached, or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever comes first. The commercial harvest or taking of spotted seatrout is prohibited during the period from sunset on Friday through sunrise on Monday, and there shall be no possession of spotted seatrout in excess of the recreational limit during the period between 10 p.m. and 5 a.m.

2. - 3.d. ...

4. The commercial taking or commercial harvesting of spotted seatrout shall be prohibited within Louisiana waters west of the Mermentau River.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S.56:6(25)(a); R.S. 56:306.5, R.S. 56:306.6, 56:325.1(A) and (B); R.S. 56:325.3; R.S. 56:326.3; Act 1316 of the 1995 Regular Legislative Session; and Act 1164 of the 2003 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:238 (March 1996), LR 24:360 (February 1998), LR 26:2333 (October 2000), LR 30:1509 (July 2004), LR 30:2498 (November 2004), repromulgated LR 32:125 (January 2006), amended LR 32:1071 (June 2006), LR 36:

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public Comments

Interested persons may submit comments relative to the proposed Rule to: Harry Blanchet, Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to: hblanchet@wlf.la.gov prior to Thursday, November 4, 2010.

Stephen J. Oats
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Spotted Seatrout Management Measures**

**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. No increase or decrease in costs to state or local governmental units associated with implementing the proposed rule is anticipated.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change is anticipated to have a slight increase on revenue collections of state and local governmental units from the increase in economic activities generated by a longer harvest season. No sizeable increase in participation within the rod and reel spotted seatrout fishery is anticipated, since participation is limited by law.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will extend the commercial harvest season of spotted seatrout from January 2 of each year until the commercial quota is filled and will prohibit the commercial harvest of spotted seatrout from waters west of the Mermentau River.

Commercial harvesters and fish dealers of spotted seatrout will directly benefit by the extension of the commercial season, since only a small fraction of the total allowable spotted seatrout quota is taken annually under the existing commercial season, which closes on July 31. Businesses that supply and manufacture goods and services used by harvesters and dealers of spotted seatrout will also benefit from the increase demand of their products; and consumers of spotted seatrout will benefit from having an increase in supply of spotted seatrout. The magnitude of these benefits cannot be determined at this time and will depend on the increase in fishing effort and the

additional amount of spotted seatrout harvested due to the extended harvest season.

The quantity of the commercial harvest west of the Mermentau River has historically been minimal, so the elimination of that harvest should have little or no impact to commercial harvesters and dealers of spotted seatrout.

No workload adjustments or additional paperwork (number of new forms, additional documentation, etc.) will be incurred as a result of the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment is anticipated to have little or no impact on competition and employment in the public or private sectors.

Lois Azzarello
Undersecretary
1009#048

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 13-14, 2010, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates: September 3, 2010
 Re-Take Candidates: September 24, 2010
 Reciprocity Candidates: November 4, 2010

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 3, 2010. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
 Commissioner

1009#040

POTPOURRI

Office of the Governor Division of Administration Office of Information Technology

OIT Bulletins Published

Pursuant to LAC 4:XV.501 et seq., the Office of Information Technology (OIT) published the following Bulletin(s) in the period 08/01/2010 to 08/31/2010:

Bulletin Number	Topic	Date
ITB 10-02	IT Standard 6-01, Revised Desktop Configuration with Budgeting Guidelines	08/27/2010

(Please note: OIT is redesigning the OIT web site and the numbering scheme associated with Policies and Standards.)

OIT Bulletins, Standards, Guidelines and Policies are posted on the OIT web site at: <http://oit.louisiana.gov>.

To receive e-mail notifications when an OIT Bulletin is published, register at <http://oit.louisiana.gov>.

Ed Driesse,
 Chief Information Officer

1009#042

POTPOURRI

Department of Natural Resources Office of Conservation

Advanced Notice of Rulemaking and Solicitation of Comments on Water Well Registration, Construction and Closure (LAC 56:I)

The Department of Natural Resources, Office of Conservation is requesting comments on the following enumerated issues regarding Water Well Registration, Construction and Closure, LAC 56, Part 1.

As part of the ongoing government streamlining effort, Act 437 of the Regular Session of the Louisiana Legislature, 2009 transferred the responsibilities relating to water wells and water well drillers from the Department of Transportation and Development to The Department of Natural Resources. As part of this transfer, the databases maintained by both departments have been merged and modernized. The Department of Natural Resources now seeks to update the forms and regulations pertaining to water wells and desires input from industry and the public pertaining to these issues.

Written comments concerning the proposed revisions are due no later than 4:30 p.m., October 20, 2010, and should be submitted to Gary Snellgrove, Office of Conservation, Environmental Division, P.O. Box 94275--Capitol Station, Baton Rouge, LA 70804-9275 or by Fax to (225) 342-3094. Persons commenting should reference this document as ENV 10-06.

1. Make all necessary administrative revisions in the regulations to reflect the shift in statutory authority from DOTD to DNR, Office of Conservation.

2. LAC 56:I.105.G.2. Registration of Reworked Wells. Add specific language citing enforcement authority of the agency for failure to comply with the water well registration requirements of unregistered wells that have been reworked, deepened or changed in any manner or if the screen setting is altered.

3. Include proof of liability insurance coverage for a minimum of \$1,000,000 as a condition for agency approval of all initial and annual renewal applications for water well driller contractor licenses.

4. Require all rig supply water wells to be constructed with a protective cement slab and four corner posts. Include rig supply well onsite location criteria to prevent or minimize risks of damage or environmental contamination. Require that all rig supply wells be properly plugged and abandoned within six months of completion of associated oil and gas well drilling activity if the rig supply well is constructed to meet rig supply well construction standards only, unless the rig supply well owner provides all necessary change of information or transfer of ownership, and agency

notification for future well use for domestic or irrigation purposes only.

5. Require all water well pump installation activity to be reported to the agency by the company that performs the pump installation activity including written certification of compliance with sanitary code requirements for well disinfection.

6. LAC 56:I.329. Revise existing requirements for annular space cementing to include use of sodium bentonite with minimum porosity requirements as is allowed by other southern states.

7. Require owner installation of control devices on all free flowing waters wells regardless of the volume of water produced per day.

8. Incorporate the standard and procedures included in the December 2000 Construction of Geotechnical Boreholes and Groundwater Monitoring Systems Handbook into LAC 56, Part I regulations.

9. Clarify the definition of "Test Hole" under LAC 56:I.113 to state: "a temporary exploratory borehole drilled for the sole purpose to obtain geologic, hydrologic and water quality data."

10. All forms included in LAC 56, Part I will be revised as needed to conform with all applicable revisions to the requirements.

11. Require water well drillers to complete all water well location information on all forms that currently require that information to be input by state agency inspectors or staff.

12. LAC 56:I.315.A. Include "ponds" and "lakes" to the existing minimum distance requirement for "Drainage canal, ditch or stream".

13. LAC 56:I.317.A. Provide clarification to the location requirements at levees such that these requirements clearly include not only water wells, but also geotechnical boreholes, monitoring wells, etc.

14. LAC 56:I.317. Include a specific section for relief wells located within 250 feet from the land side toe of a levee that include: a) written approval from DHH, Office of Public Health, U.S. Corps of Engineers and the local levee authority, if applicable and b) minimum construction standards for grouting down to at least 10 feet from the ground surface and a one-way check valve.

15. LAC 56:I.319.A. Revise the construction elevation requirements for wells located in flood-prone areas to exclude wells located in areas along the Gulf Coast prone to storm surges and include specific well construction requirements to prevent or minimize well damage and groundwater contamination from storm surge and debris impact.

16. LAC 56:I.323.D. Add clarification to the regulatory language regarding health and safety measures to include reporting within 24 hours any observations during the drilling and construction of wells that indicate the subsurface presence of natural gas or other gaseous substance.

17. LAC 56:I.327.C. Clarify screen material requirements by revising the 3rd sentence with the underlined as follows: "If a corrosive environment is present, the screen should be made entirely of the same material, and the lap or

extension pipe (for not less than 5 feet) above the screen and blank pipe, if used, should be made of the same material as the screen."

18. LAC 56:I.331.F.1. Revise water well registration forms to require water well drillers to certify compliance with well disinfection requirements.

James H. Welsh
Commissioner

1009#083

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, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
E E Meshell	Blue Lake	S	Sabine Lbr Co	001	90138

James H. Welsh
Commissioner

1009#033

POTPOURRI

**Department of Natural Resources
Office of Conservation
Environmental Division**

Hearing—US Liquids of La
Docket No. ENV 2010-04

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6:00 p.m., Thursday, November 18, 2010, at the Jefferson Davis Parish Police Jury Meeting Room at the Sidney E. Briscoe Jr. Building, 304 N State Street, Jennings, Louisiana.

At such hearing, the Commissioner, or his designated representative, will hear testimony relative to the application of U S Liquids of La., L.P., P.O. Box 1467, Jennings, Louisiana 70546. The applicant requests approval from the Office of Conservation to construct and operate an additional Class II well for deep well injection / disposal of exploration and production waste (E and P Waste) fluids as a minor modification to their existing permitted commercial E&P Waste disposal facility located in Township 10 South, Range 02 West, Section 012 in Jefferson Davis Parish.

The application is available for inspection by contacting Mr. Daryl Williams, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North Third Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the Jefferson

Davis Parish Police Jury or the Public Library in Jennings, Louisiana. Verbal information may be received by calling Mr. Williams at (225) 342-7286.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, December 2, 2010, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2010-04
Commercial Facility Well Application
Jefferson Davis Parish

James H. Welsh
Commissioner

1009#056

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Loran Coordinators

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 10 claims in the amount of \$40,840.28 were received for payment during the period August 1, 2010 - August 31, 2010

There were 8 paid and 2 denied.

Latitude/longitude coordinates of reported underwater obstructions are:

2907.169	8923.321	Plaquemines
2910.625	9108.033	Terrebonne
2911.833	9027.550	Terrebonne
2914.757	9013.827	Lafourche
2916.959	8949.356	Plaquemines
2917.082	8952.549	Plaquemines
2922.228	9043.263	Terrebonne
2926.684	8958.466	Jefferson
2936.077	9001.853	Jefferson

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Robert D. Harper
Secretary

1009#094

POTPOURRI

**Department of Public Safety and Corrections
Oil Spill Coordinator's Office**

Mosquito Bay Natural Gas Condensate Discharge
Final—Settlement Agreement

Action: Notice of availability of a Final Settlement Agreement (Final SA) for LOSCO NRDA case file #LA2001_0405_1002 [Mosquito Bay 2001].

Agencies: Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Louisiana Department of Environmental Quality; Louisiana Department of Natural Resources; and Louisiana Department of Wildlife and Fisheries (referred to herein as the Trustees).

Summary: Notice is hereby given that a document entitled, "Settlement Agreement Mosquito Bay 2001" is final and will become available to the public on September 20, 2010. The Final SA was negotiated by the Trustees and Transcontinental Gas Pipe Line Company, LLC (Transco) to recover damages for injuries to natural resources and services resulting from the Incident. The Final SA is a binding agreement in which Transco agrees to pay the Trustees \$1,843,375.72 for their response costs, past assessment costs, future Trustee costs, natural resource damage claims, and future restoration project implementation costs associated with a Trustee-implemented compensatory restoration project, as described in the Final Addendum (Attachment 1 of the Final SA). Execution of the Final SA by the Trustees and Transco shall provide the basis for compensating the public for injuries to natural resources and services resulting from the Incident.

Interested members of the public are invited to request a copy of the Final SA from Gina Muhs Saizan at the address provided below.

For Further Information: Contact Gina Muhs Saizan at (225) 925-6606 or by email at gina.saizan@la.gov. To view the Final SA via the internet, please visit www.losco.state.la.us and look under News Flash for Mosquito Bay 2001 Oil Spill.

Address: Request for copies of the Final SA should be sent to:

Gina Muhs Saizan
Louisiana Oil Spill Coordinator's Office
Department of Public Safety and Corrections
P.O. Box 66614
Baton Rouge, LA 70896
(225) 925-6606
Gina.Saizan@la.gov

Supplementary Information: The public was given an opportunity to review and comment on the Draft Settlement Agreement (Draft SA) document and the Draft Addendum to the Final Damage Assessment and Restoration Plan (Draft Addendum) during the public comment period, which extended from April 20, 2010 through May 20, 2010. Public review of the Draft SA and Draft Addendum is consistent

with all state laws and regulations that apply to the Natural Resource Damage Assessment (NRDA) process, including the Louisiana Oil Spill Prevention and Response Act (OSPRA), La. Rev. Stat. 30:2451 et seq.; and the regulations for NRDA under OSPRA, La. Admin. Code 43: Part XXIX, Chapter 1. The Trustees did not receive comments during the public comment period and have executed the Final SA.

Roland Guidry
Oil Spill Coordinator

1009#039

POTPOURRI

**Department of Revenue
Office of the Secretary**

September Meeting of Act 442
Collaborative Working Group

The next meeting of the Collaborative Working Group will be conducted on Wednesday, September 29, 2010 at 9 a.m. in the Griffon Room on the first floor of the LaSalle Building, 617 N. Third Street, Baton Rouge, Louisiana.

Section 4 of Act 442 of the 2009 Regular Session of the Louisiana Legislature established a collaborative working group of state and local tax administrators and industry representatives for the purpose of assisting in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

The group's mission is to study and develop specific proposals on the definition of tangible personal property under Chapters 2, 2-A, 2-B and 2-D of Title 47 of the Louisiana Revised Statutes of 1950. The group shall report its policy recommendations to the chairmen of the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than January 31, 2011.

The group shall cease to exist on June 30, 2011.

Further information concerning this meeting may be obtained from Ted James, Office of the Secretary, P.O. Box 66258, Baton Rouge, LA 70896, phone (225) 219-2707.

Cynthia Bridges
Secretary

1009#038

CUMULATIVE INDEX
(Volume 36, Number 9)

Pages	2010	Issue
1-157.....		January
158-439.....		February
440-713.....		March
714-911.....		April
912-1153.....		May
1154-1411.....		June
1412-1670.....		July
1671-1919.....		August
1920-2147.....		September
EO—Executive Order PPM—Policy and Procedure Memoranda ER—Emergency Rule R—Rule N—Notice of Intent CR—Committee Report GR—Governor's Report L—Legislation P—Potpourri		

ADMINISTRATIVE CODE UPDATE

Cumulative

January 2009—December 2009, 146

AGRICULTURE AND FORESTRY

Agricultural and Environmental Sciences, Office of

- Giant Salvinia, 1927ER, 2056N
- Labeling of coated seeds, 1587N
- Pesticide 2, 4-D, 914ER, 1036N, 1980R
- Seed certification standards and fees, 336N, 1220R
- ULV malathion/pyrethroid, 914ER, 1036N, 1980R

Agricultural Finance Authority

- Farm and agribusiness recovery and loan program, 442ER, 464R

Animal Health, Board of

- Trichomoniasis, 1156ER, 1580N, 1925ER

Commissioner, Office of the

- Agriculture commodities commission, 1416ER
- Family farm credit, 231R
- Fees: amount, time of payment, 446ER
- Louisiana strawberries, 2057N
- Sweet potato yield adjustment, 445ER

Horticulture Commission

- Landscape architect registration exam, 161P, 425P, 1906P, 2134P
- Landscape irrigation contractors insurance waiver, 1585N
- Retail floristry examination, 425P, 1143P, 1402P

Seed Commission

- Labeling of coated seeds, 1587N
- Seed certification standards and fees, 336N

Structural Pest Control Commission

- Rule revisions and technical corrections, 2060N

CHILDREN AND FAMILY SERVICES

NOTE: Formerly Social Services. See Social Services section of this Index for prior subject listings of January through June.

Child Welfare Section

- Daycare services—residential licensing, 1590N
- Legal representation in child protection cases, 1587N
- Residential licensing
 - Notice of revocation action, 1462R

Economic Stability and Self-Sufficiency Section

- Child care assistance program, 1794N
 - Discontinuance of job search, 1767R
- Daycare services—residential licensing, 1590N
- Family independence temporary assistance program (FITAP), 1673ER, 1794N
- Family violence prevention and intervention program, 1589N
- Kinship care subsidy program (KCSP), 1673ER, 1794N
- Supplemental nutrition assistance program (SNAP), 1673ER, 1794N
 - Iraqi, Afghani Immigrant—Qualified Alien, 1674ER
- Temporary assistance for needy families (TANF)
 - Initiatives, 1676ER

CIVIL SERVICE

Civil Service Commission

- Food and drink limit, 855N
- Performance adjustment, 343N
- Temporary suspension of merit increase authority, 716ER, 855N

Ethics, Board of

- Financial disclosure forms, 232R
- Financial disclosures, 340N, 1463R
- Food and drink limit, 304R, 1466R

CULTURE, RECREATION AND TOURISM

State Library of Louisiana

- State library, name and procedural changes, 1592N

Tourism, Office of

- Cultural districts, 469R
- State library, 1281N
- State parks, 558N, 1225R
- Welcome centers, 50R

ECONOMIC DEVELOPMENT

Business Development, Office of

- CDC certification program, 79N, 750R
- Enterprise zone program, 1808N
- Entertainment tax industry credit programs—digital media act, 425P, 1981R
- Industrial ad valorem tax exemption program, 1818N
- Motion picture investor tax credit program, 52R, 1928ER
- Regional awards and matching grant awards programs, 51R

ECONOMIC DEVELOPMENT (Continued)

Research and development tax credits, 1768R
Retention and modernization act, 474R
Small and emerging business development program, 51R
Sound recording production and infrastructure tax credit programs, 304R, 2084N
Technology commercialization credit and jobs program, 307R

Entertainment Industry Development, Office of

Motion picture investor tax credit program, 52R, 1928ER
Sound recording production and infrastructure tax credit programs, 304R, 2084N

Louisiana Economic Development Corporation

Retention and modernization act, 474R

Secretary, Office of

Ports of Louisiana tax credits; investor tax credit program, 1287N
Regional awards and matching grant awards programs, 51R
Retention and modernization act, 474R
Veteran initiative, 471R

EDUCATION

Elementary and Secondary Education, Board of

Bulletin 111—The Louisiana School, District, and State Accountability System, 856N, 1037N, 1291N, 1299N, 1769R, 1987R, 1994R
Bulletin 118—Statewide Assessment Standards and Practices, 81N, 477R, 967R
Bulletin 119—Louisiana School Transportation Specifications and Procedures, 567N, 1466R
Bulletin 120—Adult Education Data Quality and Procedures, 310R
Bulletin 125—Standards for Educational Leaders in Louisiana, 1302N
Bulletin 126—Charter Schools—fourth year review of charter schools on contract probation, 1830N
Renewal process and timeliness, 478R
Bulletin 129—The Recovery School District, 2085N
Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel, 1045N, 1906P
Bulletin 741—Louisiana Handbook for School Administrators, 588N, 1224R
Administration of medication, 480R
Agricultural education, 1071N, 1995R
Career options, 1072N, 1995R
Carnegie credit for middle school students, 59R, 344N, 1308N
Compulsory attendance, 481R
Curriculum and instruction 590N, 1485R
Foreign languages, 1073N, 1996R
General career and technical education, 601N, 1074N, 1496R, 1996R
Health education, 603N, 1497R
Health occupations, 1309N
Individual graduation plan, 604N, 1497R
Non-complex health procedures, 482R
Public comments, 59R
Response to intervention, 346N
Science education, 483R

Technology education, 1075N, 1997R
Unsafe schools, 604N, 1498R
Bulletin 741 (Nonpublic)—Louisiana Handbook for School Administrators
Assessment requirements for a state diploma, 587N, 1498R
Definitions of schools and early childhood programs, 1837N
Professional staff development, 1839N
Programs of study, 1840N
Bulletin 746—Louisiana Standards for State Certification of School Personnel
ACT/SAT scores in lieu of PRAXIS I scores, 484R
Adult education instructor, 485R
Alternative path to certification, 1310N
Alternative teacher preparation programs, 1312N
Application packet, 1831N
Certification appeal process, 486R
CTTIE-1 and CTTIE-2 certificates, 1832N
Louisiana teacher preparation programs, 1833N
PRAXIS I scores, 487R
Requirements to add a non-NCLB secondary content area, 1598N
School nurse, 1076N, 1998R
Standards certificates for teachers in nonpublic/charter schools, 751R
Teaching certificate, 1077N, 1998R
Temporary authority to teach (TAT), 1599N
VTIE, CTTIE and CTTIE-1 certificates, 1079N, 2000R
World language certificate, 486R
Bulletin 996—Standards for approval of Teacher and/or Educational Leader Preparation Programs
Programmatic intervention and acronyms, 753R
Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools
Driver education and training program for children, 489R
Bulletin 1566—Pupil Progression Policies and Procedures, 1081N, 2001R
Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
Regulations for gifted/talented students, 1091N, 2011R
Regulations for students with disabilities, 605N, 1499R
Bulletin 1929—Louisiana Accounting and Uniform Government Handbook, 612N, 1505R
Recovery school district
Standing and executive committees and advisory councils, 1824N
Regents, Board of
Registration and licensure, 2092n
Student Financial Assistance, Office of
GO grant program changes, 1841N
Scholarship/grants program, 311R, 716ER, 1110N, 2029R
2010 legislation, 1843N
Chafee educational and training voucher, 1158ER, 1600N, 1679ER
Health care educator loan forgiveness, 1158ER, 1603N

EDUCATION (Continued)

Louisiana GO Grant, 1681ER

TOPS, 1682ER

Intersession, 490R

Rockefeller state wildlife scholarship, 915ER, 1316N

START Savings Program, 1111N, 2030R

TOPS, 917ER, 1319N

Tuition Trust Authority

START Saving Program

Account deposits/documentations, 1604N

Educational savings account, 313R, 717ER, 1111N,
1161ER, 2030R

Miscellaneous provisions, 1111N, 2030

Split investment, 492R

ENVIRONMENTAL QUALITY

Environmental Protection Agency

Environmental Protection Agency

EPA region 4 outer continental shelf (OCS) air quality
permitting actions, 704P

Environmental Services, Office of

Permit Services Division

Standard fees for solid waste transporters, 704P

Secretary, Office of the

Legal Affairs Division

Control of emissions of nitrogen oxides, 59R

Control of emissions of smoke, 1321N

DEQ notifications to state police, 348N, 1239R,
1535R

Exemption for tanks storing corrosive materials,
1605N

Fee schedule, 432N

Gasoline handling, 641N, 1534R

HW tanks—secondary containment requirements and
90 day turnover of hazardous waste, 643N, 1234R

Incorporation by reference—2009, 1607N

Miscellaneous amendments and corrections, 1847N

Miscellaneous amendments for NRC compatibility,
1112N, 1771R

Organic solvents and solvent degreasers, 649N,
1773R, 2030R

Prevention of significant deterioration, 1322N

Regulatory permits for cement and concrete facilities,
350N, 1540R

Removal of pesticide application exemption from
LPDES permitting requirements, 2095N

Reportable quantity for brine from solution mining,
655N, 1241R

Revisions of the drinking water source use, 1612N

Spill prevention and control, 858N, 1778R

Regulation of greenhouse gas emissions and title v
applicability, 431P, 704P

Technical review of working drafts of waste permits
(100 Pot1), 161P

Termination determination of CAAA §185 penalty
fees—state implementation plan revision, 432P,
705P

Training requirements for underground storage tank
system operators, 313R

EXECUTIVE ORDERS

BJ 09-20 Bond Allocation—Jefferson Parish Finance

Authority—Amend Executive Order BJ 09-18, 1EO

BJ 09-21 Executive Branch—Expenditure Reduction,
1EO

BJ 10-01 Rescinding Executive Orders BJ 08-48 and BJ
08-52, 2EO

BJ 10-02 Support to Oklahoma, 169EO

BJ 10-03 State of Emergency—Extension of Qualifying
in the Parish of Desoto, 440EO

BJ 10-04 Carry-Forward Bond Allocation 2009, 440EO

BJ 10-05 Merit Increase Freeze, 714EO

BJ 10-06 Expenditure Freeze, 714EO

BJ 10-07 Flags at Half-Staff, 912EO

BJ 10-08 Emergency Procedures for Conducting State
Business, 912EO

BJ 10-09 Emergency Partial Suspension of
Certain EMT Licensing Laws, 1154 EO

BJ 10-09 Bond Allocation—Local Government
Environmental Facilities and Community Development
Authority, 1155 EO

BJ 10-11 Property Use for Emergency Berm Project for
Deepwater Horizon Oil Spill Response, 1412EO

BJ 10-12 Executive Department—Limited Hiring
Freeze, 1413EO

BJ 10-13 Louisiana Intrastate Rail Authority, 1414EO

BJ 10-14 DOTD Guidelines for Vehicles, Trucks and
Loads, 1671EO

BJ 10-15 Offender Labor, 1920EO

BJ 10-16 Small Purchase Orders, 1920EO

BJ 10-17 Governor's Military Advisory Board—
Amends and Supercedes Executive Order No. BJ 09-4,
1923EO

BJ 10-18 In Memoriam, 1924EO

GOVERNOR

Administration, Division of

Motion picture investor tax credit program, 52R

Patient's compensation fund oversight board

Actuary, annual actuarial study, risk rating, rates,
surcharges, 1853N

Oversight board administrative role clarifications,
355N

Racing commission, 1323N

Mandatory health screening, 1931ER

Stables, 1324N

The veteran initiative-procurement, 507R

Architectural Examiners, Board of

Admission renewal procedure, 353N, 1780R

Auctioneers Licensing Board

Licensing, examination procedure, fees, qualifications
as apprentice, bonds, funds, advertising violations,
continuing education, 1851N

Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, Board of

General provisions, 493R,

Public hearing—substantive changes, 161P

Boxing and Wrestling Commission

Boxing and Wrestling Standards, 108N, 354N, 756R,
992R, 1242R

GOVERNOR (Continued)

Coastal Protection and Restoration Authority

Public hearing—state fiscal year 2011 draft annual plan, 164P

Contractual Review, Office of

The veteran initiative-procurement, 507R

Crime Victims Reparation Board

Compensation to victims, 1614N

Eligibility for reparations, 919ER

Elderly Affairs, Office of

State plan on aging, 1325N

Facility Planning and Control, Office of

Percent for universal design, 1542R

Financial Institutions, Office of

Expired license reinstatement procedure, 316R

Non-depository records retention, 656N, 1243R

Group Benefits, Office of

PPO plan of benefits

Continued benefits, 1615N

Mental health and substance abuse benefits, 1616N

Prescription drug benefits: brand/generic, 1617N

Wellness benefits, 1618N

PPO plan of benefits, eligibility, medical benefits, and schedule of benefits, 1162ER

Home Inspectors, Board of

Training, testing, and licensure, 2096N

Information Technology, Office of

IT bulletins published, 705P, 2134P

Office of electronic services abolition, 863N, 1544R

Law Enforcement and Administration of Criminal Justice, Commission on

Peace officer training, 355N, 992R

Louisiana River Pilot Review and Oversight, Board of

General provisions, 99N, 984R

Manufacturer termination of franchise; liquidation of new vehicle inventory; warranty work; exception, 1932ER

Motor Vehicle Commission

General provisions, 864N, 1545R

Public Defender Board

Capital Defense Guidelines, 111N, 993R

Trial court performance standards for attorneys representing parents in child in need of care and termination of parental rights cases, 1857N

Sheriff's Pension and Relief Fund

Eligible rollover distribution, 1868N

Shorthand Reporters, Board of Examiners

Fees, 1114N, 1780R, 1929ER

State Military Department

National guard death and disability benefits, 316R

State Purchasing, Office of

The veteran initiative-procurement, 507R

State Travel, Office of

General travel PPM, 150PPM

Statewide Uniform Payroll

403(b) Tax Shelter Annuity Program, 1686ER

Used Motor Vehicle Commission

Commission name change, 657N

Recreational products regulation, 657N

Transfer of licensing, 657N

HEALTH AND HOSPITALS

Addictive Disorders, Office of

Need and application reviews, 521R

Aging and Adult Services, Office of

Adult protective services, 759R

All inclusive care for the elderly, reimbursement rate reduction, 170ER, 1687ER

All inclusive care for the elderly, repeal of reimbursement rate reduction, 171ER

Facility need review—relocation of nursing facility beds, 364N, 1009R

Home and community based services waivers

Adult day health care, reimbursement rate reduction, 177ER

Adult day health care, repeal of reimbursement rate reduction, 178ER

Elderly and disabled adults, personal assistance services, 1183ER

Nursing facilities admissions, 365N, 737ER, 1010R

Personal care services

Long-term, policy clarifications, 1374N, 1749ER

Long-term, reimbursement rate reduction, 215ER, 673N, 1250R

Long-term, repeal of reimbursement rate reduction, 215ER

Service limit reductions, 1749ER

Citizens with Developmental Disabilities, Office of

Home and community-based services waivers

Children's choice, allocation of waiver opportunities, 1954ER

Children's choice, family training services, 324R

Children's choice, reimbursement rate reduction, 178ER, 927ER, 1696ER

Children's choice, service cap and reimbursement rate reduction, 1696ER, 1955ER

New opportunities waiver, reimbursement rate reduction, 662N, 719ER, 1247R

New opportunities waiver, resource allocation model, 65R

Supports waiver, reimbursement rate reduction, 928ER, 179ER, 1630N, 1722ER, 1956ER

Dentistry, Board of

General provisions, 63R

Mobile dentistry; relicensure of dentists, hygienists, 1115N, 2035R

Health Services Financing, Bureau of

Adult dentures programs, replacement and relines limits, 170ER, 920ER, 1327N, 2039R

Adult residential care providers—minimum licensing standards—dementia training requirements, 362N, 1008R

All inclusive care for the elderly, reimbursement rate reduction, 170ER, 171ER, 1687ER

Ambulatory surgical centers, reimbursement rate reduction, 172ER, 172ER, 921ER, 1621N, 1688ER, 1933ER

Clinic services

End state renal disease facilities, reimbursement rate reduction, 175ER, 925ER

HEALTH AND HOSPITALS (Continued)

- CommunityCARE program
 - Immunization, 173ER, 447ER, 1416ER
 - Pay-for-performance initiative, 173ER, 447ER, 1416ER, 1622N
 - Payment levels, 173ER, 447ER, 1622N
 - Primary care providers
 - Referral exemptions, 1417ER
 - Reimbursement rate adjustment, 1689ER
 - Demonstration waivers
 - Family planning waiver, reimbursement rate reduction, 175ER, 926ER
 - Disproportionate share hospital payments
 - Low income and needy care collaboration, 4ER, 921ER, 1690ER
 - Mental health emergency room extensions, 717ER, 1119N, 1418ER, 1781R
 - Non-rural community hospitals, 4ER, 923ER, 1418ER
 - Pre-admission certification and length of stay assignment, 65R
 - Radiology utilization management, 512R
 - Early and periodic screening, diagnosis and treatment
 - KIDMED services, claims filing, 128N, 759R
 - Dental program and covered services, 1624N
 - Reimbursement rate reduction, 1691ER
 - Dental program, reimbursement rate reduction, 174ER, 924ER, 1329N, 2040R
 - Personal care services, 872N
 - Reimbursement methodology, 1870N
 - Electronic health records incentive payment, 2108N
 - End stage renal disease facilities, 925ER
 - Reimbursement rate reduction, 1330N, 1693ER, 2040R
 - Facility need review
 - Adult day health care providers, 322R
 - Exception criteria for downsizing enrolled beds, 1625N
 - Relocation of nursing facility beds, 364N, 1009R
 - Family planning clinics, reimbursement rate reduction, 1693ER
 - Family planning waiver, reimbursement rate reduction, 926ER, 1626N, 1694ER, 1934ER
 - Federally qualified health centers
 - Service limits and reimbursement rate reduction, 176ER, 718ER, 1420ER
 - Service limit reduction, 1627N
 - Forensic supervised transitional residential and aftercare facilities minimum licensing standards, 1164ER, 1935ER
 - Home and community based services waivers
 - Adult day health care, reimbursement rate reduction, 177ER, 1695ER
 - Adult day health care, repeal of reimbursement rate reduction, 178ER
 - Children's choice, allocation of waiver opportunities, 1954ER
 - Children's choice, family training services, 324R
 - Children's choice, reimbursement rate reduction, 178ER, 927ER, 1628N, 1696ER
 - Children's choice, service cap and reimbursement rate reduction, 1696ER, 1955ER
 - Elderly and disabled adults,
 - Personal assistance services, 1183ER
 - Reimbursement rate reduction, 1697ER
 - Minimum licensing standards, 1331N
 - New opportunities waiver reimbursement rate reduction, 662N, 719ER, 1247R, 1706ER
 - New opportunities waiver resource allocation model, 65R
 - Residential Options Waiver, 720ER, 1706ER
 - Service budget and reimbursement rate reduction, 1721ER
 - Supports waiver, reimbursement rate reduction, 928ER, 179ER, 1630N, 1722ER, 1956ER
- ### Home health program
- Durable medical equipment, reimbursement reduction, 180ER, 181ER, 663N, 734ER, 1185ER, 1247R, 1364N, 2041R
 - Nursing and home health aide services,
 - Reimbursement rate reduction, 182ER, 183ER, 928ER, 1631N, 1957ER
 - Provider accreditation, 512R
 - Provider accreditation requirements, repeal, 735ER, 1420ER
- ### Hospital licensing standards
- Crisis receiving centers, 513R
- ### Inpatient hospital services
- Non-rural, non-state hospitals
 - Children's specialty hospitals, 929ER, 1723ER
 - Low income and needy care collaboration, 1186ER
 - Major teaching hospitals, 930ER, 1188ER, 1724ER
 - Reimbursement rate reduction, 931ER, 1190ER, 1552R, 1871N
 - Pre-admission certification, 197ER, 939ER, 1960ER
 - Reimbursement methodology, 1725ER
 - Small rural hospitals, upper payment limit, 1729ER
 - Supplemental payments, 935ER
- ### Intermediate care facilities for persons with developmental disabilities
- Non-state facilities, reimbursement rate reduction, 1730ER
 - Public facilities, reimbursement methodology, 1731ER
 - Reimbursement rate reduction, 1555R, 1732ER
- ### Laboratory and radiology services
- Radiology utilization management, 1120N, 1781R
 - Reimbursement rate reduction, 198ER, 665N, 939ER, 1248R, 1733ER, 1874N, 1960ER
- ### Long term care
- Intermediate care facilities for persons with development disabilities, 737ER, 881N
 - Non-rural, non-state hospitals
 - Low income and needy care collaboration, 7ER, 184ER
 - Major teaching hospitals, 8ER
 - Outlier payment methodology, 519R
 - Pre-admission certificate, 66R
 - Reimbursement, 448ER, 736ER
 - Reimbursement rate reduction, 186ER, 190ER, 877N
 - Supplemental payments, 194ER

HEALTH AND HOSPITALS (Continued)

- Medicaid eligibility
 - Express lane eligibility, 9ER, 882N, 941ER, 1555R
 - Medicare savings programs, 11ER, 942ER, 1734ER, 2110N
 - Medical necessity criteria, 1365N
 - Medical transportation program
 - Emergency ambulance services, reimbursement rate reduction, 199ER, 666N, 1193ER, 1194ER, 1248R, 1875N, 1961ER
 - Non-emergency ambulance services, reimbursement rate reduction, 200ER, 201ER, 944ER, 1877N, 1962ER
 - Non-emergency medical transportation, reimbursement rate reduction, 944ER, 1736ER, 1878N, 1963ER
 - Mental health rehabilitation program
 - Reimbursement rate reduction, 202ER, 451ER, 668N, 945ER, 1249R, 1879N, 1963ER
 - Service Limitations, 451ER, 668N, 1249R
 - Termination of parent/family intervention (intensive) services and continued treatment clarifications, 1736ER
 - Multi-systemic therapy
 - Prior authorization and reimbursement rate reduction, 202ER, 946ER, 1880N, 1964ER
 - Reimbursement rate reduction, 453ER, 670N, 1250R, 1738ER
 - Nursing facilities
 - Admissions, 365N, 737ER, 1010R
 - Emergency preparedness—electronic reporting requirements, 325R
 - Minimum licensing standards—dementia training requirements, 368N, 1013R
 - Minimum licensing standards—Nurse aide training and competency evaluation program, 1422ER, 1965ER
 - Per diem rate reduction, 325R, 520R
 - Reimbursement methodology, rate determination, 203ER, 1121N, 1195ER, 1782R
 - Reimbursement rate reduction, 12ER, 204ER, 884N, 947ER, 948ER, 1556R, 1421ER, 1882N, 1970ER
 - Outpatient hospital services
 - Non-rural, non-state hospitals
 - Reimbursement rate reduction, 1739ER
 - Children's specialty hospitals, 1742ER
 - reimbursement rate reduction, 205ER, 209ER, 949ER, 950ER, 1366N, 1739ER, 2041R
 - Low income and needy care collaboration, 13ER, 740ER, 1744ER
 - Major teaching hospitals, 16ER, 954ER, 1747ER
 - Radiology utilization management, 67R, 1123N
 - Reimbursement rate reduction, 454ER, 671N, 950ER
 - Supplemental payments, 213ER, 1196ER, 2111N
 - Small rural hospitals
 - Upper payment limit, 1747ER
 - Personal care services
 - Long-term, policy clarifications, 1374N, 1749ER
 - Long-term, reimbursement rate reduction, 215ER, 455ER, 673N, 1251R, 1752ER
 - Long-term, repeal of reimbursement rate reduction, 215ER
 - Service limit reduction, 1749ER
 - Pediatric day health care program, 1557R
 - Pharmacy benefits management program
 - Maximum allowable costs, 222ER, 456ER, 1198ER
 - Medication administration, H1N1 immunizations, 22ER, 955ER, 1124N, 1782R
 - Methods of payment, 16ER, 457ER
 - Restoration of the dispensing fee, 18ER, 887N, 1558
 - Restoration of the dispensing fee repeal, 743ER
 - Pregnant women extended services
 - Dental services, reimbursement rate reduction, 216ER, 955ER, 1370N, 1753ER, 2044R
 - Professional services program
 - Anesthesia services
 - Reimbursement methodology, 956ER, 1251R, 1632N, 1754ER
 - Supplemental payments, 1199ER
 - Reimbursement rate reduction, 217ER, 459ER, 674N, 956ER
 - Family planning services, reimbursement rate reduction, 219ER, 958ER, 1893N, 1971ER
 - Inpatient physician services, 68R
 - Physician services, reimbursement rate reduction, 219ER, 460ER, 676N, 959ER, 1252R, 1372N, 1755ER
 - Prosthetics and orthotics
 - Provider accreditation, 520R
 - Reimbursement rate reduction, 221ER, 461ER, 521R, 678N, 960ER, 1253R, 1756ER, 1883N
 - Rural health clinics, reimbursement rate reduction, 223ER, 747ER
 - Services for special populations
 - Pediatric day health care program, 885N
 - Targeted case management
 - Nurse family partnership program, reimbursement rate reduction, 223ER, 1125N, 1200ER, 1783R
- ### **Medical Examiners, Board of**
- Administrative provisions, licensure and certification, practice, 660N, 1243R
 - Enforcement terms; unprofessional conduct, 2103N
 - Licensure and certification; reciprocity, 2105N
 - Licensure exemptions; emergency transfer of patients, 1869N
- ### **Nursing, Board of**
- Alternative to disciplinary proceedings, 129N, 358N, 1244R
 - Definition of terms—other causes, 1619N
 - Faculty, 130N, 360N, 1245R
 - Fees for fingerprint imprint, 131N, 359N, 1245R
 - Registered nurses
 - Peripherally inserted central catheter, 64R
- ### **Pharmacy, Board of**
- Digital imaging of prescriptions, 755R
 - Pharmacy interns, 755R
 - Prescription monitoring program, 755R
 - Prescription transfers, 756R
- ### **Practical Nurse Examiners**
- Adjudication, definitions, licensure qualifications, and name change, 1887N

HEALTH AND HOSPITALS (Continued)

Psychologists, Board of Examiners of

Authority, 124N, 1005R
Continuing education, 124N, 1005R
Credentials, 124N, 1005R
Disciplinary action, 124N, 1005R
Licensure, 124N, 1005R
Supervised practice, 124N, 1005R
Supervision of assistants psychologists, 659N, 1246R
Supervision of unlicensed assistants, 124N

Public Health, Office of

2009 Louisiana annual beach report, 1143P
Advanced notice of rulemaking, 164P
Center for environmental health
Request for comments—fish consumption advisory protocol, 165P
Disease reporting instructions; perinatal HIV exposure reporting, 370N, 1014R, 1253R
Food processing plans, food recall plans and positive test result reporting, 1884N
Genetic diseases neonatal screening, 1661P
Maternal and child health section
Maternal and child (MCH) block grant federal funding, 1402P
Pilot testing for severe combined Immunodeficiency syndrome, 1661P
Preparation and handling of seafood for market, 373N, 1016R
Preventive health services
Water supplies—fluoridation, 72R
Preventive health and health services block grant—public hearing, 1143P
Sewage disposal program, 1633N

Veterinary Medicine, Board of

Continuing veterinary medicine education, 319R
Fall/winter exam dates, 1906P
Temporary registration during a declared emergency, 919ER, 1932ER
Temporary registration during oil spill, license procedures, 2106N

Wholesale Drug Distributors, Board of

Enforcement action, 321R
Fees, 158P
General provisions, 321R
Required information, 361N, 1246R
Wholesale drug distribution—exemptions, 1620N
Wholesale drug or device distributors, 322R

INSURANCE

Commissioner, Office of the

Regulation 99—Certificates of Insurance, 374N, 706P, 2114N

Health, Office of

HIPPA assessment rate, 1661P

JUSTICE

Attorney General, Office of the

Certificates of public advantage, 376N, 1255R

NATURAL RESOURCES

Conservation, Office of

Environmental division
Hearing—Docket No. ENV 2010-04, US liquids of La., 2135P
Exploration and production site groundwater evaluation and remediation—statewide order no. 29-B, 388N, 1562R, 1783R
Fees, 1889N
Groundwater evaluation, 132N
Ground water management, 326R
Manifest system—statewide order no. 29-B, 390N, 1017R
Orphaned oilfield sites, 165P, 433P, 706P, 1144P, 1402P, 1661P, 1910P, 2135P
Pit closure techniques and onsite disposal of E and P waste, 679N, 1264R
Professional services program
Public hearing—docket no. env. 2010-03, 1146P
Solicitation of comments for rule-making, 1907P
Statewide order no 29-B, 2117N
Statewide orders no. 29-B and 29-B-a, 1427ER, 1438ER
Water well registration, construction and closure—advance notice of rulemaking and solicitation of comments, 2134P

Secretary, Office of the

Fishermen's gear compensation fund
Loran coordinates, 165P, 433P, 706P, 1144P, 1403P, 1661P, 1910P, 2136P

PUBLIC SAFETY AND CORRECTIONS

Corrections Services

Attorney visits, 1894N
Crime victim services bureau, 525R
Death penalty, 525R, 2121N
Disciplinary rules and procedures for adult offenders, 1449ER, 1636N, 1973ER, 2121N
Louisiana risk review panels, 528R
Medical reimbursement plan, 1126N, 1784R
Offender incentive pay and other wage compensation, 531R
Parole board, 2119N
Public information program and media access, 681N, 1265R
Regulation of air traffic, 391N, 1017R
Restoration of good time, 26ER, 533R
Sex offender assessment panels, 23ER, 534R

Gaming Control Board

Accounting regulations, 392N, 1018R
Licensees, permittees, loans and restrictions, 684N, 1268R
Video draw poker, 1376N, 1636N, 2045R

Juvenile Justice, Office of

Educational and work assignment experience incentive program, 1127N, 1784R

Liquefied Petroleum Gas Commission

Emergency powers of director, 1895N

PUBLIC SAFETY AND CORRECTIONS (Continued)

Oil Spill Coordinator's Office

Mosquito bay natural gas condensate discharge final—settlement agreement, 2136P

Parole, Board of

Amendments to board composition, meetings, hearings, 2119N

Composition, meetings, hearings, time served, 1972ER

Private Security Examiners, Board of

Licensing of journeyman, 134N, 764R

Training, 72R

State Police, Office of

DNA samples, collection, submission, receipt, identification, storage, disposal, 1450ER

Explosives code, 550R

Motor carrier safety—hazardous materials, 1897N

Motor vehicle inspection, 1133N, 1789R

Motorcycle safety training program, 536R

Preparedness and response act, 545R

State uniform construction code, 1135N

Tow truck license plate, 462ER

Towing, recovery and storage, 546R, 690N, 1270R, 1898N

State Fire Marshall, Office of the

Code enforcement and building safety

Fire protection, 687N, 1563R

Industrialized buildings, 394N, 1020R

Property protection licensing, 1379N

State Uniform Construction Code Council

Certification requirements, grandfathering, 690N, 1271R

Uniform construction code, 326R

REVENUE

Policy Services Division

Ad valorem taxation, 765R

Application of net operating losses

carryover to otherwise closed years, 1640N

Corporation income and franchise tax filing extensions, 552R

Electronic filing requirements for oil or gas severance tax, 691N, 1271R

Extension of time to file; waiver of interest, 329R

Income tax credits for wind or solar energy systems, 692N, 1394N, 2047R

Income tax withholding on gaming winnings, 2122N

Individual income tax filing extensions, 72R

Limited local sales tax exemption for cancer and related chemotherapy prescription drugs, 1028R

March meeting of Act 442 collaborative working group, 706P

National center for construction education and research apprentice tax credits, 1137N, 1790R

Natural gas severance tax rate, 1147P

Oil spill contingency fee, 1662P

Sales and use tax exemptions, 404N, 1566R

Secretary, Office of the

Act 442 collaborative working group meeting, 433P, 1404P, 1910P, 2137P

State central registry

Criminal background and risk assessment evaluation, 45ER, 142N, 850R

Tax Commission

Public hearing—substantive changes to proposed rule valuation of oil, gas, and other wells, 434P

SOCIAL SERVICES

Community Services, Office of

Foster care, 73R

Guardianship subsidy program, 552R

Legal representation in child protection cases, policies and procedures, 1453ER

Residential licensing, 329R, 784R, 1029R,

Adult residential care, disqualification, 831R

Child residential care, 784R

Disqualification, 27ER, 1272R

Emergency shelter, required records, 227ER

Notice of revocation action, 696N

State central registry, 34ER, 135N, 838R, 1031R

Social services block grant (SSBG)

2010-2011 intended use report, 707P

Temporary assistance to needy families (TANF)

Caseload reduction report, 434P

Family Support, Office of

Adult residential care, disqualification, 831R

Child Care Assistance Program

Automated time and attendance

Discontinuation of job search, 40ER, 698N, 747ER, 1277R

Military child care providers, 225ER, 555R

State central registry, 137N

Child care daycare services

Child care quality rating system, 332R

Child care licensing

Disqualification, 1272R

Revocation notice, 701N, 1279R

State central registry, 41ER, 141N, 847R

Supplemental nutritional assistance program (SNAP),

Iraqi, Afghani immigrant—qualified alien, 961ER

Family independence temporary assistance program (FITAP, kinship care subsidy program, 1201ER

Support enforcement, 74R

TANF initiatives, family violence prevention and intervention program, 1203ER, 1205ER

TRANSPORTATION AND DEVELOPMENT

Highway Construction

Access connection permits and driveway permits, 2123N

Outdoor Advertising

Outdoor advertising regulations, 892N

Professional Engineering and Land Surveying Board

Re-examinations, experience, and licensure status, 405N, 1033R

Transportation Research Center

LTRC transportation training and education fund, 1904N

TREASURY

State Employees' Retirement System

DROP excess benefit arrangement, 1398N, 2050R

WILDLIFE AND FISHERIES

Secretary, Office of the

Shrimp packaging regulations, 1034R

Wildlife and Fisheries Commission

2010 spring inshore shrimp season, 963ER, 1757ER

Bucks-only deer hunting, 48ER

Carp, 145N

Commercial spotted seatrout rod and reel fishery,
1760ER

Commission commercial and recreational fishing,
1761

Crab traps, 77R

Elmer's island wildlife refuge, 463ER, 708P, 1280R

Early migratory seasons, 1762ER

Fishing closure, 963ER

Commercial fisheries closure, 1758ER

Portion of eastern Louisiana, 964ER

Portion of territorial seas, 1206ER

Recreational and commercial fisheries closure,
1764er

Barataria and Terrebonne basins and territorial
seas, 1207ER

Barataria to Caminada pass, 1207ER

Bayou Lafourche and Terrebonne, reopen
territorial seas, 1208ER

Chaland pass to Barataria, west of Bayou
Lafourche, 1208ER

Due to oil spill, 1208ER

Portions of Plaquemines and St. Bernard
Parishes, 1455ER

Portions of Plaquemines, St. Bernard, Orleans
and St. Tammany Parishes, 1455ER

Portions of state inside and outside waters,
1456ER

Portions of zones 1 and 3 to shrimping, 1757ER

St. Bernard Parish, 1456

Outside waters

From caminada pass to belle pass, 1209ER

From chaland pass to red pass, 1209ER

Portion of

Barataria basin, 1210ER

Inside waters within Barataria basin, 1210ER

State inside and outside waters, Terrebonne
Parish, 1211ER

St. Bernard Parish, 1211ER

Territorial seas near Marsh Island, 1211ER

Vermillion Parish, 1212ER

Vicinity of Marsh Island, 1212ER

West of Mississippi River, Plaquemines Parish,
1212ER

Commercial fisheries opening, 1759ER

Commercial crab fishing opening

East of the Mississippi River, Plaquemines, St.
Bernard, and Orleans Parish, 1974ER

West of the Mississippi River, 1975ER

Opening and closing, portions of Barataria basin,
1213ER

Opening, inside waters near Cocodrie and
portions of territorial seas, 1213ER

Openings, portion of state outside and inside
waters, zones 1 and 2, except shrimp in zone 1,
1214ER

Recreational angling and charter boat angling
fisheries opening, 1977ER

Recreational fishing opening, 1765ER

Recreational fishing opens, 1758ER

Reopening

Recreational catch and release of finfish, 1459ER

Recreational fisheries closure and commercial
fisheries opening, 1978ER

Recreational and commercial fisheries

East of Mississippi River, St. Bernard parish,
1456ER

Inside and outside waters east of the
Mississippi River, 1457ER

Inside waters south of Cocodrie, 1457ER

Inside waters, territorial seas east of the
Mississippi River, Plaquemines parish,
1458ER

Inside waters, western Terrebonne Parish,
1214ER

Outside waters south of Marsh Island, 1215 ER

Portion of inside and outside waters, 1215 ER

Portion of state inside and outside waters,
Terrebonne Parish, 1215ER

Portion of state outside waters, 1216ER

Portions of Lafourche and Terrebonne Parishes,
1458ER

Portions of Terrebonne, Lafourche, Jefferson and
Plaquemines Parishes and closes in St. Bernard
Parish, 1459ER

State inside waters in portions of Bayou
Lafourche and other Lafourche Parish inside
waters, 1459ER

St. Bernard Parish, 1216ER

Recreational and commercial fisheries closure,
1454ER, 1976ER

Recreational red snapper season closure, 1216ER

Shrimp season changes, state outside waters,
zones 2 and 3, 1217ER

Shrimp seasons and fishing closures, 1217ER

Spring shrimp season opening

Portion of zone 1, 1218ER

Remaining portion of zone 1, 1218ER

General and wildlife management area hunting,
406N, 1566R

General and WMA turkey hunting regulations,
1641N

Hunting preserve regulations, 1399N

Hunting season, 49ER

King mackerel, 47ER

Large coastal shark, 229ER, 748ER

Nuisance wildlife control operator program, 74R

Physically challenged hunters permit, 1138N,
2051R

Recreational harvest

Silver and Bighead Carp, 1280R

Reef fish, 47ER, 48ER, 897N, 1791R

Resident game hunting season, 421N

Oyster season, 1763ER

Resident game hunting season, 1580R

Shrimp, 49ER, 143N, 230ER

Closure, portion of zone 1, including Breton and
Chandeleur Sounds, 964ER

WILDLIFE AND FISHERIES (Continued)

Special bait dealer's permit, 77R

Special shrimp season

Closure, remainder of Zone 1 and all of Zone 2,
965ER

Opening, portion of Breton and Chandleur Sounds,
965ER

Spotted seatrout management measures, 2132N

Spring inshore shrimp season closure in Zone 2,
1460ER

Zone 2 and portion of Zone 1, 965ER

Territorial sea shrimp

Closure and portion of Zone 3 opening, 966ER

Re-opening, 966ER

Turkey seasons, 1644N

Use of yo-yo's and trotlines in Lake Lafourche,
2131N

Wildlife rehabilitation program, 852R

WORKFORCE COMMISSION

Workers' Compensation Administration, Office of

Average weekly wage rate, 1907P

Weekly Compensation Benefits Limit, 1907P